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# House suspends rules, OK's resolution blasting court

BY HUGH W. SPARROW
News staff writer

MONTGOMERY, Ala., June 18—Without a dissenting vote the House suspended its rules today and gave speedy approval to a House joint resolution condemning the United States Supreme Court for its decisions based "on social ideologies not expressed or envisaged in the Constitution."

The measure was sponsored by Barber Rep. McDowell Lee, a former FBI agent.

The action was taken in the midst of today's continued filibuster in connection with the pending competitive bid bill.

THE RESOLUTION CITED several rulings including the case decided yesterday resulting in the release of five Communists convicted under the Smith Act and the ordering of new trials for nine for similar violations.

The resolution declared in part:

"Be it resolved by the Legislature of Alabama, both houses concurring:

"That the Legislature of Alabama deplores the recent tendency of the Supreme Court of the United States to base its decision solely, apparently, on the private views of its members, for in so doing the court subverts the rule of law and has caused immeasurable confusion in the law, has precipitated much tension and unrest among our people, and has damaged severely the security of our nation; and that the Legislature of Alabama does hereby urge members of the Supreme Court of the United States to reverse this tendency and to restore the rule of law to this nation."

THE BIRMINGHAM NEWS
Birmingham, Alabama
June 18, 1957
Front Page
Red Star Final

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44 JUL 1 1957

# Court Put a Strain On Academic Liberty

By JAMES [illegible]
Special to The New York Times.

WASHINGTON, June 18—The Supreme Court is more in the mind of the capital today as a result of its recent decisions on individual liberties than at any time since its great battles with President Franklin D. Roosevelt during the early days of the New Deal.

Following on its decision in the public school segregation cases, it now has spoken out on the other great controversies of the post-war era: individual liberty vs. national security; the rights and responsibilities of Government employes; the investigative power of state and Federal Legislatures; and the ancient traditions of the sanctity of reputation, the right of privacy, and academic freedom.

### Supreme Court Criticised

Today, legal experts in the Senate were conceding that the court had put fundamental and historic restrictions on a Congressional investigatory power that in recent years had been asserted as all but limitless.

Many Senators severely criticized the high court in its reversal of the conviction of John T. Watkins for contempt of Congress. Others suggested that wholesale reform of procedures might be needed if the investigative pattern, particularly in the field of alleged subversion, is not to collapse.

Also throughout today constitutional lawyers here were studying the implications of this month's decisions by the court, and they were pointing to the [illegible] v. The State of New Hampshire as an expression of the new court's attitude toward [illegible] guaranteed under the Fourteenth Amendment.

Professor Sweezy, author and lecturer, who twice [illegible] before Attorney General Louis C. Wyman of New Hampshire and questioned in great detail about alleged subversive activities. He was asked about lectures he had made at the university, about his interests in the Progressive party, his political views and associations.

He denied that he had been a member of the Communist party, but refused to answer a number of questions about his teachings, his political opinions and associations. Thereupon he was held in contempt by the New Hampshire Supreme Court, and ordered to jail but released on $1,000 bond, pending appeal.

Chief Justice Earl Warren, announcing the judgment of the Supreme Court and Justice Felix Frankfurter, concurring, both delivered eloquent opinions in support of academic and political freedom.

Merely to summon a witness and compel him against his will to disclose the nature of past expressions and associations, Chief Justice Warren said, "is a measure of governmental interference in these matters.

"We believe," he wrote, reversing the judgment of the state court, "that there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression—areas in which government should be extremely circumspect to tread. * * *

"No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait-jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation."

### Frankfurter Notes Denial

Justice Frankfurter noted that Professor Sweezy had sworn that he never, during the lectures at the University of New Hampshire or anywhere else, had advocated the overthrow of the Government by force or violence. Justice Frankfurter added:

"Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation.

"The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. * * *

"For society's good—if understanding be an essential need of [illegible]

[illegible] quoted a recent statement on the need to continue the free spirit of the open universities of South Africa, now under attack by the South African Government:

"In a university, knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of church or state or any sectional interest.

"A university is characterised by the spirit of free inquiry, its ideal being the ideal of Socrates —'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs.

"Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself."

Justice Frankfurter said he was not seeking to compare the situation of the South African universities with those of this country, but he added:

"I do say that in these matters of the spirit inroads on legitimacy must be resisted at their incipiency. This kind of evil grows by what it is allowed to feed on. The admonition of this court in another context is applicable here:

"'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure'."

### The Right of Privacy

This is what the Supreme Court now seems to be saying in a great number of cases: not that officials in the Executive and members of the Legislatures have evil objectives or intent, but that in recent years they seem to have become infected with a spirit of casualness or even indifference toward those legal procedures of due process that were established to defend the sanctity of reputation, and the right of privacy, and to place legal limits on arbitrary action by Government.

In short, the Supreme Court, whose balance has undoubtedly been tipped toward greater concern for individual liberties by the appointments of President Eisenhower in the last four and a half years, now is indeed proclaiming "liberty throughout all the land"—and doing so in no ambiguous terms.

It is [illegible] answer to

# The High Court Splits Hairs

Yesterday's remarkable decision by the U. S. Supreme Court, freeing five convicted Communist leaders and ordering new trials for nine others, establishes a new interpretation of the Smith Act that may seriously hamper Government efforts to repress the Communist conspiracy in this country.

The Smith Act makes it unlawful to teach or advocate the violent overthrow of the U. S. Government and under it many of the top officials of the Communist Party in America have been sent to prison. In 1951, the Supreme Court upheld the constitutionality of the Act and the conviction under it of 11 Reds.

The case decided yesterday concerned 14 California party heads who were convicted in 1952 on charges of plotting to teach violent overthrow of the Government.

In upsetting the convictions by resort to some astonishing legalistic hair-splitting, the Court majority has been charged by the lone dissenter, Justice Clark, "with usurping the function of the jury." Many persons are likely to believe that the function of Congress may have been usurped as well.

Congress did not write the word "instigate" into the Smith Act. But Justice Harlan, in writing the majority opinion in this case, has proceeded to do so.

The court holds, the Justice stated, that the Smith Act does not forbid teaching and advocating forcible overthrow as an abstract principle "divorced from any effort to instigate action to that end." The Smith Act, he added, "was aimed at the advocacy and teaching of concrete action for the forcible overthrow of the Government, and not of principles divorced from that action."

Here, in this schoolroom approach to a vital issue, we have something vastly different from prior interpretations of the Smith Act and its power to punish those plotting the overthrow of our free institutions. Jus-

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BULLETIN
DAILY NEWS

DATE 6-18-57
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EDITOR Walter Annenberg
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ice Harlan's insistent requirement of "concrete action," of "instigation," hark back to the then-dissenting opinion of Justice Douglas in the 1951 decision, which pointed out that the Communist defendants were not accused of any "overt act" and that the case against them dealt with speech alone.

If an overt act of attempted overthrow has to be proved against suspected Communist conspirators, if the teaching and advocating of which they are accused must be bound up with proved instigation to violence, Government prosecutions under the Smith Act may be considerably handicapped.

Are we not to be permitted to head off an overt act?

In writing the majority opinion in the 1951 case, Chief Justice Vinson had this to say: "The words 'clear and present danger' cannot mean that before the Goverment may act it must wait until the putsch is about to be executed, the plans have been laid, and the signal awaited."

Unfortunately, the new majority lineup in the Supreme Court does not share Vinson's opinions in the matter. It prefers to narrow the scope of the Smith Act and in so doing to dull the edge of an instrument which has been highly effective in dealing with the ringleaders in the Communist conspiracy.

Even if the new theory of the court majority should hold, it is difficult to understand why the Government should not have an opportunity to present its evidence against all the defendants under the changed conditions.

Meanwhile, as others accused under the Smith Act race into court with the new decision clutched to their chests, it might be well for Congress to take a searching look at the law that it wrote, and perhaps amend it or re-write it in such a way that no legalistic loop-holes are left for Communist plotters.

# A Good Day's Work

The Bill of Rights—that part of the United States Constitution which guards the liberties of American citizens—is the stronger because of four decisions handed down by the Supreme Court near the close of its 1956-57 term. Taken together those rulings provide a reassuring contrast to the decisions in recent years that have tended to erode constitutional rights.

In these four civil liberties cases the Supreme Court decided:

First, that 14 "second string" Communist leaders in California were unlawfully convicted under the Smith Act in 1952.

Second, that career diplomat John Stewart Service was wrongfully discharged by the Secretary of State in 1951.

Third, that Illinois labor leader John T. Watkins was not guilty of contempt of Congress when he refused to tell the names of former Communist associates to a House Un-American Activities subcommittee.

Fourth, that Paul M. Sweezy, economist and co-editor of the *Monthly Review*, was not accorded due process of law when he was held in contempt by the Attorney General of New Hampshire for refusing to answer questions about lectures at the University of New Hampshire and about his political activities.

* * *

In none of these cases was there the slightest disposition on the part of the Supreme Court to favor Communists or their teachings. In each case, the Supreme Justices based their decision on basic rights which must apply equally to all if freedom of the individual citizen is to be protected.

Justice Harlan, an Eisenhower appointee, gave the 6-to-1 decision in the case of the California Communists. With only Justice Clark dissenting (Justices Brennan and Whittaker were not on the high bench when the case was argued), the court freed outright five of the defendants and returned the cases of nine others for new trials. The five were freed, the Supreme Court said, because the evidence against them "is so clearly insufficient that their acquittal should be ordered."

As Justice Harlan said, the Department of Justice erred in putting its reliance on the 1951 decision of the Supreme Court upholding the Smith Act conviction of Eugene Dennis and other top officials of the Communist party in the United States. The error was, so Justice Harlan found, in failing to distinguish between "advocacy of abstract doctrine and advocacy of action." To quote the Justice's words:

> The essential distinction is that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something.

In applying the Smith Act, the Supreme Court had to decide, so Justice Harlan explained, whether the 1940 law forbid advocating and teaching forcible overthrow as an abstract principle, "divorced from any effort to instigate action to that end." Answering the question, Justice Harlan said: "We hold that it does not."

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Justices Black and Douglas, who were the two dissenters in the Dennis case, would have gone much further than the majority in the California case. They said, in a separate opinion, that the statutory basis for the Los Angeles convictions "abridges freedom of speech, press and assembly in violation of the First Amendment."

By returning nine of the cases for retrial, the Supreme Court invites the Department of Justice to show what it can do in the light of this decision. If Attorney General Brownell's staff has evidence that can be made to stand up in court, now is the time to get busy on it.

The Service case, decided 8 to 0, was narrowly based on the procedure followed in the discharge of the diplomat, as of "doubtful loyalty," by Secretary of State Acheson six years ago. Reviewing the steps in the case, the Supreme Court found that the State Department's own regulations were violated when lower loyalty review boards were overruled by a higher board which then was supported by the Secretary of State.

* * *

Chief Justice Warren, another Eisenhower appointee, spoke for the Supreme Court in the 6-to-1 Watkins case. Reading a sharp lesson to the House of Representatives as well as to its Un-American Activities Committee, the Chief Justice said that the labor leader was

> not accorded a fair opportunity to determine whether he was in his rights in refusing to answer. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government.
>
> No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the government. Investigations conducted solely for the personal aggrandizement of the investigators or to punish those investigated are indefensible.

The Chief Justice spoke also in the 6-to-2 Sweezy case—in which the New Hampshire procedure was "to summon a witness and (to try) to compel him against his will to disclose the nature of his past expressions and association." This invaded the teacher's liberties in the areas of academic freedom and political expression—and these, as Mr. Warren said, are "areas in which government should be extremely reticent to tread." Sweezy's testimony included statements that he was a Socialist in political orientation, but that he had never been a Communist party member and did not advocate forcible overthrow of the Government.

There will be those to differ with one or more of these decisions, as for example, Representative Smith of Virginia, author of the Smith Act. We believe, as we said at the outset, that the Bill of Rights is the stronger because they have been handed down. For the Supreme Court is saying in effect that while the national security is vital and must be protected against subversion, so are the rights of citizens vital and so must freedom also be protected against

# A Communist Field Day

There is understandable concern in Congress over the U. S. Supreme Court's latest decision on Communists which some feel virtually give Red plotters in this country the most effective go-ahead signal they have had in years.

The Supreme Court has become for all practical purposes the American lawmaking body in the field of civil rights and civil liberties.

Its rulings have had the effect of law in the huge vacuum left by Congress which has passed practically no civil rights legislation in the 20th century.

The court may turn out to be President Eisenhower's most memorable monument. He has appointed four of the nine members: Chief Justice Warren and Justices Harlan, Brennan, and Whittaker. He may have to name more before his term is up, if there are further deaths and retirements.

Under Warren's leadership the court has become far-reaching in its decisions on civil rights—most notably its ban on segregation in public schools—and on civil liberties.

It has been roughly criticized—particularly by Southerners—not only on segregation but for its opinions on Communists and Fifth Amendment cases. One thing is sure:

The court has made it tougher for the government to prosecute—or perhaps made it more cautious about beginning prosecutions—while giving defendants more constitutional protection than they've ever enjoyed.

* * *

It would be impractical here to go into all the decisions of the court in the past few years in the related fields of civil rights and civil liberties.

Some of its rulings on Communism have had a tremendous effect. For instance, yesterday the court threw out the convictions of 14 California Communists under the 1940 Smith Act, freeing five and ordering new trials for the other nine. It was under this same act the 11 top Communists were convicted several years ago.

But this decision was based on technicalities and will not necessarily interfere with the government's ability to try other Communists under other sections of the act.

A year ago the court knocked Eisenhower's Federal Employe Security program into

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Paterson Evening News
Paterson, N. J.

Date: 6-18-57 Editorial

Harry B. Haines
Publisher & Editor

62-27[redacted]-14
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The court said Eisenhower went too far under existing law: That only people employed in sensitive jobs could be ousted as security risks. There are other laws under which people otherwise undesirable can be fired.

Earlier this year the court threw out the conviction of a man who bought narcotics from a government agent never further identified except as "John Doe." The court said: No more of that.

The court said if the government wants to prosecute a man, he has a right to know who the government informer was, and confront him, if doing so is relevant to his case.

On June 3 the court went further: It said that if the government does use a witness against a defendant in a criminal trial—and in its secret files has information supplied by that witness against the defendant—the man on trial has a right to see that information.

This ruling has been interpreted in some circles as meaning the FBI will have to throw its files wide open. The decision, it seems, is narrower than that. It's limited to written information by a witness against a particular defendant.

The purpose of the ruling was to give a defendant every opportunity to prove the witness against him has a faulty memory or is a liar but in the meantime, it provides a potent stalling influence for those who want to stymie government trial.

The court has also ruled that past party Communist membership is not in itself a bar to the practice of law. It knocked out the conviction of three people who harbored a convicted and fugitive Communist leader.

The reason: FBI agents, without search warrents, raided the house and hauled away every bit of furniture.

The court also has held the Justice Department lacks authority to ban Communist activity by an alien who has been under a deportation order for six months.

The right of states to try people—meaning Communists—on sedition charges was wiped out by the court which said the Federal Government has sedition laws to protect the whole country. Any prosecutions will be handled in Federal Court.

And the court ordered a new trial for Ben Gold, formerly a top Communist, after he was convicted of lying about party membership. The reason: An FBI agent talked to members of the jury or their families about a case not related to Gold at all.

This may all be law, but it would seem the forces of opposition to the government are getting super-protection from the same laws they are always working to overthrow.

High Court Decision
Put a Strong Stress
On Academic Liberty

By James Reston

(NY Times, June 19)

Washington, June 18----The Supreme Court was more in the mind of th capital today as a result of its recent decisions on individual liberti than at any time since its great battles with Pres. Roosevelt.

Legal experts in the Senate are conceding that the court had put fundamental and historic restrictions on a Congressional investigatory p that in recent years had been asserted as all but limitless. Constitut lawyers were studying the implications of this month's decisions by the and they were pointing to the order in the case of Prof. Paul M. Sweezey the State of N.H. as an expression of the new court's attitude toward du process under the 14th Amendment. In reversing the state court's conten citation of the Professor for refusing to answer a number of questions a his teachings, his political opinions and associations put to him by the state's Attorney General, Chief Justice Warren said this "is a measure o governmental interference in these matters." "We believe," he wrote, "th there unquestionably was an invasion of petitioner's liberties in the ar of academic freedom and political expression--areas in which Government should be extremely reticement to tread."

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# Communists Score 'Greatest Victory'

COMMUNISM had its innings in the United States Supreme Court Monday.

The highest tribunal in the land made three decisions which in effect turned the Communist conspiracy free to pursue its treasonous mission with little fear of American law.

In one decision, the Supreme Court ruled that to advocate violent overthrow of the United States Government there must be "an advocacy of action," not merely "advocacy of an abstract doctrine," before it is indictable under the Smith Anti-Sedition Act.

Five Los Angeles Communists were freed outright and a retrial of nine others was ordered. All had been convicted under the Smith Act in 1952.

In the other two decisions, the Court cleared a Federal employe who had been fired after adverse findings by the Loyalty Review Board, and overruled the contempt of Congress conviction of a labor leader who refused to give the House Un-American Activities Committee the names of former Communist associates.

Two weeks ago, the Court held that a criminal action must be dismissed if the Government refuses to turn over to the defense secret reports by the FBI on which the action is based.

Here is a series of constitutional verdicts that could hardly have been more pleasing to the implacable enemies of our country, than if it had been left to the Communists themselves to render them.

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Daily Worker
The Worker
New Leader

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One verdict says, in plain words, that it's quite all right to preach Communism if only the preacher does not openly preach violence.

The unalterable fact remains that the central creed of Communism is destruction of our social order by force.

Commenting on the Court's decision freeing five Communists and ordering new trials for nine others, former U. S. Attorney Walter S. Binns, who conducted their original prosecution in Los Angeles, said:

"I do not see how the Government could prosecute a case of this kind under the ruling, and continue to keep agents under cover."

This means that America's most carefully erected and strongest defense against subversion, secret FBI investigations, would be razed by the Supreme Court if retrials are started.

Los Angeles Communists were quick to grasp the point.

They held a jubilee, celebrating what they unanimously called their "greatest victory."

Dorothy Healey Connelly, former chairman of the Communist Party in Los Angeles County, rejoiced in what she termed "the greatest victory the Communist Party in America has ever received.

"It will mark a rejuvenation of the party in America. We've lost some members in the last few years, but now we're on our way."

That's what the Communist leaders think of the Supreme Court decisions.

*Regarding Communists*

# What the Court Seemed to Say

DECISIONS of the United States Supreme Court, handed down Monday in cases relating to Communist activity, will be received with mixed emotions.

There will be those who, fearing the existence of a communist conspiracy in the United States, will feel that the Court has taken a soft turn.

Opposed to these will be that segment of public opinion which will hail the decisions as a protection of individual liberty, thought and action.

There were two principle decisions. One reversed a lower court which held a group of California Communists guilty of violation of the Smith Act which makes it a crime to advocate overthrow of the Government by force. The validity of the Smith Act which has previously been upheld by the Supreme Court was not at issue. Only its application was tested.

The other case involved a witness before a Congressional committee who was cited for contempt for refusing to answer questions about association with Communists or suspected Communists. In this case the Supreme Court ruled that a committee must be specific in its questioning and show that its questions have point and relevancy.

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THE decision in the Smith Act case centered around the issue of forthright advocacy of violence as opposed to the theoretical or abstract principle expounded without instigating direct action.

Therein lies a fine distinction which it will be difficult for many Americans to discern.

It is undoubtedly correct that to discuss violence in abstract terms is different from an overt act. But the abstract discussion, it may be argued, will usually precede direct action and may even incite it.

It probably boils down pretty much to who employs the abstract terms, where they are used and under what conditions. One expounder of an abstract principle may be regarded as wholly objective; another using virtually the same terms may be highly inflammatory.

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BOTH the decisions mentioned reflect, we can assume, the extremely low state of Communism in this Country. Events of the recent past, culminating in the Hungarian uprising, have proved to many sympathizers that Communism is a chimera.

Party members and fellow travelers have defected and it is a question whether the remaining handful of diehards could mount a conspiracy that would do more than draw tired yawns from the most radically inclined.

Again, in both decisions, and with acknowledgement that the Communist danger is not imminent, the Supreme Court applied gentle brakes to those who, in their zeal, might be inclined to push restrictive measures too far, to the detriment of all citizens.

The Communist atmosphere in this Country is not conducive to hysteria; there is no need, then, for too vigorous measures which in the name of security, endanger freedom and liberty.

We doubt that the Supreme Court has let the bars down.

Rather, we interpret the decision as a gentle warning not to get excited when there is, at least momentarily, no cause for excitement.

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Page 8 Column 2

Lee Hills, editor

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# The Detroit News

*EDITORIAL PAGE*

40 WEDNESDAY, JUNE 19, 1957


*COURT SEEKS A BALANCE*

# *Security and Freedom*

It is certainly no accident that the two dramatic decisions of the Supreme Court upholding individual rights, even of admitted Communists, were written by conservatives appointed to the court by President Eisenhower. Surely the intent was to remove both opinions from any possible charge of fuzzy-minded radical authorship. The court had in mind something more important than abstract principles.

In reversing the contempt of Congress conviction of John T. Watkins, Chief Justice Warren attempted to set modest limits on the investigative powers of congressional committees. In freeing five California Communist leaders and ordering the retrial of nine others, Justice Harlan tried to re-define the Smith Act to make it compatible for the First Amendment guaranteeing free speech.

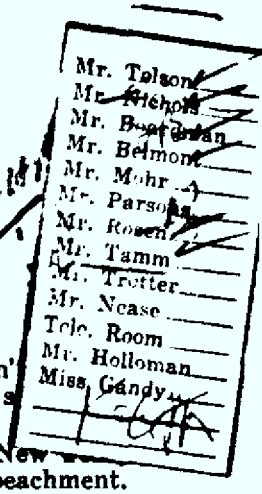
Both cases involved the delicate balance between governmental powers necessary for an orderly, and secure society and the freedom of the individual basic to our political philosophy and religious faith. Clearly this balance is never perfect, never at rest, but like the poise of a tight-rope walker requires constant compensating movements one way or the other.

★ ★ ★

What the court meant to say is simply that in our recent preoccupation with national security we have teetered too far in the direction of increasing the powers of government. The balance on which democracy stands may be lost if we do not vigorously resume concern with the rights of persons, particularly their right to speak or remain silent according to their conscience so long as they do not thereby injure others.

Even so the court has been circumspect. In neither case has it defined constitutional limits on congressional action. Congress may still provide broad authorizations of power to its committees but must do so in clear specific terms. It may also reverse Justice Harlan's reading of the Smith Act but only by specific legislation passed after public debate.

In brief the court recognizes both that excesses have occurred in the past and that the present climate of opinion has changed. It therefore asks the other branches of government to take a new reading of the public will.




# The Supreme Court

As if the temperature and humidity weren't to bear, we have to stand the journalistic heat s by this week's Supreme Court decisions.

The New York Daily News—it was hot in New too—really blew its top. Talked about impeachment. There hasn't been much talk about impeaching members of the Supreme Court since Civil War days. But the New York paper declared yesterday: "If a movement should start in Congress to impeach one or more of the learned justices, it might have much popular support."

The Philadelphia Inquirer followed, feebly. Declared: "The High Court Splits Hairs."

Item: The Supreme Court reversed (6 to 1) the conviction of a Midwest labor leader named John T. Watkins for contempt of Congress. Watkins refused to tell the House Un-American Activities Committee the names of persons he'd known as Communists. He admitted contributing to Commie causes, but wouldn't tell on others. We think the Court was right. No American should be forced to inform on the misdeeds of others performed long ago.

Item: The Supreme Court freed five California Communists convicted under the Smith Act and ordered a new trial for nine others. It drew a distinction between "advocacy of abstract doctrine" and "advocacy directed at promoting unlawful action." We think the Court was right here, too. Americans have a right to shoot off their mouths, if it doesn't lead directly to unlawful action. History books recall that Thomas Jefferson wrote in 1787, when the American Government was just being formed: "A little rebellion, now and then, is a good thing." Wonder what would have happened to Jefferson under some interpretations of the Smith Act?

Item: The Supreme Court ruled (8 to 0) that former Secretary of State Dean Acheson wrongfully discharged John Stewart Service, a Foreign Service officer, as a security risk in 1951. We're always glad to see justice done to an individual, though late. But we can't help smiling slightly at the memory of rabid GOPartisans accusing Acheson of being too soft on suspected Communists. Now the Court says he was too tough.

Conclusion: We think the Supreme Court has come out on the side of American rights to freedom of thought and belief. It has cracked down on improper use by Congress of its investigating power, and told it to stick to its knitting—and to stop going in for exposure "for exposure's sake." It has warned Congress, the lower courts and the executive branch that the Constitutional guarantees of individual freedom are at least as important as the government's duty to prosecute Reds.

We say: Amen.

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EDITOR McCullough
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# Claim Court Aids Reds

**By David Sentner**

Detroit Times Washington Bureau

WASHINGTON, June 19—Top officials of government investigative agencies today are convinced the current series of Supreme Court decisions have given "aid and comfort" to the new Moscow line.

They sense the rulings as being made to order for the Russian switch in policy of reducing armaments and increasing the Soviet fifth column in the United States.

The decisions in the Jencks, Watkins and Schneiderman cases have dealt a body blow to the battle against Communist activities along the following lines:

- Disclosure of FBI undercover agents in the Communist party made mandatory in the ruling for supplying defendants with confidential government files.
- The destruction of the investigative powers of Congress.
- The spiking of the chief weapon for prosecuting Communist leadership—the Smith Act.

A justice department spokesman told the Hearst newspapers that the full effects were being awaited of the decisions on cases in lower courts before legislation was drafted.

Senator Eastland (D) of Mississippi, chairman of the Senate judiciary committee, is getting impatient over the delay of the justice department and may introduce a measure of his own.

While it is admitted the temper of the prevailing bloc of Supreme Court justices might result in striking down the new legislation, it is felt the court will respond to public indignation reflected by Congress.

What is behind this rash of decisions?

Rep. Walter (D) of Pennsylvania, chairman of the House committee on un-American activities, put it this way:

**"The government seems to be much further to the left than the nation. The actions of the Supreme Court echo the so-called liberalism of the Americans for Democratic Action. Our distinguished jurists, I am afraid, mistake a political leftist fad for civil rights."**

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Date 6/19/57 Edition Star
Page 11 Column 2

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*Today in National Affairs*

# Court Ruling Called Blow To Congressional Inquiries

By DAVID LAWRENCE

WASHINGTON, June 18.—The Supreme Court of the United States has crippled the effectiveness of Congressional investigations. By one sweeping decision the court has opened the way to Communists, traitors, disloyal citizens and crooks of all kinds—in business and in labor—to refuse to answer any questions which the witness arbitrarily decides for himself are not "pertinent" to a legislative purpose. This means that every time a Senator or a Representative asks a question in an investigation the witness must be given a clear explanation of what the "legislative purpose" is and this may even have to be confirmed by a resolution adopted in each case by the Senate or the House. Then it may have to be passed upon in a decision by the Supreme Court before it is really valid.

Lawrence

This cumbersome procedure kills future investigations that seek to expose the ways and means by which the Communists infiltrate America. It kills any searching investigation of racketeers in the labor-union movement, or any other kind of corruption. Had the Supreme Court's new "law" been in effect during the Harding administration it would have killed off any exposure of the Teapot Dome scandals. Had it been rendered in 1950 Alger Hiss could have avoided answering questions asked by the House Committee on un-American Activities, whose "charter" of authority held ever since 1938 now is torn to shreds by the Supreme Court.

### Must Anticipate Queries

Sen. McClellan of Arkansas, Sen. Kefauver of Tennessee, Eastland of Mississippi and the chairmen of various House investigating committees might as well shut up shop. The power to investigate has been curtailed drastically on the ground that Congress has to particularize in every case and specify in its resolutions exactly why it wants certain questions answered. It must somehow anticipate all the questions the investigating committees may wish to ask. This is, as Justice Clark, a former attorney general, declared in his dissent, both "unnecessary and unworkable." He added:

The resulting restraint imposed on the committee system appears to cripple the system beyond workability."

This is because the Supreme Court has now set itself up as knowing more about what Congress needs to know to legislate than Congress itself thinks it does. In the words of Justice Clark:

"The majority (of the court) has substituted the judiciary as the grand inquisitor and supervisor of Congressional investigations. It has never been so."

### Legal Vacuum Seen

All the justices, of course, are honorable men and conscientious in the pursuit of their duty. But for the most part they live in a legal vacuum. awareness of the actual operations of Communist subversion. To them, apparently, there is no Communist menace, no such thing as infiltration by stooges of the Communists, and if a man admits he has worked and "co-operated" with the Communists and then refuses to tell who else he met in such activities, this is construed now as a "right of silence" derived from the First Amendment which, now added to the Fifth Amendment, makes it easy for treason to be protected.

The Supreme Court majority realized, to be sure, the gravity of its decision and tried to soften the blow by minimizing the future danger. All the Congress has to do now, the court patronizingly suggests, is to take "added care" in authorizing the use of compulsory process. But, as Justice Clark realistically points out, the court doesn't say how this "added care" would be applied in practice.

The Supreme Court majority—Chief Justice Warren, Justices Frankfurter, Black, Douglas and Brennan—seemed to think that the desire of the individual to be spared any unpleasant publicity due to his past associations, was more sacred and more important than the right of Congress to get information about Communist plots and infiltration in order to pass laws to safeguard the nation against destruction. The ruling was proclaimed, too, by the court that any one hereafter can teach and even advocate the forcible overthrow of the government of the United States, but unless there is conclusive proof that these teachings are part of a conspiracy to "incite" some one to some action, the viewpoint expressed is merely "abstract doctrine" and not subject to punishment by any law Congress might pass.

### Called a Fateful Day

There were other significant cases decided by the Supreme Court on Monday, June 17, 1957, which will make that day a fateful one in American history. State legislatures were told that they, too, cannot investigate and require witnesses to answer their questions except where it can be proved that the state has an overriding interest in a "subversive" individual which outweighs his right to silence, and this, in turn, might have to be reviewed in each instance by the Supreme Court of the United States.

In another case, the court didn't decide the merits of the "disloyalty" charges against John Stewart Service but said the Secretary of State couldn't reverse his Under Secretary who had ruled favorably to Mr. Service. In still another case involving fourteen persons convicted of Communist activity under the Smith law, five were set free and nine ordered to stand trial—so as to ascertain the facts as to activities of the defendants relating to one word—"organize"—in the existing law. It could mean activities with reference to a new party or subversive group or a continuing process of organizing in Communist party circles as the Department of Justice has contended.

Since organization work in the Communist party now is ruled by the court to happen only at the creation of the party in 1945 and is adjudged not to be a "continuing" process, certain defendants are set free because they were not prosecuted within the time prescribed in the statute.

### Sees Escape for Crooks

These decisions will cause much consternation throughout the country. They will make happy in some respects, the so-called "liberals" who have long crusaded against Congressional investigations of Communist activity, but it will make them unhappy in other respects because it gives crooked labor racketeers, shady business operators, financial manipulators and other wrongdoers a means of escape from Congressional exposure.

Naturally, Moscow should be happy. All they need do now is to instruct their Communist party in the United States how to adapt themselves to the new ruling. The Communist "Daily Worker" editorials have assumed all along that the court would decide some day as it did this week, that a man can betray this country and in certain circumstances get away with it.

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Daily Worker
The Worker
New Leader

Date JUN 19 1957

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# *Blow to Random Inquiry*

The Supreme Court on Monday powerfully reasserted its guardianship of individual liberty. This reassertion was especially needed and long overdue in regard to the excesses of certain congressional investigating committees—most notably the House Committee on Un-American Activities. In reversing the conviction of John T. Watkins for contempt of Congress, the Court drew new and clearer boundaries for the application of congressional investigating powers.

These boundaries might have been, and should have been, clarified a decade ago. In the Barsky case, decided by the United States Court of Appeals for the District of Columbia in 1948, Judge Henry Edgerton set forth in a dissenting opinion many of the same strictures against the Un-American Activities Committee's investigating methods that were made by Chief Justice Warren for the Supreme Court in the Watkins case—and made again, when Watkins was before them, by Judges Edgerton and Bazelon. Had the Supreme Court consented to review the Barsky case, investigating practices might have been brought within proper limits and much injustice to individual witnesses avoided.

"We have no doubt," the Chief Justice said for the Supreme Court on Monday, "that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its Government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." But from its very inception 20 years ago, the Un-American Activities Committee regarded exposure of individuals—and punishment of them through "pitiless publicity"—as its principal and primary function. In short, it aimed to punish by investigation what the Constitution forbids Congress to punish by legislation.

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New Leader

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The power to investigate, however, is merely an adjunct of the power to legislate. "Clearly," as the Chief Justice put it, "an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking . . . Abuses of the investigative process may imperceptibly lead to abridgment of protected freedoms."

The Un-American Activities Committee has operated as a kind of roving satrapy, intruding into almost every aspect of American life, oblivious to any consideration of privacy and unfettered by any limitation in the House Resolution which created it. Its jurisdiction is so vague, the Court concluded, that witnesses called before it have no means of determining whether the questions put to them have relevancy to any legitimate congressional purpose. "Prosecution for contempt of Congress," Justice Frankfurter said in a concurring opinion, "presupposes an adequate opportunity for the defendant to have awareness of the pertinency of the information that he has denied to Congress." There was plainly no such opportunity in the hearing given to Mr. Watkins.

The court decision in no way strips Congress of its power to investigate. "The legislature is free to determine the kinds of data that should be collected," the Chief Justice pointed out. "It is only those investigations that are conducted by use of compulsory process that give rise to a need to protect the rights of individuals against illegal encroachment. That protection can be readily achieved through procedures which prevent the separation of power from responsibility and which provide the constitutional requisites of fairness for witnesses." The decision is a landmark in the long struggle to keep Americans free from oppressive and arbitrary governmental power.


Rewriting the Laws Again

THE HOUSTON CHRONICLE
6/19/57
Houston, Texas
EDITOR: M. E. WALTERS

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# Individual Freedom Bolstered

The United States Supreme Court has taken another step in the direction of giving judicial support to the constitutional guarantees of individual freedom. In doing so, it has placed new curbs on Congress, on the investigative agencies of the Executive Department and on the lower courts.

This was done in two striking decisions, reversing lower court actions, whereby five alleged Communists were freed and nine others were remanded to the lower courts for new trials. Both were 6 to 1 decisions. Two justices did not take part. Justice Clark wrote a sharp dissenting opinion.

Chief Justice Warren and five associate justices set forth some new judicial principles for the guidance of Congress, the Department of Justice, and the lower courts when dealing with subversion. These are the most challenging:

1. There can be no such thing as guilt by association.

2. An accused need not give the names of Communist associates.

3. It is not illegal to be a Communist.

4. It is not illegal to teach forcible overthrow of our government as an abstract doctrine.

Small wonder that some members of Congress are up in arms against these restrictions on congressional investigative committees. But the unhysterical citizen readily sees in these restrictions, a reaffirmation of fundamental individual rights, vouchsafed in the Constitution but badly strained in the McCarthy and other congressional and judicial crusades against subversive activities.

• • •

Now that the global tensions are less frightening than they were a few years ago, the high court's reaffirmation of constitutional guarantees of individual freedom should be accepted without tremor. They should be welcomed for removing much latent and avowed public misgiving over the methods used to ferret out the Reds in this country.

The two cases at bar involved defenses based on the First and Fifth amendments of the Constitution. Since similar defense has been invoked in many cases still pending in the lower courts, the Supreme Court's latest rulings may be expected to have wide repercussions. The effect should be wholesome.

The point raised that "teaching overthrow of the government as an abstract doctrine" is not prohibited in the Smith Act, under which these subversion cases are brought, will undoubtedly cause continued debate. The court held that to become violative of law, the teaching "must be linked to effort to institute action to that end."

Preaching Communism is thus placed on a level with being a Communist—both are legal. But subversive deeds that aim at overthrow of government by force are, of course, forbidden. The distinction between preaching and practicing in this matter is important—also somewhat elusive.

• • •

The majority emphasized again and again that advocacy of abstract doctrine was not "enough to offend the Smith Act." The Government, it said, had not realized the importance of proving advocacy of forcible action to overthrow the Government. It will have to do so in the future.

Justice Clark in his dissent argued that the majority was making distinctions "too subtle and difficult to grasp."

This reasoning of the majority is of a part with that which undergirds the court's point that it is not illegal to be a Communist. The Red doctrine aiming to replace democracy is no secret. But resort to arms is clearly an act of military revolt.

The Court is not soft toward Communism. It wants to define the menace in as exact terms as possible and prevent the danger of ill-defined suspicion and hearsay placing innocent people in jeopardy.

Our courts are the custodians of justice. The Supreme Court particularly has the paramount duty to interpret and apply the Constitution to the facts of evidence and to the statute law in all cases appealed to it for review and final adjudication. It is a tribute to the court that it has again acted with courage and deep insight in upholding individual freedom as guaranteed in the nation's charter.

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# Without Common Sense

"What the United States needs most," said Senator McClellan of Arkansas, "is a Supreme Court of lawyers with a reasonable amount of common sense."

The need grows more apparent with each new batch of decisions. While the American people know the political nature of most Supreme Court appointments, while they no longer expect the court to be peopled by legal giants, nevertheless they might reasonably expect that the justices would be men of common sense.

McClellan

Another Senator, North Carolina's Erwin, noted another disturbing trend by the justices—"a willingness to substitute their personal notions for the law of the land."

* * *

As if to illustrate Senator Erwin's point, the justices drew a remarkable distinction in freeing five Communist leaders charged with plotting to teach violent overthrow of the Government, and in ordering the retrial of nine others.

The majority decided that the Smith Act, under which the Communists were convicted, "was aimed at the advocacy and teaching of concrete action for the forcible overthrow of government and not of principles divorced from that action."

In other words, it is all right to teach, as a principle, that the White House should be blown up, but don't do anything "concrete"!

Dissenting Justice Clark said he failed to find the distinction had much meaning, and many ordinary Americans will agree.

Mr. Clark also pointed out that his colleagues for the first time in the history of the court had ordered an acquittal on the facts rather than an interpretation of the law.

* * *

Thus the high court, in its long series of decisions favorable to Communists, stands accused not only of writing laws, which is the proper function of the Congress, but of determining the facts of a law suit, which is the province of the jury.

The high-handedness of the court, its casual assumption of powers never granted to it, its whimsical findings, its lack of common sense, are deeply distressing to millions of Americans. These people are asking what can be done and very shortly they may be demanding some answers.

For if the court will not curb its own excesses it should be curbed. If the court acts in what the people regard as an irresponsible manner, and does so over a long period, then steps should be taken to make it responsible.

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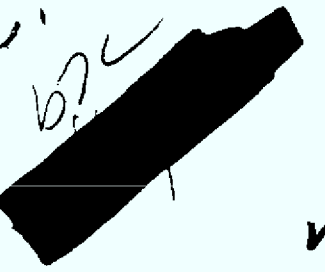

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# SUPREME COURT DECISIONS

Two new U. S. Supreme Court decisions have set off a great wave of criticism by various members of Congress. When the court ruled recently in favor of 14 California Communists, and in the case of John T. Watkins, who had been convicted of contempt of Congress, Rep. Howard Smith (D-Va.) said bitterly, "I do not recall any case decided by the present court that the Communists have lost." And that is the gist of the current uproar.

Five of the 14 California Communists were freed outright, and the others were granted new trials. Watkins, who admitted working with Reds in the labor movement, was freed on a technicality. Chief Justice Warren said there is no congressional power to expose for the sake of exposure. How Warren arrived at this remarkable conclusion will make for interesting debate. If what he says is true, then the FBI and all congressional investigating committees may as well close shop, for their prime purpose is exposure of enemies of the nation.

In the words of Rep. Jenner (R-Ind.), the decisions handed down by the court mean the Communists can go where they wish and do what they want to do, including teaching in schools and moving back into labor unions. In the words of our own Sen. Sam Ervin, "the justices have shown a willingness for some time to substitute their own personal emotions for the law of the land."

Perhaps Sen. McClellan (D-Ark.), chairman of the Senate Investigation subcommittee, was right when he pointed out that the country needs a Supreme Court of lawyers with a reasonable amount of common sense. And naturally, under the court ruling on Watkins, Arthur Miller will promptly appeal his recent conviction on a similar contempt of Congress charge. If the line of reasoning taken by the court holds up, there is no reason to expect that Miller will not be freed also.

Justice Harlan, writing for the majority, said "preaching abstractly the forcible overthrow of the government is no crime under the Smith Act. The essential distinction is that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something." This is abstract reasoning of the first order, at a time when solid action against the inroads of subversion is needed more than ivory tower, intellectual discussion.

Communists care little for the abstract. What they are interested in is the further advance of Soviet influence to the detriment of American interests. It seems strange that almost everyone can recognize the dangers of communism except the robed members of the U. S. Supreme Court.

BAUMGARDNER

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Rocky Mount, N.
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V. F. Sechriest,
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Chicago Daily Tribune
THE WORLD'S GREATEST NEWSPAPER
THE TRIBUNE COMPANY, PUBLISHERS
Part 1— Page 18 F Wed., June 19, 1957

# THE SUPREME COURT JUMPS THE TRACK

In a mess of decisions Monday, the Supreme court managed to perform major services for Communists and loyalty risks on the federal payroll and at the same time to diminish substantially the power of Congress to deal effectively with any of them. Friends of the court say that these decisions fortify the defense of individual rights. Others will be inclined to agree with Sen. McClellan's judgment that the decisions demonstrate that what the country sadly lacks is a Supreme court of lawyers with a reasonable amount of common sense.

In ordering that five California leaders of the Communist party be freed from conviction under the Smith act, and in directing new trials for nine others, the court managed to reverse its own interpretation of the Smith act, handed down by a 6 to 2 majority only six years ago.

The court's new line is that, to convict under the Smith act, which makes it a crime to conspire to teach and advocate overthrow of the government by force and violence, it is necessary to prove that action toward violent rebellion is being advocated. A simple showing of advocacy, said the court, is not sufficient.

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In its decision of June 4, 1951, the court dealt with precisely this point. Interpreting the "clear and present danger" doctrine, the late Chief Justice Vinson said then:

"Obviously the words ['clear and present danger'] cannot mean that before the government may act, it must wait until the putsch is about to be executed, the plans have been laid, and the signal is awaited. If government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the government is required."

The court now renounces that outlook and maintains that such advocacy is little more than theoretical discussion and that it will be satisfied with nothing less than evidence approximating an overt act.

It seems to us that this reflects an unduly fastidious approach to the motivation of Communists, and that the United States Court of Appeals in New York, in its Smith act opinion of Aug. 1, 1950, was far more sensible in saying, "The jury has found that the conspirators will strike as soon as success becomes possible, and obviously no one in his senses would strike sooner."

Having dealt a crippling blow to the efforts of Congress to deter Communists thru the Smith act, the court then proceeded to another decision severely impairing the powers of congressional investigating committees to compel testimony, on pain of contempt, from persons with subversive associations.

It overruled the contempt conviction of an Illinois labor union organizer, John T. Watkins, who admitted to the house committee on un-American activities that he had coöperated with Communists, but refused to name communist associates. The court decreed that the committee had no power "to expose for the sake of exposure," but that it is required to show a definite legislative purpose in its explorations. Congressional inquiries are thus confined to a straitjacket.

In still another case, the court reversed the dismissal from the state department of John Stewart Service, who was discharged in 1951 by former Secretary of State Acheson on authority voted by Congress vesting him with absolute discretion to terminate the employment of any department official. Service, after a round of loyalty hearings, came before the civil service loyalty review board, which found reasonable doubt of his loyalty. Acheson expunged this finding but ordered Service fired. The court ruled that he had no right to do so, even tho Congress had given it to him, because a state department loyalty board previously had cleared Service and Acheson's subordinate, the deputy undersecretary of state, had approved the finding.

The taxpayers thus find that Service, a man arrested in the war time Amerasia magazine scandal, in which 1,700 top secret, secret, and confidential documents were extracted from government files and handed over to notorious pro-Communists, is forced back upon them, together with a bill for six years of retroactive salary.

The boys in the Kremlin may wonder why they need a fifth column in the United States so long as the Supreme court is determined to be helpful.

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## THE SUPREME COURT CREATES SOME PROBLEMS

In its sudden spate of decisions touching upon various aspects of personal freedom and the Communist issue the United States Supreme Court has certainly complicated the work of uncovering and prosecuting Communists or other organized espionage agents.

The issues involved are highly legalistic despite the emphasis upon individual rights and constitutional guarantees—and as a result it will take careful study and analysis before a thorough understanding of what the court has accomplished will be really possible.

But it is already quite apparent that the congressional investigative practices and procedures developed in the past decade will be substantially inhibited by the new court attitude.

"Inquisition by political authority," in the phrase used by Justice Frankfurter, is pretty strongly ruled out by the new Washington finding. And, of course, there has been bitter criticism of vigorous congressional investigation as pursued by the late Sen. McCarthy and other members of both houses. But with witnesses now given an entire new area of escape from legislative inquiry, it seems doubtful that many of the important accomplishments of recent years could now be repeated—even if needed.

In the matter of the Smith Act and of Communists or others who seek to overthrow the U. S. Government by force and violence the Supreme Court has produced a thin-line decision that is almost beyond comprehension.

"Preaching abstractly" the overthrow of the government by force of arms is *no* crime, says the Court. But when does abstraction become tangible? Only when the proven Communist finally does take a gun, or a bomb, to do damage to official persons? If incitement to riot is a criminal act—yet perceptible *only* in words, how can we excuse deliberate support of the theory that force, rather than democratic processes, provides the answer to government change in this country?

The Supreme Court's concern for the maintenance, and the enlargement, of individual liberties is understandable enough in times like these.

But the whole record of action and revelation arising from congressional investigations and from the Smith Act trials of the years since World War II supports the public conclusion that there is a serious—and perhaps continuing—conspiracy against the national well-being by groups and individuals in the service of the Soviet Union or of international Communist ideals.

That conclusion certainly has been given no service by the Supreme Court in the rulings it has handed down this week.

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44 JUL 19 1957

New Haven Register, p. 22
N.H. Journal-Courier, p. ____
Daily Worker, p. ____
Bridgeport Herald, p. ____
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Submitted by the New Haven Div.

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UP16
(COURT)
SEN. JACOB K. JAVITS (R-N.Y.) CALLED FOR A HALT TO "BERATING" THE SUPREME COURT FOR ITS RECENT DECISIONS AGAINST THE GOVERNMENT IN COMMUNIST CASES.

THE DECISIONS HAVE DRAWN STRONG CRITICISM FROM SOME MEMBERS OF CONGRESS, PRINCIPALLY FROM AMONG THOSE SERVING ON CONGRESSIONAL COMMITTEES INVESTIGATING COMMUNIST ACTIVITIES. BUT OTHER MEMBERS PRAISED THE COURT FOR RULING AGAINST WHAT IT FOUND TO BE ABUSES OF INDIVIDUAL RIGHTS IN THE DRIVE AGAINST SUBVERSIVES.

"ACCEPTANCE AND CONSIDERATION OF THE DECISIONS ARE FAR MORE CONSTRUCTIVE THAN BERATING THE COURT FOR DOING WHAT IT CONSIDERS ITS DUTY IN INTERPRETING THE CONSTITUTION," JAVITS SAID.

THE COURT "HAS GIVEN US THE GUIDELINES," HE SAID. "NOW CONGRESS SHOULD GIVE FULLEST CONSIDERATION TO WHATEVER LEGISLATION NEEDS CHANGING (IN THE LIGHT OF THE COURT'S RULINGS) TO PROTECT OUR INTERNAL SECURITY."

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UP106

ADD 1 COURT (UP76)

REP. FRANK THOMPSON JR. (D-N.J.) SAID HE CONSIDERED THE DECISIONS "SOUND AND CONSTRUCTIVE." HE SAID, "WE CAN RID OURSELVES OF COMMUNISTS IN GOVERNMENT AND OTHER PLACES WITHOUT ABUSING THE CIVIL RIGHTS AND CIVIL LIBERTIES OF PEOPLE AS HAS BEEN DONE IN THE PAST."

REP. MORGAN M. MOULDER (D-MO.), A MEMBER OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES, SAID "CONGRESSIONAL ACTION WILL BE NECESSARY TO OVERCOME THE EFFECTS OF THE COURT'S DECISION. HE SAID CONGRESS SHOULD PASS LEGISLATION "TO CLEAR THE WAY FOR THE COMMITTEE ON UN-AMERICAN ACTIVITIES TO PROCEED WITH ITS INVESTIGATIONS."

SOME OF THE WITNESSES APPEARING BEFORE THE COMMITTEE AT HEARINGS IN SAN FRANCISCO YESTERDAY CITED THE COURT'S NEW RULING IN REFUSING TO ANSWER CERTAIN QUESTIONS.

REP. KENNETH B. KEATING (N5Y.), RANKING REPUBLICAN ON THE HOUSE JUDICIARY COMMITTEE, AGREED WITH MOULDER. HE SAID THE "COURT-IMPOSED SHACKLES" SHOULD BE REMOVED FROM CONGRESS AND THAT "THIS SURELY CAN BE DONE WITHOUT VIOLATING THE LEGITIMATE RIGHTS OF WITNESSES."

REP. DONALD L. JACKSON (R-CAL.), ANOTHER MEMBER OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES, TOLD THE HOUSE THAT THE COURT'S RULINGS MADE MONDAY "BLACK MONDAY FOR THE AMERICAN PEOPLE."

HE SAID THE COURT HAD "DIRECTLY CHALLENGED CONGRESS' RIGHT TO INQUIRY." HE URGED THAT CONGRESS GIVE THE DECISIONS ITS IMMEDIATE ATTENTION."

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# How Far Left?

THE announced objective of the Communist party is to wreck the American system of government.

The determined intention of most Americans is to stop the Reds from doing that, and to grab them by the scruff of the neck if they're caught trying.

But now comes the U. S. Supreme Court with a ruling that makes the Communist end of the struggle considerably easier to operate, while making life more difficult for our anti-Red agencies.

CLARK

By a vote of 6 to 1, the Supreme Court has freed five California Commie leaders who were convicted under the Smith Act of 1940. And the Court has granted new trials for nine other California Reds.

Justice Tom Clark stood alone in voting against this action. In his opinion, the original convictions should have been upheld. That's the way we feel too.

We're heartily in favor of justice, civil rights and the Constitution, as any real American should be.

But the decisions taken by the Court this week are so far to the left as to alarm a person who is not whole-heartedly liberal. How far to the left will Chief Justice Warren and his liberal associates swing?

The Smith Act called for criminal action against anyone teaching or advocating the violent overthrow of our government. That still seems to us like a mighty good idea. And we also think it's a good idea to cite a person for contempt of Congress when he makes a travesty of the Bill of Rights.

But the Court has spoken. And its words place new barriers in the path of anti-Communist action by the Justice Department, the FBI and the Congress.

In all this concern for the Leftists, what's happening to the rights of plain, conservative Americans?

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

Newspaper: BOSTON TRAVELER
Date : 6-19-57
Edition : LATE FINAL
Author or Editor : EDITORIAL
Title : HAL CLANCY
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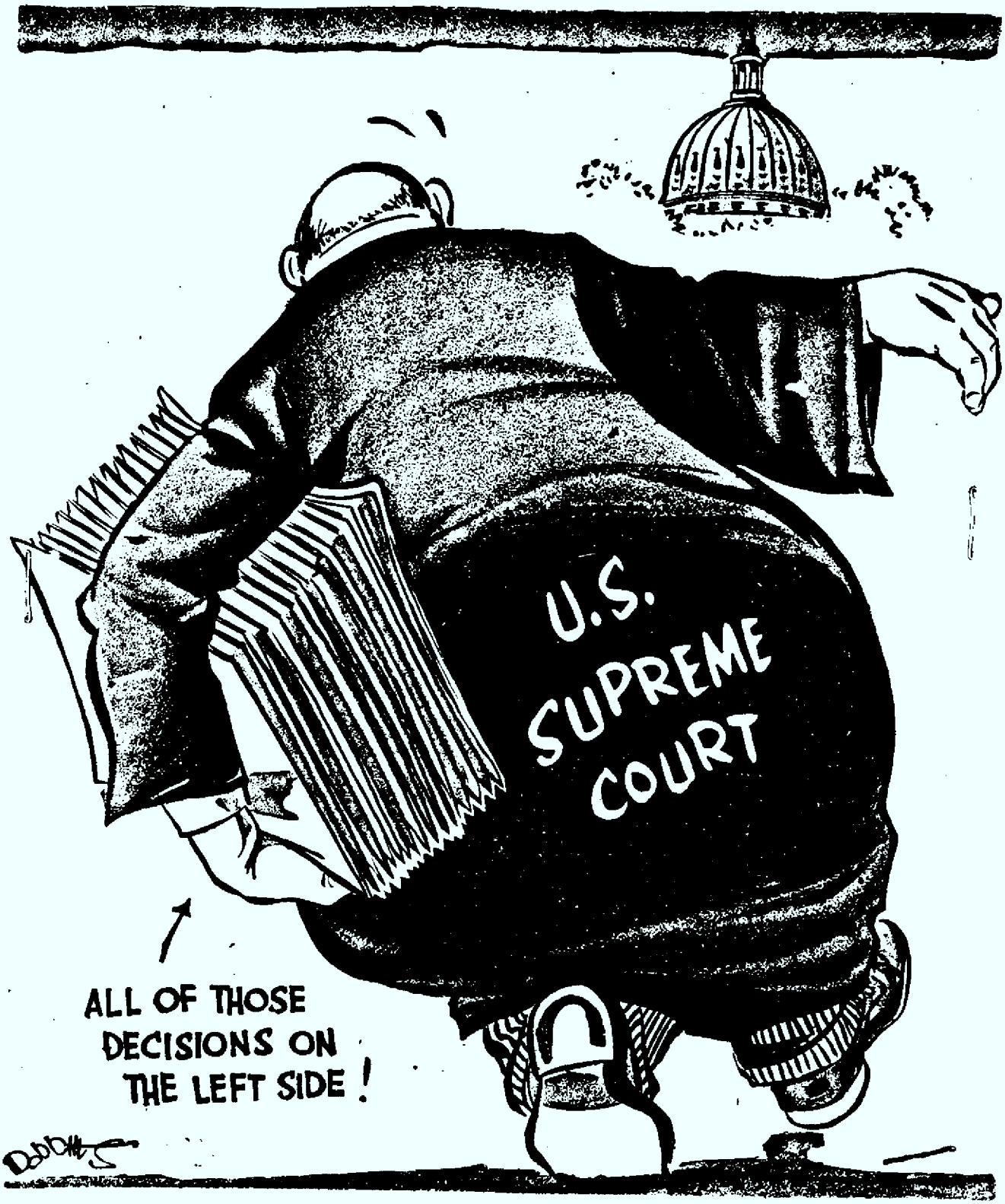

# Liberals Gay Over Rulings

## High Court Dominated by Kindred Spirits

World-Herald Washington Bureau,
1220-22 National Press Building.

Elation was the dominant characteristic Wednesday of the "liberals" in Washington, so far as the United States Supreme Court is concerned.

But many "conservatives" are admittedly dispirited over decisions by the high tribunal.

That a "liberal" majority now dominates the Court, perhaps to the greatest extent in history, is almost universally agreed.

**Files Opened**

On Capitol Hill, because of some of the recent decisions, many members are saying that it will be next to impossible to get a conviction against a defendant for contempt of Congress.

There is also concern among members of the FBI and that agency's friends, over the ruling that has the effect of forcing the bureau's files to be opened to defendants in cases where Government witnesses rely on FBI reports.

And the release of Communists, convicted under the Smith Act, is another disturbing factor to a good many.

**5 Vote Together**

The five members of the Court who have been voting closely together include three appointed by President Eisenhower, and two more named by Franklin D. Roosevelt.

They are Chief Justice Warren and Associate Justices Black, Douglas, Harlan and Brennan.

All told, there have been a dozen cases, in the broad field of "Constitutional rights," that have given pleasure to the nation's liberal elements, but less comfort to the conservatives.

As now composed, the Court includes five Democrats, four Republicans.

**Truman Named 2**

Three of the Democrats (Black, Douglas, Frankfurther) were appointed by the late Mr. Roosevelt. One (Clark) was Harry Truman's appointee. The fifth (Brennan) was named by Mr. Eisenhower, who also chose three Republicans (Warren, Harlan, Whittaker.) Mr. Truman also named a Republican to the bench (Burton).

Associate Justice Clark of Texas has been dissenting in most of the recent decisions that have aroused so much attention.

A former Attorney General, who in that capacity supervised the work of the FBI, Justice Clark dissented vigorously on the decision that has the effect of opening the heretofore secret files of the agency.

This, he warned, would afford a "Roman holiday" to defendants who could thumb through confidential information and national defense secrets at will.

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OMAHA WORLD-HERALD
OMAHA, NEBRASKA
6-20-57
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# Supreme Court Ends An Era

The Supreme Court Monday handed down two decisions that may be considered the official end of the dark era of mccarthyism.

The court sharply reminded all branches of the government that Americans cannot be punished for their beliefs or their associations. It told Congress that its powers of investigation are not unlimited and that it has no power to conduct "ruthless exposure of private lives" merely for the sake of exposure.

In the first case, the court ruled that the Smith Act, under which many Communists have been convicted for conspiring to advocate the overthrow of the government by force does not forbid such advocacy as an abstract principle. There must be "teaching in the sense of a call for forcible action at some future time." There can be no conviction for "advocacy in the realm of ideas."

In the case at issue, 14 California Communist leaders had been convicted in 1954. The trial court did not require that a guilty verdict must be based on action, not abstraction. The high court therefore ordered that nine of the defendants be tried again because there is a possibility that they, like others who have been convicted, did advocate action. But it ordered five other defendants freed on the ground that none had been guilty of more than membership or officeholding in the Communist Party.

Thus the court is saying that an American can be punished only for doing something subversive and not for his belief in doctrines that may be unpopular or even subversive.

In the second case, although the late Sen. McCarthy was not involved, the high court's finding constituted an indictment of the methods he used. The court said, "Investigations (by Congress) conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible."

The court reversed a contempt of Congress sentence placed on John T. Watkins, Rock Island, Ill., labor leader, for refusing to answer certain questions put to him by the House Un-American Activities Committee in 1954. He said he had never been a Communist but had associated with many. He identified some he believed still to be party members but refused to identify former members he believed had left the party. He thought their identity was none of Congress's business.

The high court ruled that Watkins was within his constitutional right to refuse this information since it had not been made clear what useful legislative purpose it would serve.

"We simply cannot assume," the court said, "that every congressional investigation is justified by a public need that overbalances any private rights affected . . . (such investigations) can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it."

This decision should write an end to irresponsible congressional witch hunts that trample on individual rights. The court pointed out that with proper care for such rights, congressional committees can still get information they are rightfully entitled to.

Some persons may criticize the court's decisions as a return to "coddling" of Communists. We believe they are a return to basic American principles of respect for individual rights, principles that were forgotten during the McCarthy era.

CHICAGO SUN-TIMES
Star Final Editi
Date JUN 20 1957
Page 41 Col. 1

# The Need Is Desperate

The Supreme Court's decision in the case of JOHN T. WATKINS, labor leader convicted of contempt for refusing to name communist associates, may profoundly affect findings of the Senate Anti-Racketeering Committee. The high court reversed the conviction. Its ruling might even nullify all major congressional investigative activities.

Some good may come of it, however, in that it has stirred Capitol Hill as few events of recent months have, and if Congress gets angry enough it is quite apt to cut the Supreme Court back to constitutional size.

Senator KARL MUNDT (R., S. D.) let it be known quickly that he is "completely out of sympathy with the whole trend of recent Supreme Court decisions. They (decisions) are weakening the internal security of this country and strengthening the capacity of the communists to infiltrate Government positions and carry on their purposes to weaken and pervert freedom in this country."

Senator JOHN MCCLELLAN of Arkansas, chairman of the anti-racketeering committee, was equally blunt, and along with it, he pointed out what he says is the country's greatest need.

"This decision," he said, "coupled with other recent decisions of the Supreme Court, prompt me to say that what this country needs most today is a Supreme Court of lawyers with a reasonable amount of common sense, and who will apply it in deliberations rather than follow untenable detours into a strange philosophy and unsound logic to make the wrong decisions."

From a standpoint of the nation's safety, the need for the type of court described by Senator MCCLELLAN is desperate.

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Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

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THE COMMERCIAL APPEAL
MEMPHIS, TENN.
DATE 6-20-57

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FBI - MEMPHIS
Bureau

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# WHAT THE COURT DID

THE MEN of the Extreme Right are shricking at the Supreme Court today in one great, obscene chorus. The successors of the late Joe McCarthy are besides themselves with rage at the high court's decision in the California Smith Act case.

"Impeach 'em," the New York Daily News broadly suggests. And Dixiecrat congressman George W. Andrews from Louisiana sneers that two groups "can't lose" a case before the Supreme Court—the Communists and the National Association for the Advancement of Colored Peoples. (Clearly this gentleman opposes both civil liberties and civil rights.)

Why the heat about the decision?

The majority opinion does not nullify the decision of 1951 affirming the constitutionality of the Smith Act. The majority did not do what Justices Hugo L. Black and William O. Douglas urged, that is, return squarely to traditional freedoms of speech, press and assembly as guaranteed by the First Amendment.

What the Court did do was to limit sharply the dragnet character of the so-called conspiracy indictments under the Smith Act with its flimsy informer evidence, frequently remote in time. The majority opinion threw out the so-called "organizing" branch of the indictment, pointing out that the Communist Party was "organized" or "reconstituted" in 1945, at the very latest. Therefore, under the law, indictments that were handed down more than three years after 1945 were barred by the statute of limitations.

The majority opinion also emphasized the difference between "advocacy" and "incitement" to action—a difference that trial judge William Mathes had failed to bring out during his instructions to the jury.

These are relatively fine legal points which will escape most laymen. They do not meet the issue as sought by Black and Douglas—that political ideas and associations are protected by the First Amendment and that Congress cannot legislate about them. The Smith Act, they assert, was unconstitutional when adopted in 1940, when passed upon by the Supreme Court in 1951 and unconstitutional today.

The high court did not re-state this basic democratic maxim. What it did was to limit sharply the extent of the witchhunt.

But even this drives wild the Eastlands, the Mundts, the Walters, the Department of Justice crowd, J. Edgar Hoover, the rest of the cold warriors and others who have a vested interest in the continuation of the witchhunt.

The decision was, of course, a victory for all liberty-loving Americans, irrespective of political views, who stand for the Bill of Rights. The trade union movement, too, shares in this victory.

Organized labor's existence and growth is bound up with the maintenance and extension of civil liberties. Surely it will find itself ranged with other democratic Americans to defeat the men of the Right now beating the anti-Supreme Court tom toms.

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Mr. Tolson
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# Repairing the Damage

IT MIGHT seem futile to seek an amendment to the Smith Act to offset the Supreme Court's ruling on Communist cases.

Because the court wouldn't leave itself open to what would amount to an easy reversal of its decision.

But, even if there is only a one-in-a-million chance of success, Congress should try to repair the damage that has been done to the government's anti-Communist legal code.

WARREN

We feel the high court blundered badly when it ordered five California Communists freed and directed a new trial for nine others.

Lawmakers of both parties have attacked the rulings as "undermining our existing barriers against Communist subversion."

Meanwhile, Chief Justice Warren says it's not the court's function to set rules for Congress to follow in its investigatory capacity.

Congress undoubtedly will have something to say about that.

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Date : 6-20-57
Edition : LATE FINAL
Author or Editor : EDITORIAL HAL CLANCY
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# Javits Against 'Berating' High Court on Edicts

JAVITS

WASHINGTON, June [illegible] Jacob K. Javits (R-NY) [illegible] for a halt to "berating [illegible] Court for its [illegible] decisions against the [illegible] liberties cases.

Meanwhile, [illegible] papers across the country greeted [illegible] high court's new approach as "long overdue" (Washington Post) while others opposed it violently.

The decisions have drawn strong criticism from some members of Congress, principally from among those serving on Congressional committees investigating Communist activities. But other members praised the Cour for ruling against abuses of individual rights.

"Acceptance and consideration of the decisions are far more constructive than berating the court for doing what it considers its duty in interpreting the constitution," Javits said.

The Court "has given us the guidelines," he said. "Now Congress should give fullest consideration to whatever legislation needs changing (in the light of the Court's rulings) to protect our internal security."

Rep. Frank Thompson, Jr. (D-NJ) said he considered the decisions "sound and constructive." He said, "we can rid ourselves of Communists in government and other places without abusing the civil rights and civil liberties of people as has been done in the past."

The Court on Monday held that witnesses before Congressional committees are within their rights in refusing to answer questions unless the committees establish that the questons are pertinent to a specific purpose. It was this decision, plus an earlier one, that the government must provide defendants in criminal cases with certain material from hitherto secret FBI files, that brought the strongest objections from Congressional critics.

Rep. Emanuel Celler (D-NY),

(Continued on Page 7)

## JAVITS

(Continued from Page 1)

chairman of the House Judiciary Committee, said the Court "did a real service in striking at the assumed broad powers of Congressional investigating committees."

"I find that too often investigations by some of our committees . . . are for personal aggrandizement of committee members who seek to punish in one way or another those investigated."

Sen. Wayne Morse (D-Ore) also hailed the Court's ruling on this issue.

"It was time that a reasonable check be placed on the investigating powrs of Congress," he said. "Now it will be clear that Congress can investigate for a legislative purpose, but not for purely inquisitorial purposes."

A survey of the nation's press reveals a cleavage on the issues the Court raises, with a few, including the Herald-Tribune, expressing a cautious, divided approach.

On the Smith Act ruling, the Herald-Tribune found "an important further reinforcement for the traditional rights of free speech" (in the Court's definition of 'advocacy').

In the Watkins case, though, Tribune editors wondered whether Congress would feel the Supreme Court "has not imposed an overly strict set of standards."

The Washington Post & Times-Herald declared the Court acted to reassert its guardianship of individual liberty." The editorial said the move "was especially needed and was long overdue in regard to the excesses of certain Congressional investigating committees—most notably the House Committee on Un-American Activities."

From the Baltimore Sun came this comment: "If you believe (as we do) that in times of popular uncertainty or passion, it is more than ever necessary to be careful about the rights of the individual and meticulous legal procedure, then these are good decisions."

Editors of the Minneapolis Star & Tribune voiced mild approval: "The Watkins decision will not stifle the legitimate work of the Congressional committees which conduct investigations as part of the lawmaking process, but it will discourage fishing expeditions."

Said the Hartford (Conn.) Courant: ". . . The Supreme Court has now once more made history by choosing liberty. We need not be afraid."

The Boston Herald said the Justices "were acting in the great conservative tradition of the court. Every one of these decisions was based firmly on precedent, and if there was any change of direction, it was a reversion from later decisions to more traditional grounds."

Said the Philadelphia Bulletin: "The Supreme Court has wisely taken the position that individual rights and freedoms must weigh heavier in the balance, where a choice has to be made, than the objective of total exposure and punishment of any conection, however remote, with the Communist conspiracy."

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N. Y. Journal American
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# THE ORDER OF THE BLACK ROBE

By ALAN MAX

A SPEECH in the House. I rise to inform the members of Congress that another subversive cell has been uncovered here in Washington almost in the shadow of the nation's capitol.

This cell is at present engaged in a program of undermining the foundations of the United Witchhunters and is trampling upon the principles laid down by our four fathers: McCarthy, Dies, Walter and Eastland.

At the present time, according to information in the files of J. Edgar Herbert Hoover, the cell has nine members. It meets regularly on Mondays — except during the summer months — when it engages in subversion, immersion, counter-mersion and even plain, undisguised mersion.

At their meetings, the members of the cell show their contempt for our American ways and customs. As a badge of their subservience to a foreign power, they do not even dress like Americans but wear long black robes.

Their meetings are conducted according to strange rituals. They pledge one another to secrecy as to their deliberations and if any member reveals a decision before the group is ready, he is done away with.

The members of the cell address one another by the foreign term "Judge."

The language of their writings can be easily understood only by the initiates. They are full of references to what they call their classics: Commissioner V. Sunnen, 333 U.S. 591,6-1-602; Tait V. Western Maryland R. Co., 289 U.S. 620; the Evergreens V. Nunah, 141 F. 2nd 927,918, etc etc.

They have received instructions from abroad to infiltrate the Smith Act and have so dismembered it that our esteemed colleagues here, Rep. Howard Smith, author of the sacred law, is considering changing his name to Hinklewinkle.

They have a policy of what they call "concentration." When a matter is before them, they discuss it informally and then turn it over to one of the members with instructions to "contrate."

One of their main targets has been the House and Senate Investigating Committees. As the honorable members here know, if these committees collapse, our supply of hot air is endangered. If our hot air supply goes, then all of Southeast Asia, Alaska and Palo Alto will fal like dominoes.

I have been asked by an honorable member of this House whether the situation is as serious as I have pictured it and whether the facts are as grim as I have given them here. I can only say that this information comes straight from J. Edgar Herbert Hoover who has his men planted in all echelons of this subversive network. And I can inform the House that there is at least one agent of the Injustice Department inside the cell of which I have spoken, unbeknown to the other members.

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# Stop 'Berating' Court, Javits Tells Colleagues

United Press

Sen. Jacob K. Javits (R-N. Y.) said yesterday members of Congress should stop "berating" the Supreme Court and use its recent decisions as guidelines for possible legislation.

He referred to criticism aimed at the Court after it ruled against the Government on several Communist cases. Members of congressional committees investigating Communist activities have been particularly critical.

Javits

The Court "has given us the guidelines," he said. "Now Congress should give fullest consideration to whatever legislation needs changing (in the light of the Court's rulings) to protect our internal security."

Rep. Frank Thompson Jr. (D-N. J.) said he considered the decisions "sound and constructive." He said "We can rid ourselves of Communists in Government and other places without abusing the civil rights and civil liberties of people as has been done in the past."

The Court on Monday held that witnesses before congressional committees are within their rights in refusing to answer questions unless the committees establish that the questions are pertinent to a specific purpose. It was this decision, plus an earlier one that the Government must provide defendants in criminal cases with certain material from secret FBI files, that brought the strongest objections.

Rep. Morgan M. Moulder (D-Mo.), a member of the Committee on Un-American Activities, said "congressional action will be necessary to overcome the effect" of the Court's decision.

Rep. Kenneth B. Keating (R-N. Y.) said the "court-imposed shackles" should be removed from Congress and that "this surely can be done without violating the legitimate rights of witnesses."

But Rep. Emanuel Celler (D-N. Y.), chairman of the Judiciary Committee, said the Court "did a real service in striking at the assumed broad powers of congressional investigating committees."

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# WASHINGTON

## By ROSCOE DRUMMOND

### What the Court Really Ruled

WASHINGTON.

There is an erroneous impression that the Supreme Court is undermining the authority of Congress to investigate Communism and cutting the foundation from under the Smith Act to prosecute Communist leaders.

It is doing no such thing—or so it seems to me.

Drummond

There is plenty of room for honest differences of opinion over the court's latest rulings. The argument is already going on so furiously that one newspaper has remarked with relish how it would like to join a crusade to impeach the offending justices.

Obviously impeachment talk is just rhetoric. Franklin D. Roosevelt's roundly defeated court-packing plan of 1937—to get a bench that would give him the kind of decisions he wanted—was a mild course of action compared to impeachment which would be a court-unpacking plan. Of course, both are wrong and thoughtful critics of the Supreme Court's opinions do not bring impeachment into the discussion.

• • •

What I want to bring out is that public controversy, pro and con, over the latest decisions ought to rest on what the court actually ruled, not on what some headlines say the court ruled.

Take the Watkins decision. John T. Watkins, whose conviction for contempt of Congress was set aside by the court, was required to answer and did answer all committee questions concerning his own pro-Communist activities. He was required to answer and did answer all questions concerning people he knew who were presently engaged in pro-Communist activities. He only declined to answer questions about those he knew had broken with the Communist party several years ago.

It was at this point that the Supreme Court ruled 6-to-1 that Congress exceeded its investigatory powers. The court made these points:

That the Congressional power to investigate stems from the Congressional right to legislate and thus investigation must clearly serve the legislative function.

That while the Congressional power to investigate is very large, it is not unlimited, it must not have the predominant result of invading "the private rights of individuals."

That the Congressional power to investigate does not reach to exposure "for the sake of exposure."

This means, it seems to me, a very careful and moderate limitation on Congressional committee investigations and a requirement that the Congressional committees clearly establish the relevance of their questions at the time of the hearings.

Take the Smith Act decision. Here the court freed five California Communist leaders and ordered a new trial for nine others—in both instances because of trial errors.

The court again sustained the constitutionality of the Smith Act which forbids conspiracy to advocate the overthrow of the government by force and violence.

The court found the California trial judge in error because he failed to charge the jury, as Judge Medina had in New York, that advocacy of violence is illegal only when it is directed to inciting an act of violence, not just teaching the theory of violence. Judge Medina's charge did not prevent the New York jury from finding the Communist leaders guilty.

It does seem to me that Justice Harlan's majority opinion is overly semantic in defining the word "organize" as meaning only "to bring into being." The legislative history of the Smith Act suggests that Congress was referring to keeping the Communist party in being as well as bringing it into being and this will undoubtedly have to be cleared up.

Congress' primary role is not to investigate; its primary role is to legislate and investigations must be faithfully used to serve that end.

Congress' primary role is not to punish and prosecute, and thus when its investigations reach to that end they must not be allowed, as the court says, "to abridge protected freedoms." It is the role of the courts, not Congress, to prosecute and punish.

And when the Supreme Court surveys these precious Constitutionally-protected freedoms it is not thinking merely of a few Communist leaders, it is thinking of 170,000,000 Americans.



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Date JUN 21 1957

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THOMAS L. STOKES

# Checks and Balances at Work

A-13

## Supreme Court Rulings on Reds Seen Halting Threat to Liberties

Watching government and politics from a front row seat here offers the opportunity to see our still reliable checks and balances at work. Periodically the long-time observer becomes aware of this reflex action in operation, a continual reminder of what has properly been called the genius of our American system. It is a thrilling experience.

Many of us saw it at work 20 years ago at the initiative of a popular, powerful and dynamic President—Franklin D. Roosevelt. He was able to swing the Supreme Court of that day, which was balking at social and economic reform measures, in line to accept Federal legislation deemed essential to protect the welfare of our people. This he did by the threat of "packing" the court with judges who would be friendly to such reform.

Today we are watching another significant checks and balances operation that is also bound to become historic. This time it is the Supreme Court that is out in front and taking the initiative and has risen up to say, in effect:

"Wait a minute."

It is acting to halt a threat to our individual liberties. This threat came from the inquisitorial frenzy aroused over communism that swept into Congress and special congressional committees, and to which the executive branch also was susceptible for a time. Many innocent persons were injured and a climate was created where dissent from orthodox views was suspect to the point that a stultifying conformity endangered independence of thought and freedom of speech which are so necessary to a democracy.

The decade of fear through which we struggled was a natural development from the instinctive abhorrence and fear of communism. That fear was intensified by the "cold war" with Russia that followed the "hot" Second World War and was magnified by attempts at Communist infiltration and subversion of our Government.

This was a fertile field for exploitation, and instruments of such exploitation always are at hand, ready, in our country as in others. They cropped up first in what was named "The Un-American Activities Committee" of our House of Representatives and finally, most dramatically, in a Senator at the other end of the Capitol. He gave the frenzy its name - "McCarthyism" - and rode high for awhile until his own Senate colleagues checked his course and censured him into obscurity. That censure was a checks and balances operation.

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"Who can define the meaning of un-American?"

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Similarly, President Roosevelt's Supreme Court "packing" scheme of 20 years ago set up a checks and balances operation of its own at the same time that it served to move Chief Justice Charles Evans Hughes to bring the court around to ratification of social and economic reforms. It became plain that our people would not stomach such interference with the Supreme Court as the President proposed and this reacted in Congress. The consequence was that the Roosevelt court bill was shelved. The over-all result, in balance, was that we moved forward to meet the needs of the day but left the court intact.

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Date JUN 21 1957

Supreme Court


It Was Once the Job of the Man in the Middle

EVENING WORLD-HERALD
OMAHA, NEBRASKA
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National Affairs

# Maybe People Will Have to Elect Supreme Court

By David Lawrence

Washington.

Now that the Supreme Court has transformed itself into "another legislative body," a movement has started to bring about election of the high court justices by the people.

The idea is not novel. Thirty-six states elect their highest court judges at the polls.

## It's Bewildering

The Supreme Court has rendered so many conflicting and confusing decisions that many lawyers are bewildered.

The issue was succinctly stated by a member of the Court, the late Justice Robert H. Jackson. He wrote:

"Rightly or wrongly, the belief is widely held by the practicing profession that this court no longer respects impersonal rules of law but is guided in these matters by personal impressions which may be shared by a majority of justices.

"Whatever has been intended, this court also has generated an impression . . . that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles."

## They've Been Taught

For the last 20 years many professors of law, particularly in the East, have raised a generation of so-called "liberals" who believe the Supreme Court should make "policy" and that adherence to historic principles is out of keeping with the spirit of the times.

If the Supreme Court is to make "policies," to whom should it be responsible?

It now places itself above both the Congress and the Executive, which are accountable to the people. The justices, however, are accountable to no one but themselves.

Justice Jackson . . . precedents are obsolete.

## Two Who Changed

Justice Black wrote extensively on the rights of Congressional investigating committees when he was a United States Senator. So did Justice Frankfurter before he came to the court.

Both wrote approvingly of the harassment of businessmen.

But when the harassment turns to people who have had "past associations" with Communists and who conceal their connections, Justices Frankfurter and Black seem to champion the very individual rights they once urged should be denied.

Many persons in Congress are coming reluctantly to the conclusion that election of judges for fixed terms, with the right to run for re-election, is the only way out of the political dilemma which the present court has created by its legislative decisions.

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THOMAS L. STOKES

# Checks and Balances at Work

## Supreme Court Rulings on Reds Seen Halting Threat to Liberties

Watching government and politics from a front row seat here offers the opportunity to see our still reliable checks and balances at work. Periodically the long-time observer becomes aware of this reflex action in operation, a continual reminder of what has properly been called the genius of our American system. It is a thrilling experience.

Many of us saw it at work 20 years ago at the initiative of a popular, powerful and dynamic President—Franklin D. Roosevelt. He was able to swing the Supreme Court of that day, which was balking at social and economic reform measures, in line to accept Federal legislation deemed essential to protect the welfare of our people. This he did by the threat of "packing" the court with judges who would be friendly to such reform.

Today we are watching another significant checks and balances operation that is also bound to become historic. This time it is the Supreme Court that is out in front and taking the initiative and has risen up to say, in effect:

"Wait a minute."

It is acting to halt a threat to our individual liberties. This threat came from the inquisitorial frenzy aroused over communism that swept into Congress and special congressional committees, and to which the executive branch also was susceptible for a time. Many innocent persons were injured and a climate was created where dissent from orthodox views was suspect to the point that a stultifying conformity endangered independence of thought and freedom of speech which are so necessary to a democracy.

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Date JUN 21 1957

# The Inquiring Fotographer

By JIMMY JEMAIL

*THE NEWS will pay $10 for each timely, interesting question submitted and used in this column. Today's award goes to Walter Kerler, 903 Scotia Road, Philadelphia 28, Pa.*

THE QUESTION.

Are you concerned about the recent decisions of the Supreme Court favoring Communism?

WHERE ASKED.

Seventh Ave. and 30th St.

THE ANSWERS.

Barney Wollman, Seventh Ave., fur manufacturer: "Definitely. These decisions all favor the Communists and they are dangerous to our country. If they are allowed to stand, there will be no way to fight the Communists. There was no Communist conspiracy and no H-bomb when our Constitution was adopted."

Mrs. Mary Chalk, Detroit, department manager: "No. We cannot have one law for those we like and another for those we do not like. If our civil liberties are to be protected, some people such as Communists will benefit from the protection we all receive. That is part of the price we must pay for liberty."

Nathan Kraft, Chicago, buyer: "Yes. The Communists are dedicated to the overthrow of our government. They are given too much leeway and too many loopholes, including the Fifth Amendment and those recent Supreme Court decisions. Our laws should be tightened so we can cope with them."

Arthur Ettinger, Flushing, salesman: "While I'm strictly in favor of jailing the Communists, I also feel that the civil rights of everyone should be protected. The Supreme Court has voted almost unanimously. Apparently our present laws are inadequate to combat Communism. Congress should pass new laws."

Mrs. Skippy Gallagher, Hicksville, home: "Yes. I'm concerned about the future of my three children. These decisions have allowed known Communists to get out of jail. Marilyn Monroe's husband, Arthur Miller, will probably go scot free. Even worse, Communists can now plot with immunity."

Castle Moore Jr., Rosedale, sales engineer: "Definitely. It will be practically impossible for the FBI to convict the hard core Communists who advocate the overthrow of our government. You'd think that the Supreme Court would rule that anything against our government is against the spirit, if not the letter, of the Constitution."

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Morning Mail

# Individual Safeguards Reasserted By Court

Your editorial of June 19, "Crisis in the Law" is a timely and balanced consideration of the recent Supreme Court decisions.

The Supreme Court, in rendering these various decisions, reasserted the vital and fundamental safeguards of the individual—what Blackstone called "the glory of the English law."

Chief Justice Warren noted: "Congress is not a law enforcement agency, and investigations conducted solely for the personal aggrandizement of investigators, or to punish those investigated, are indefensible."

Mr. Francis Walters, chairman of the House Un-American Activities Committee, whose investigations appeared to be "conducted solely for the personal aggrandizement of the investigators," illustrated this in San Francisco by exclaiming his resentment: "Congress should assert its authority and block further judicial (sic) invasion into legislative fields."

Amid this outburst, Mrs. Sherwood, the widow of the biochemist summoned as a witness who had just committed suicide, dramatically accused the Walters Committee of "destroying" her husband.

Sherwood, in his farewell letter, stated that he had a fierce resentment to being televised; that in two days he would be assassinated by publicity.

Such is the effect on individuals of this modern inquisition, the auto da fe.

A. LEO OBERDORFER
Birmingham.

P.S.: Speaker Rayburn has forbidden Representative Walter's Congressional committee's television road show since the suicide of Mr. Sherwood.

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BAUMGARDNER

BIRMINGHAM POST-HERALD
Birmingham, Alabama
June 21, 1957
Final Edition

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BAUMGARDNER

Thursday, June 20, 1957

# Supreme Court Decisions

The Supreme Court handed down a series of decisions last Monday that seem to have an adverse effect on the efforts of Congress and the Department of Justice to control Communism. While a more complete appraisal of the opinions cannot be made until the full text of each decision is available, newspaper reports provide a basis for preliminary comments.

In the first place, it is obvious that the opinions will be unpopular. The Supreme Court has written unpopular opinions before. Popularity has never been one of its prime motives. Some unpopular decisions resulted from the fact that the Court was completely out of touch with political realities. Others have resulted from the fact that particular acts of Congress were at variance with the Constitution. Still others were poorly prepared and the Court could only proclaim the meaning of the statute as it was written.

The Supreme Court as the watchdog of Constitutional liberties and as the guardian of minority rights is bound at times to make findings which will be unpopular with a majority of the people.

* * * *

Unpopular decisions, however, have no bearing on the integrity of the Court. This does not prevent it from being severely, even violently, attacked. Both its integrity and its ability are impugned. In the present series of opinions, there is little basis for such attacks, since there seems to be only one dissenting vote—that of Mr. Justice Tom Clark. The Justices as a group are symbolic of the best tradition of the Court.

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In trying to analyze why the Supreme Court has come to conclusions that seem at variance with the present needs of the country, it is permissible to ask whether Congress, both in its investigating procedures before committees, as well as in its drafting of legislation, has not created mischiefs in the country which bring about remedies that seem extreme. In other words, extreme action by Congress brings an extreme check by the Supreme Court.

* * * *

Whatever wisdom or lack of wisdom these opinions may show, the purpose of the Supreme Court is clear. This purpose is to protect and maintain the Bill of Rights. This is the part of the Constitution we take most glory in and about which we have our greatest disputes. Ever since the Communists' trial in New York before Judge Medina there have been controversies as to whether the trials themselves did not constitute a violation of the Bill of Rights. It is a foregone conclusion that if the Supreme Court decision had been to the contrary, the Communists and their American sympathizers would have used every possible device to discredit the court and to prove that the courts themselves were instruments of bourgeois oppression.

* * * *

Regardless of our individual reactions to these recent decisions, it is increasingly clear that we must depend upon the machinery of the courts to protect the constitutional liberties of the people. If the effect of the Supreme Court decision is to cause Congress to refine its procedure so as to make certain that we do not deprive persons of their liberties in any situation beyond that which is necessary for the actual preservation of our form of Government, the ultimate cause of freedom may have been served.

The Dallas Morning News
FRIDAY, JUNE 21, 1957

# Congress Versus Supreme Court

PRESIDENT Eisenhower hints that he will ask for legislation to give the Supreme Court a better understanding of its functions as laid down by the Constitution and a long line of precedents set by the court itself. Rep. Francis E. Walter, chairman of the un-American activities subcommittee, says that he will introduce a bill that the Supreme Court "can understand."

These remarks are directed at two recent decisions. One makes relevant FBI records available to Communist defendants. The other reverses a number of verdicts under the Smith Act in language that weakens the power of Congress to enact anti-Communist legislation.

Congress should come to the defense of the FBI. But, above all, it should come to the defense of itself. When this government was set up, it was contemplated as a form of government that would be run by the people through elective representatives. This meant a government with a powerful legislative branch. But when some future historian writes an objective political history of the United States, he will give a long chapter to the slipping away of congressional authority to the executive branch, on one hand, and the judicial branch, on the other.

Beginning with Roosevelt's administration, the setting up of powerful bureaus began to steal away Congress' domestic authority. Secret treaties (in effect, if not name) made without Senate confirmation took away from Congress a part of whatever authority had been given it under the Constitution.

The Supreme Court has followed the executive bureaus by entering into the field of lawmaking itself, and it is doing so primarily on the basis of personal opinion of the Justices and not the Constitution and statutes or the precedent of prior decisions.

Congress put the Supreme Court in its place in the act returning the tidelands to the states. It would have done so in the natural-gas case had not Eisenhower vetoed. It should enact a law to counteract the annihilating effect of the court's recent decisions smoothing the way for Communist infiltration in this country. In fact, Congress should adopt a general policy of enacting laws "that the Supreme Court can understand." Maybe it will take a hint.

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# In the Offing

*A Weekly Size-Up by Members of the Washington Staff of the Scripps-Howard Newspapers*

## CONGRESS VS. THE SUPREME COURT

**MAJOR BATTLE BETWEEN CONGRESS AND THE SUPREME COURT IS SHAPING UP.**

Twenty years ago, Chief Executive and Court were feuding. Congress sided with the Court, against FDR.

Now congressmen accuse Justices of rewriting laws they have passed; attempting to function as a "third house" of the legislature.

They plan to investigate; to try for legislation to limit effect of recent decisions; if necessary—and possibly—to amend the Constitution.

Recent outbursts against the Court are aimed at:

1. Dozen or more decisions striking down or watering anti-subversive laws, including the key Smith Act.

2. Jencks decision which has thrown all Federal prosecutions into "chaos" by requiring that FBI records be shown to defendants.

3. Watkins decision curbing the powers of congressional investigating committees.

First action may come on legislation to limit effect of Jencks decision. Justice Department heads are putting finishing touches on proposed bill this week-end. Attempt will be made to pass it before adjournment.

**MEANWHILE, SECRET PLANS ARE BEING MADE BY A POWERFUL HOUSE GROUP FOR MORE FAR-REACHING ACTION. THEY WANT TO CREATE A SPECIAL COMMITTEE TO STUDY ALL THE COURT'S RECENT DECISIONS; THEN RECOMMEND NEW LEGISLATION OR CONSTITUTIONAL AMENDMENTS, TO CIRCUMVENT THEM.**

Sponsors are seeking a Northern Democratic lawyer to head the group. This would avoid charge that move comes from Southerners angry at de-segregation rulings (tho most of the angry abuse of the Court in Congressional Record comes from this group).

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Date JUN 22 1957

## Civil Rights Showdown May Wait

Don't be surprised if Senate vote goes over until next year (just before election).

House bill will be called up next month, filibustered. But before then, leaders hope to clear most appropriation bills, other urgent measures. That way they can adjourn when everyone gets tired of the talk.

A bill to insure voting rights (with jury trial) could pass Senate easily. But Southerners now have it on the record that Administration bill could be used to enforce de-segregation of public schools. Sen. Thomas Hennings (D., Mo.), a backer of the bill, was asked in Senate debate if this were true; answered yes. *That makes the difference.*

NOTE: Vice President's decision on point of order, putting the issue up to the Senate for a vote, closely followed a proposed decision written by Sen. Clifford Case (R., N. J.) and when Southerners' chief strategist, Sen. Richard Russell (D., Ga.) got into an argument with Nixon over meaning of the decision, it was Case who helped extricate the Vice President.

## New Budget Blues

Administration, jolted by recent budget revolt, is trying hard to pare figures for 1959 fiscal year, now being worked over. With bigger costs coming up for highways, possibly for defense programs, its work is cut out.

*THERE'S BEEN SOME TALK OF NEXT BUDGET REACHING $76 BILLION, BUT FIGURES SO FAR MEAN LITTLE.* Agency requests now coming in will be carefully screened. But best that insiders look for is a budget no higher than 1958.

Top Administration figures say much of this year's revolt is due to fact that when current budget was being put together, entire topside of Government was out politicking, with an eye on fall elections.

* * *

**Democratic members of House Appropriations Committee predict appropriation for foreign aid will be nothing like as large as $3.6 billion authorization bill just approved.**

**Secretary Dulles didn't help his case when he testified, members say. He tried to sell new "soft loan" plan with the hint Congress shouldn't worry about repayment until the loans come due; had no details about how he planned to spend the money.**

MOMENTOUS CHANGE

# The Supreme Court's New Liberal Swing

By DANIEL M. BERMAN

The Supreme Court, except for the Girard case hearing set for July 8, is closing down its regular season tomorrow. As far as vocal elements in Congress and the administration are concerned, the recess is coming not a moment too soon. A few more Decision Days like the last would be hard to take.

In a series of momentous actions on Monday, the Court put its sister branches of government on notice that their days of freewheeling subversive-hunting are over. Congressional committees, the Department of Justice, and the various State legislatures came in for severe tongue lashings as a new liberal majority on the Court asserted its strength.

Until recently, the liberal Justices were in a distinct minority. Readers of Supreme Court opinions were accustomed to a weekly refrain: "Mr. Justice Black and Mr. Justice Douglas, dissenting." Hugo L. Black and William O. Douglas, two of President Roosevelt's appointees, had found themselves increasingly isolated as their fellow Rooseveltians moved to the right and as President Truman placed conservatives like Fred M. Vinson, Tom Clark, Harold H. Burton and Sherman Minton on the Court.

But today Justices Black and Douglas find that their years in the wilderness are over. Overnight the situation has changed, and they now constitute the nucleus of a new liberal alignment on the Nation's highest court. Their astonishment at this turn of events must be particularly great because their liberal allies have been selected by a Republican President—Dwight D Eisenhower.

## Eisenhower Picked Four

During his years in office, Mr Eisenhower has named four Justices to the Supreme Court—one short of a majority. His first appointee was Earl Warren, a former governor of California and the 1948 Republican vice presidential candidate. Nominated to succeed Chief Justice Vinson, who had been chosen by President Truman, Chief Justice Warren discovered that his constitutional views were not far from those of Justices Black and Douglas.

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President Eisenhower's second Supreme Court appointment went to John Marshall Harlan, grandson of a famous Justice who had dissented vigorously when the Court upheld racial segregation in 1896. On some issues, Justice Harlan seemed considerably to the right of his Chief Justice. Numerous eyebrows were raised, however, when he wrote the 1956 opinion holding that President Eisenhower had acted illegally in extending the loyalty-security program to non-sensitive Government departments.

Two more vacancies have been filled by the President within the past year. The first, created by the retirement of conservative Justice Minton, went to William J. Brennan, Jr., of the New Jersey Supreme Court. The conservatives' loss was the liberals' gain, for it soon became apparent that Justice Brennan was an intellectual ally of the new Black-Douglas-Warren bloc.

The President's most recent appointment went to Charles Evans Whittaker of Kansas City. Justice Whittaker has not been on the Court long enough to betray his political philosophy. It is true that he comes to Washington with impeccably conservative credentials. But after his experiences with Chief Justice Warren and Justices Brennan and Harlan the President will probably not be too astounded if Justice Whittaker, too, turns out to be something of a maverick.

## Spoke for Liberals

The fruit of these appointments is the fact that the most significant of recent liberal opinions have been written by Eisenhower appointees:

● Justice Brennan delivered the opinion in the Jencks case, in which the Court held that if Government witnesses have given statements to the Federal Bureau of Investigation in a criminal case, the prosecution must show these reports to the defendants or the case will be dismissed.

● Justice Harlan wrote the opinion in the Yates case, freeing five Communists who had been convicted under the Smith Act and ordering a new trial for nine others. He also announced the Court's decision that former Secretary of State Dean Acheson had acted illegally in discharging John Stewart Service on loyalty grounds.

● Chief Justice Warren administered the *coup de grace* with his opinions in the Watkins and Sweezy cases. In the former, he reversed the conviction of a labor leader who had defied the House Un-American Activities Committee when it demanded that he inform on associates who had been Communist Party members. In the Sweezy case, he upheld a Socialist editor who had refused to tell a one-man committee of the New Hampshire legislature about an academic lecture he had delivered at the State university.

It is faith in democracy and the Bill of Rights rather than any sympathy with radicalism which underlies the libertarian stand of the Eisenhower Justices. Their theory is that, although there would undoubtedly be less crime if a policeman were stationed in every home, the sacrifice of privacy and other values would make the bargain a bad one. They are generally willing to take their chances on the side of freedom.

They appear to share this sentiment expressed by Justice Black on Monday:

"The First Amendment provides the only kind of security system that can preserve a free government—one that leaves the way open for people to favor, discuss, advocate or incite causes and doctrines, however obnoxious and antagonistic such views may be to the rest of us."

## Clark Is Dissenter

The justice who has been most offended by the court's rising liberalism is Tom Clark, Attorney General under President Truman. Justice Clark was the author of the Attorney General's list of subversive organizations. He usually feels that security considerations are more important than the constitutional rights which citizens invoke.

During the past two months, his disagreement with the new court majority has become more apparent with every decision day:

● On April 29, the court held that the Government may not question an alien awaiting expulsion except

about matters directly relating to his availability for deportation. Justice Clark dissented, but only Justice Burton supported his view that the Attorney General was being stripped of a vital power.

● The following week the justices ruled that a lawyer could not be prevented from taking a bar examination merely because he was once a Communist Party member. Justice Clark was once again in dissent.

● On May 13, the court reversed the convictions of two men and a woman accused of harboring a Communist who had fled in order to avoid a prison term for violating the Smith Act. The guilty verdict was overturned on the ground that the FBI had conducted an illegal search of the defendants' home. Again Justices Clark and Burton were in the minority.

● A week later, Justice Brennan wrote the opinion which reversed the conviction of a labor leader who was accused of lying when he swore in his Taft-Hartley affidavit that he was not a Communist. Justice Clark wrote a solo dissent, in which he said: ". . . Those intelligence agencies of our Government engaged in law enforcement may as well close up shop, for the court has opened their files to the criminal and thus afforded him a Roman holiday for rummaging through confidential information as well as vital national secrets."

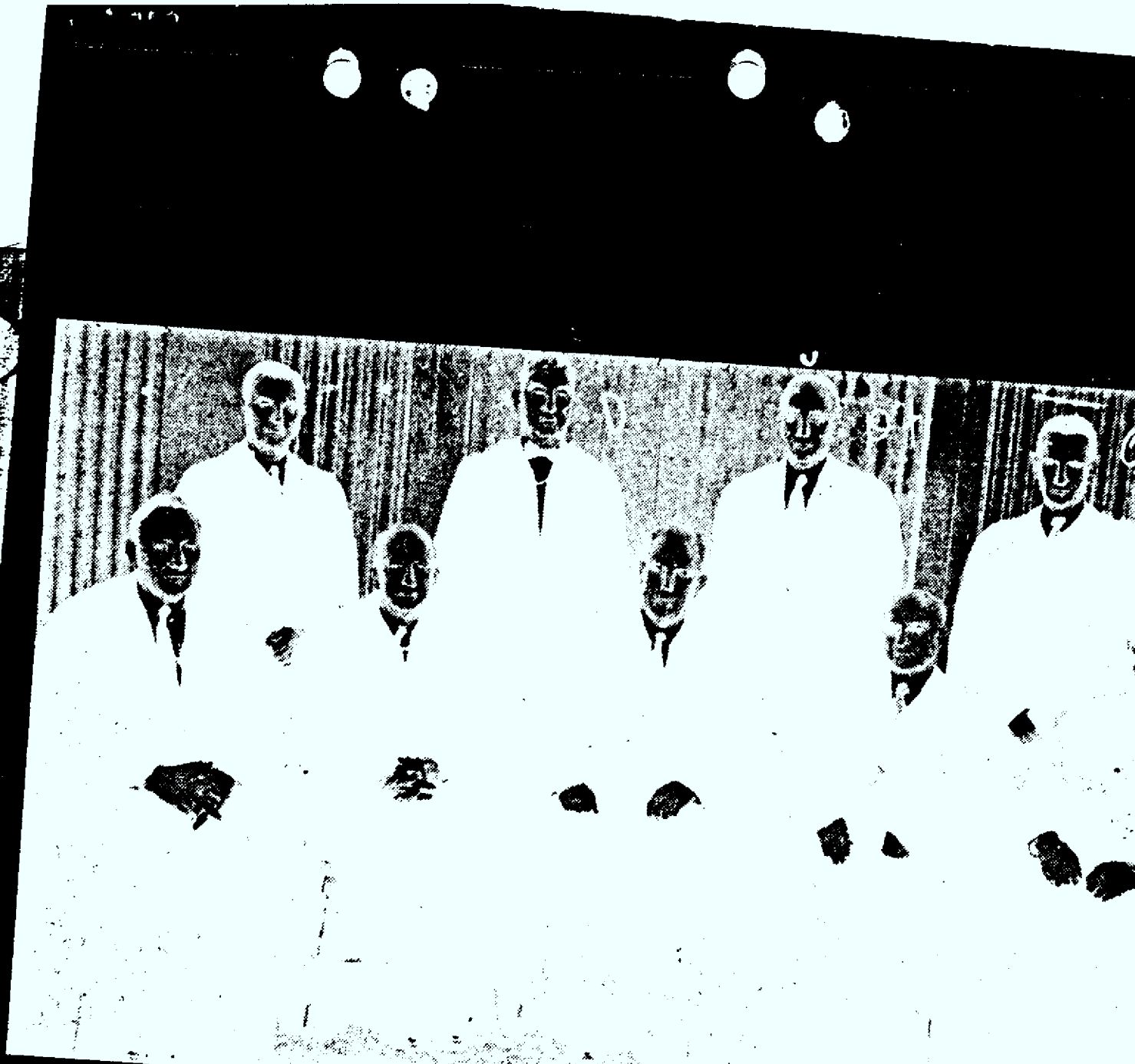
● Last Monday, Justice Clark dissented from three important "subversion" decisions. In two of the cases he stood alone, and in the third he was joined by Justice Burton. Among other things, he accused his colleagues of making the judiciary "the grand inquisitor" of congressional investigations.

Thus, the ironic fact is that the Eisenhower administration, fighting a rear-guard action to preserve its antisubversive program against libertarian attack, must depend on two Truman appointees—Clark and Burton—for support on the court.

The liberals are in a stronger position than they have been in a decade. Chief Justice Warren and Justices Black, Douglas and Brennan have to gain support from only one more justice to constitute a majority in any case. In civil liberties matters, Justices Harlan and Frankfurter will often back them.

The Warren-Black-Douglas-Brennan coalition seems to hold firm in antitrust cases, also. The same four justices recently held that du Pont has exercised illegal monopolistic control over General Motors.

Thus, this Capital, which boasts many strange sights, has another paradox to exhibit today: The spectacle of a Republican President unwittingly restoring the liberal balance of a Supreme Court which had been pushed far to the right by his Democratic predecessor.



THE NEW COURT—Seated, from left: Justices William O. Douglas and Hugo L. Black, Chief Justice Earl Warren, Justices Felix and Harold H. Burton. Standing: Justices William J. Brennan, jr.; Tom C. Clark, John M. Harlan and Charles E. Whittaker.

Washington

"The Strong, Central Role of Simple Fairness"

By James Reston

(NY Times, June 23)

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Washington, June 22----In the generation since the depression of th early 30's, the executive and legislative branches of the Government ha combined, often with the acquiescence of the judiciary, to strengthen t authority of the central government in dealing with the anxieties of war and economic distress.

This has been done often at the expense of individual liberties, but the Supreme Court has stepped in to redress the balance. The high court not saying that the representatives of the people cannot use the investi power of the Government to gather information and pass laws in defense of the Republic. It is merely saying that these things should be done with regard for the Constitution and the Bill of Rights. It is reminding us of what we are and what we stand for, and despite the torrent of legal langu it is really saying some very simple things.

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The central question is whether, in the light of the trend toward economic centralization in the U.S. and in the face of the clear and preser danger of the Soviet menace, the pendulum has swung too far in recent years toward the side of Government authority. Mr. Justice Jackson went to his grave in 1954 believing it had. The court, this week, has reflected Justic Jackson's parting anxiety. It has not only revived the ancient traditions the sanctity of reputation, and the rights of privacy and academic freedom, but has summoned the rest of the Government to redeem Chief Justice Hughes' promise that "in the forum of conscience, duty to a moral power higher than the state has always been maintained."

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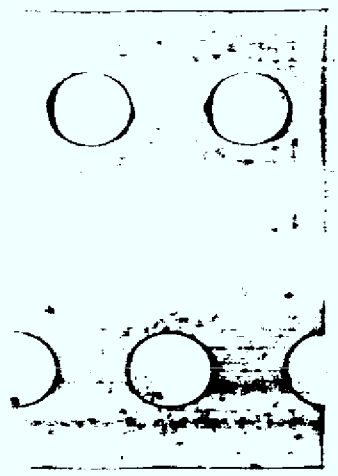



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# Washington

## "The Strong, Central Role of Simple Fairness"

By JAMES RESTON

WASHINGTON, June 22 — "I sometimes think," said Mr. Justice Cardozo in 1921, "that we worry ourselves overmuch about the enduring consequences of our errors. They may work a little confusion for a time. In the end they will be modified or corrected or their teachings ignored. The future takes care of such things."

This was written in a day when reflective men were more confident than they are now about the inevitability of progress, and yet the stabilizing influences in American life have been at work this week.

In the generation since the depression of the early thirties, the executive and legislative branches of the Government have combined, often with the acquiescence of the judiciary, to strengthen the authority of the central government in dealing with the anxieties of war and economic distress.

This has been done often at the expense of individual liberties, but now the Supreme Court has stepped in to redress the balance and to remind us of what Mr. Justice Holmes proclaimed in 1897: that "the law is the witness and external deposit of our moral life: its history is the history of the moral development of the race."

In the series of opinions handed down this month, and particularly this week, the high court has simply been serving once more as the moral conscience of a people drugged by the uncertainty, perplexities, prosperity and diversions of the past two decades.

### Some Simple Rules

It is not saying that the representatives of the people cannot use the investigative power of the Government to gather information and pass laws in defense of the Republic. It is merely saying that these things should be done with due respect for the Constitution and the Bill of Rights. It is reminding us of what we are and what we stand for, and despite the torrent of legal language, it is really saying some very simple things.

It is reminding Government officials that Government employes are also citizens who are covered by the Bill of Rights. It is saying that teachers must not be harassed by the state just because some officials or legislators don't like their teaching. It is questioning Government's right to compel men to squeal on other men and to convict them on evidence they cannot see or evaluate.

[illegible] and significant about all this is that these proclamations of "liberty through all the land" have created such a stir. For what they are saying is merely what was once taken for granted — namely, that there must be a fair balance between liberty and authority in a government of laws.

Thomas Wentworth, Earl of Stafford, summed it all up in his defense against a charge of high treason in 1641: "God, His Majesty and my own conscience * * * can bear me witness: that the happiness of a kingdom consists in a just poise of the King's prerogative and the subject's liberty: and that things would never go well till they went hand in hand together."

### The Swinging Pendulum

Men will always differ about what is a "just poise" between authority and liberty, as Mr. Justice Clark's dissents this month illustrate, but as Bernard Schwartz has pointed out in an excellent book on "The Supreme Court," published this week, it is the high court that is entrusted under the American system with securing that "just poise."

The central question is whether, in the light of the trend toward economic centralization in the United States and in the face of the clear and present danger of the Soviet menace, the pendulum has swung too far in recent years toward the side of Government authority.

Mr. Justice Jackson went to his grave in 1954 believing it had. "In this anxiety-ridden time," he wrote just before his death, "many are ready to exchange some of their liberties for a real or fancied increase in security against external foes, internal betrayers or criminals.

"Others are eager to bargain away local controls for a Federal subsidy. Many will give up individual rights for promise of collective advantages. The real question * * * is whether, today, liberty is regarded by the masses of men as their most precious possession."

The court, this week, has reflected Justice Jackson's parting anxiety. It has not only revived the ancient traditions of the sanctity of reputation, and the rights of privacy and academic freedom, but has summoned the rest of the Government to redeem Chief Justice Hughes' promise that "in the forum of conscience, duty to a moral power higher than the state has always been maintained."

Whether that duty will be maintained now remains to be seen. The court does not make the laws, and people do not always follow their conscience. But it has invoked what John Lord O'Brian calls "the irresistible moral power exerted by conscience," and argued that the strength of the nation demands "a strong and central role of simple fairness."

# CONGRESS NOW UNCERTAIN OF INVESTIGATIVE POWERS

## Watkins Decision Seems to Call for Clear Definition of the Aims of Inquiries

By CABELL PHILLIPS
Special to The New York Times.

WASHINGTON, June 22—There was a good deal of mystification in Congressional committee circles this week over the meaning and the probable impact of the Supreme Court's decision in the Watkins case, in which a conviction for contempt of the House Committee on Un-American Activities was reversed on the ground that the committee had exceeded its authority.

The decision is generally regarded as one of great significance, for—ostensibly, at least—it imposes a judicial check-rein on Congressional investigators that has not been present heretofore. But just what its practical effects may be, and the extent to which established committee procedures may be altered or curtailed in consequence, is not at all clear at this point.

John T. Watkins had been convicted for refusing to give the Un-American Activities Committee names of people with whom he had associated during a period in which he admittedly had dealings with Communists in the labor movement. He discussed his own activities freely, but refused as a matter of conscience to identify others not known positively to him as Communist party members. In so doing he did not take refuge in any of the usual constitutional protections, contending only that he believed such questions to be improper and outside the committee's jurisdiction.

### Court's Ruling

In a 6-to-1 decision the court upheld Mr. Watkins and laid down the principle that Congressional committees must be guided by a clearly defined legislative purpose in their investigations, and that they may not force witnesses to testify against their will on subjects which do not conform to that purpose.

In leading up to this conclusion the justices observed that, "It would be difficult to imagine a less explicit authorizing resolution" than that under which the Un-American Activities was—and still is—functioning. That resolution, adopted originally in 1938, and automatically renewed by every succeeding Congress, directs the committee to enquire into "un-American propaganda activities," "the diffusion of subversive and un-American propaganda instigated from foreign countries," and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

### Restricted Activities

Persons intimately familiar with Congressional committee procedures are virtually unanimous in their belief that the court's order, if literally interpreted and applied, would put a brake on familiar investigative practices. Never having been bound by the strict procedural and evidentiary rules of courts of law, many committees have long followed the convenient habit of "making the case as you go along."

While the court addressed itself to Congressional committees in general, in a practical sense its message is directed to those committees which engage in exploratory activities in which the legislative purpose is subordinate to fact-finding. Typical examples, in addition to the Un-American Activities committee and the Senate Internal Security sub-committee, which are parts of the standing committee structure, are such special and ad hoc committees as those on labor racketeering, lobbying and juvenile delinquency. Such committees more often than not operate in an area of sharp conflict between the citizen and duly constituted authority, not unlike a court of law.

While such committees cannot impose punishments directly, they can refer evidence of wrongdoing and perjury to the Department of Justice for prosecution, and they can obtain from their parent bodies (House or Senate) citations for contempt of Congress, which also is punishable in the courts. An equally potent but unofficial punishment can be applied through simply exposing a person's deeds to public view with consequent damage to his reputation.

### Defining Scope

As some well-informed persons in the field see it, investigative committees could, under this new stricture, be required to rewrite—and secure appropriate passage of—their basic authorizations. This would mean defining the scope and purpose of the investigative program in such a way as to set out clearly the legislative goals sought and the areas of information needed to accomplish it.

This could well prove quite dif-

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ficult to do. It could also prove to be something of a straight-jacket as the investigation proceeded, as it might prohibit the committee from pursuing collateral but not immediately relevant paths that opened up in the course of the hearings.

Another means of meeting the court's requirement is through a tightening of the general rules of committee procedure followed by each of the houses of Congress, with new emphasis on defining jurisdiction.

There is, of course, no direct sanction which the court can impose to force Congress to alter its committee procedures. There is some sentiment, born of resentment at "interference" of the Judicial with the affairs of the Legislative branch, to ignore last Monday's decree, and to continue in the old free-wheeling style.

**Effect of Ruling**

This has a built-in hazard, however. It is a certainty now that committee authority will be challenged more frequently than in the past by witnesses who do not wish to testify freely.

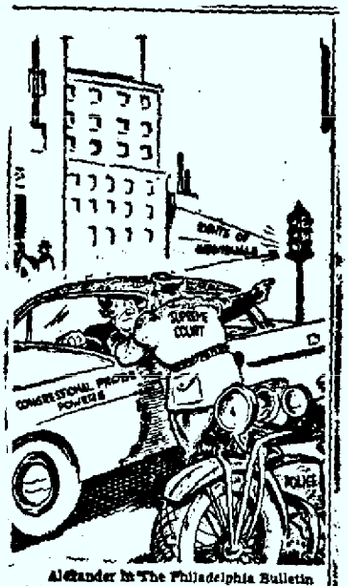
Even so, the relevancy of a question, or of a line of questioning, is not always easy to disprove. An ostensible adherence to the rule of relevancy does not wholly rule out a "fishing expedition."

Political as well as more altruistic legislative motives are at work at many investigative sessions. If a member of the committee wants badly enough to heckle or embarrass or even to indict a witness in public, he is not likely to be deterred by the fine print in an authorizing resolution or the Olympian frown of the Supreme Court.

As important in the long run, however, as the substantive reforms that the court has imposed may be the inferential disapproval that the justices expressed for the casualness of Congressional committees toward the concept of individual rights. The trenchant allusions to this in the opinion suggests what was in the majority's mind:

"We cannot simply assume that every Congressional investigation is justified by a public need that overbalances any private rights affected."

This philosophy of a heightened regard for the rights of the individual as opposed to those of a Congressional committee will undoubtedly be reflected by the rest of the judiciary as it considers future cases growing out of this conflict.




Alexander in The Philadelphia Bulletin

**"You went through a red light."**

Where Congress' Rights End

# The Court Struck a Blow for Conscience

By Max Freedman

*English law was the root source of American civil rights, and England is still the historic citadel of those rights. Freedman is Washington correspondent for the Manchester Guardian, and this is his interpretation for his English readers of last Monday's precedent-making Supreme Court decision in the Watkins case.*

THE RELATION of the Bill of Rights to the actions of congressional committees came before the Supreme Court for the first time in clear and unmistakable form in the disturbed period after 1945. In Quinn v. United States, the Court held in 1955 that the power to investigate, though broad, is subject to recognized limitations. After enumerating various restraints, it added that "still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights."

At issue in that case was the use of the Fifth Amendment, protecting one against self-incrimination. The Watkins case, just decided by the Supreme Court, extends this limitation to the First Amendment, which shelters personal rights.

It is often tempting, but almost always misleading, to make large deductions about changes in the Court's philosophy by concentrating on changes in the Court's membership. The dominant fact, obscured by current controversy, is the continuity of the Court's thinking in recent years on the enduring themes of personal freedom. The Watkins case, in fact, does not mark an abrupt change in the Court's philosophy but merely an extension plainly foreshadowed in previous decisions.

The central issue in this case concerns the restraint which the Supreme Court has placed on congressional committees when they touch the protected freedoms enshrined in the Bill of Rights.

IT IS important to realize that Watkins never took shelter under the First Amendment when he appeared under subpena for the two members of the House Un-American Activities Committee. He simply asked for a court decision to determine whether the committee had the right to put these questions to him and to hold him in contempt for refusing to answer them in the absence of this judicial verdict.

Watkins had already exposed himself. He freely admitted numerous associations with Communists over a span of years. He refused to answer only when the questions concerned other individuals who, to his "best knowledge and belief," had since left the Communist Party.

The Justice Department challenged Watkins' position on various grounds. In the

first place, it argued that the committee was entitled to have its questions answered because these replies might have given it useful clues about the nature and magnitude of Communist subversion. Secondly, the First Amendment never was intended to protect anyone from exposure to public criticism or indignation, nor was it designed to allow a witness to take refuge under its principles to shield other people from public humiliation or attack.

Finally, the department argued that "the power to investigate is broader than the substantive authority which may eventually be exerted by the investigating body, for not until the whole region of facts has been canvassed can it be determined where the boundaries of regulation should be drawn. Judicial inquiry into a committee's legislative purpose must therefore not be restrictive or hostile but must take account both of the powers of Congress and of its pressing need to inform itself broadly."

IN ITS BRIEF to the Supreme Court, the American Bar Association took roughly the same view. It too argued that "pertinency" in a committee investigation must always be given a broader interpretation than "relevancy" in a criminal trial.

In explaining what it meant by a "valid legislative purpose," it advanced the familiar doctrine that a committee does not have to limit its investigation to "legislation in actual contemplation," nor is its power to be measured by the recommendations for legislation which it may or may not choose to make.

Neither the Justice Department nor the American Bar Association treated the principle raised by Watkins as a question of conscience. Both interpreted his silence as a protection for other people. Both made the mistake of ignoring the torment which one suffers when confronted under compulsion with the choice of turning informer or else standing in peril of being indicted for contempt.

Both ignored the authority of the Bill of Rights, or, more precisely, made it yield to the mandates of security. Both placed security before freedom. Both were held to be wrong, for the Supreme Court ruled that national security cannot be bought at the price of personal freedom.

THE COURT was told that a committee sometimes must engage in exposure because that is the only sanction open to it. This argument may be valid for a committee of Congress, but why should it prevail with the Supreme Court?

The entire authority of Congress cannot invade by law the freedoms guaranteed in the First Amendment. Why should a committee, a subordinate agent, have the power to do by investigation what Congress itself cannot do under any statute? By its decision in the Watkins case, the Supreme Court has decreed that the Bill of Rights must restrain any committee once the scope and method of its investigation brings it into collision with protected personal rights.

The Court remarked that it is "obvious" that a person called upon to answer questions before a committee, under risk of perjury or contempt, must be satisfied that the questions are as pertinent as they would have to be under the Due Process Clause in a criminal trial. This rule, it must be confessed, has never been obvious to Congress.

Indeed, the Justice Department reminded the Court that "the strict standards of definiteness applicable to criminal statutes have never been thought applicable to rules or resolutions establishing congressional committees and defining their powers. If this contention (of Watkins) were sound, no congressional committee would have a sufficiently specific grant of authority to sustain the conviction of any witness who refused to give testimony before it."

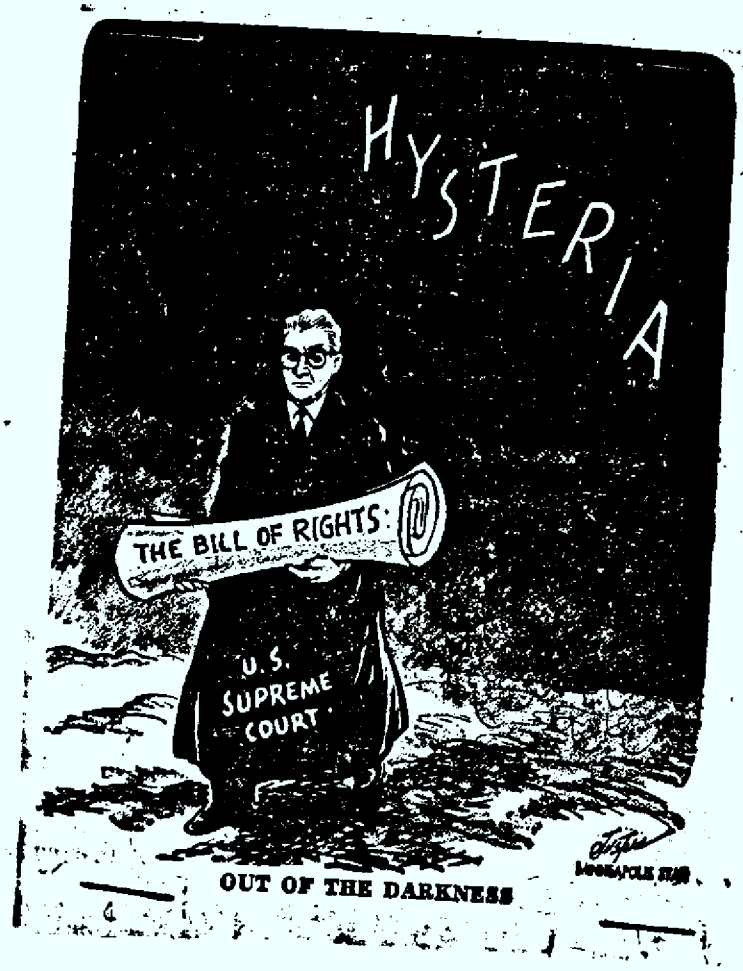
BEFORE RAISING a cry about the rights of Congress, one should remember the precise scope of the Watkins decision. It concerns only those activities which affect an individual's freedom under the Bill of Rights. Congress remains completely free to investigate and publicize corruption, maladministration and inefficiency in all Government agencies.

This "informing function" of Congress, so essential to the public good, remains entirely untouched and unabridged by the Watkins case. Committees are merely placed under judicial notice that they cannot ignore the Bill of Rights, or push it aside as something that must yield to the claims of national security or the administrative convenience of Congress.

In his dissenting opinion, Justice Clark said that many other legislative committees had authorizing resolutions or charters of authority as vague and general as those under which the House Un-American Affairs Committee operated. Justice Frankfurter, in his concurring opinion, conceded that an "implied authority" for the committee's questions might be "squeezed out" of the repeated acquiescence by Congress in the committee's work. But even then, Watkins could not be charged with contempt.

FOR THE COMMITTEE'S questions suffered from "the vice of vagueness"; they were not clearly pertinent to the subject under inquiry; they failed to rest on a frankly established and valid legislative purpose; they did not give Watkins an adequate opportunity for knowing, at the very moment the questions were put, and knowing in a "luminous" rather than a cloudy way, that he was in fact denying pertinent information to Congress.

Therefore the Supreme Court ruled that Watkins could seek the protection of the First Amendment, that he must be cleared of contempt and that Congress in its investigations must scrupulously respect the Bill of Rights.




OUT OF THE DARKNESS

# House and Senate Studying Effect On Powers to Probe Subversives

By Don Irwin

WASHINGTON.

The Supreme Court's recent series of decisions in the field of civil liberties is likely to have a substantial, but unpredictable, effect on both legislation and investigation in Congress.

The first reaction was as strong as it was divided. Depending on their places in the political spectrum, Congress members rated the decisions from "monstrous" to "monumental." The bitterest condemnation came from Southern Democrats and conservative Republicans. The warmest praise came from Democrats loyal to the Fair Deal.

The divisions were sharpest in the Judiciary Committees of both House and Senate, since they deal directly with the questions of subversion and civil rights covered in the decisions.

The House Judiciary chairman, Rep. Emanuel Celler, D., N. Y., applauded the decisions and saw them as an argument for abolition of the House Un-American Activities Committee, which he has long sought.

Rep. Kenneth B. Keating, R., N. Y., the group's ranking minority member, wants an early committee review of three key decisions, especially the one expected to affect the investigatory powers of the House's Red-hunting arm.

The Supreme Court decision which directly involves Congressional investigations was the Watkins case. In it, the court ruled that the Un-American Activities Committee exceeded its jurisdiction in trying to compel a witness to name friends he had known as Communists. It held that the inquiry had strayed from the purpose of obtaining information for legislation, and had no clear intent. It questioned the committee's powers as "excessively broad."

### *The Other Cases*

The other two principal decisions affect prosecutions in Federal courts. They are:

The Jencks case, in which the court ordered the government to give defendants access to Federal Bureau of Investigation reports if they are to be used as evidence—or if it withholds them, to drop the trials.

The Smith Act case, wherein the court freed five persons convicted of conspiring to advocate overthrow of the government and ordered nine others retried. The five were freed because the court found no evidence of overt action. The nine were remanded because of a defect in the trial judge's charge to the jury.

Whether or not Rep. Celler succeeds in blocking the kind of over-all committee study sought by Rep. Keating, the latter is prepared to sponsor an expected Justice Department bill designed to block the legal avenue opened by the Jencks case decision.

Like most members, Rep Keating has no immediate answer for the finding in the Watkins case. But he feels it will hamper all Congress committees trying to question "recalcitrant, subversive or crooked witnesses."

Saying that the Un-American Activities Committee is generally unable to recommend legislation until it has fully explored a given area of subversion, Rep. Keating suggested that, for hearing purposes, the committee have before it an incomplete bill which would be the focus of questioning.

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### The Senate Picture

In the Senate, the prospect of a bitter civil rights battle has dimmed the enthusiasm of most Judiciary Committee members for any extensive inquiry at this session into the court's decisions. But the decisions have heightened criticism of the Supreme Court by Southern members who are still angry over the court's school-desegregation decision.

Sen. James O. Eastland, D., Miss., chairman of the Senate Judiciary Committee and of its Internal Security subcommittee, joined his colleague, Sen. William E. Jenner, R., Ind., in a bitter statement blasting the court for "undermining our existing barriers against Communist subversion." They said Congress should halt the court's "boundless assumption of power," but they offered no practical step.

One such proposal has come in general terms from Sen. Sam J. Ervin jr., D., N. C., former judge and another Judiciary Committee critic of the court. He sug-

*Continued on page 10, column 6*

## Congress

*(Continued from page one)*

gested a Constitutional amendment to impose checks on court's powers, which he maintains the Founding Fathers failed to put in the Constitution.

Meanwhile, Sen. Ervin believes the Senate should "refuse to confirm obvious political appointments" to the Supreme Court bench. He named no names, however.

### The Other View

In a contrasting view from the same committee, Sen. Thomas C. Hennings jr., D., Mo., had nothing but praise for the court's decisions. He said it was on "high ground" in the tradition of the late Justice Oliver Wendell Holmes in its Smith Act finding. He called the Watkins decision "an eloquent and monumental reaffirmation of the primacy of the Bill of Rights."

But like Rep. Keating on the House side of the controversy, Sen. Hennings agrees that a Senate Judiciary Committee review of future operations, in the light of the Watkins case, would help clarify a confused picture.


**Long Arm of the Law?**

—Alley, in The Memphis Commercial Appeal

# HIGH COURT DECISIONS REFLECT NEW DIVISION

## Eisenhower Appointees and Two Named by Roosevelt Have Joined In Majority on Civil Liberties

## TRUMAN MEN ARE DISSENTERS

By ARTHUR KROCK

(WASHINGTON, June 22—The public impact of the recent decisions of the Supreme Court that curbed both the Executive and Congress on national security measures evoked by international communism, and extended the limits on the inter-relation of non-competitive corporations, was not created primarily by their inherent assertion of judicial supremacy over the two coordinate branches of the Federal Government. The Supreme Court began that assertion of power in 1865 and ! steadily pursued it. The public impact was created by the nature of the decisions, by the breadth of the language employed and by the number that issued from the Court in a brief span.

The path to judicial supremacy—for which judges prefer the euphemism of judicial review—was opened by Chief Justice Marshall in 1803 in Marbury v. Madison. But for the next sixty-two years the Supreme Court invalidated only two acts of Congress, and the high tribunal did not project the rulings as binding nor did the other Federal branches accept them as such. Since then, however, Supreme Court invalidations of legislation and Executive acts as unconstitutional have taken on the force of finality (except in cases where Congress could overcome them by new legislation). And the American people have failed to find merit in any substitute that has been proposed.

### No Specific Power

There is nothing specific in the Constitution that empowers the Supreme Court to impose on Congress and the Executive its constructions of the national charter that have varied with changing times and changing judicial personnel. Nevertheless, it has been established as a practical method of orderly government that the other two branches, the states and private litigants are subject to the restraints the Supreme Court of the day finds in the Constitution, whereas the court itself is subject to no restraints save impeachment. And so the high tribunal has become the final arbiter of the American constitutional system, which, in the epitome of Charles Evans Hughes "is what the judges say it is."

These determinations sometimes have been consistent for years, effecting what lawyers and litigants cherish and know as "continuity in the law." But periodically, as the public philosophy changes, especially when this is indicated massively at the polls, and as changes in the personnel of the court create new majorities, the line of its determinations veers to the right or left, and what was recently the Constitution ceases to be. That shift occurred after the New Deal triumph at the election of 1936. It has occurred again, but for a different and curious reason.

### Unexpected Coalition

This reason is that three of President Eisenhower's appointees to the court—the Chief Justice and Justices Harlan and Brennan—have found common ground in cases involving civil liberties with two of President F. D. Roosevelt's appointees—Justices Black and Douglas. To complete the paradox the most consistent dissenters to the views of this combination have been appointees of President Truman—Justices Burton and Clark.

Some but not all of the recent decisions that have been hailed and criticized by many are the plain product of these changes of personnel from the court whose chief was the late Fred M. Vinson. The dissenters of that period are now in the majority, and vice versa. And a tendency of Chief Justice Warren and Justice Black to couch rulings in sweeping language has increased the number of separate concurrences and moved the dissenters to contend either (a) that no one could be sure how much territory the majority was taking in, or (b)

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the majority had for the first time "usurped" the fact-finding function of a jury.

For examples:

Justice Harlan found it necessary to state separately that civilian dependents of the armed forces abroad for whom the Constitution required jury trials instead of courts-martial were only those accused of capital crimes. He did this because Justice Black's ruling for the majority could be read to assure jury trials to all such offenders.

Justice Clark dissented in the Jencks decision because he believed the majority's language would require the Government to open confidential "raw" F. B. I. reports if it produced a witness who supplied any of the information in the file, or abandon prosecution of subversives.

## Smith Act Limited

But the findings in the Watkins and California Communists cases evoked the largest and most vociferous group of critics of the Supreme Court. In the first, it set restrictions on investigating committees of Congress. In the second it limited the application of the 1950 Smith (anti-Communist) Act of Congress, invalidated the convictions of five defendants obtained by the Department of Justice and ordered new trials for nine.

The criticisms of the Watkins ruling were that the Chief Justice prescribed in such general terms how House and Senate instructions to investigating committees could legally define their objectives and future legislative purposes and so vaguely how the "pertinence" of questions to witnesses could be established to the satisfaction of the court, that Congress could not possibly know how to meet these terms.

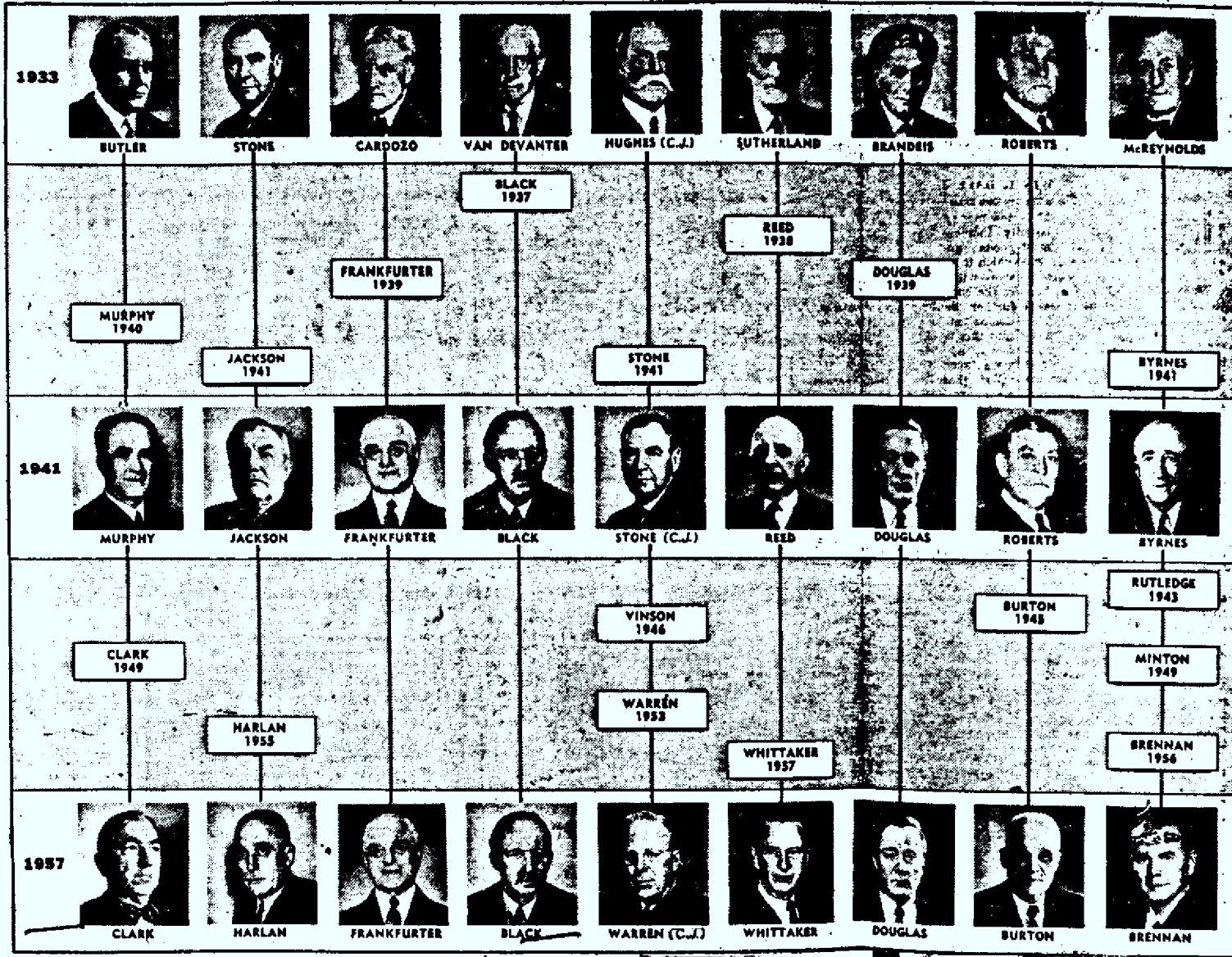
The criticisms of the California cases were (1) that Justice Harlan, for the majority, put so narrow a construction on the word "organize" in the Smith act that many active Communist conspirators are henceforth exempt from the act. And (2) that in applying the protection of the First Amendment to those who "advocate" as an abstraction the forcible overthrow of the Government, as contrasted with those who conspire to "incite" the attempt, he gave the most dangerous subversives a loophole through which they can elude legal process.

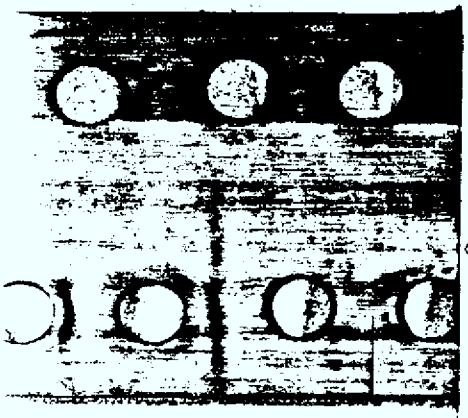
## Time Will Tell

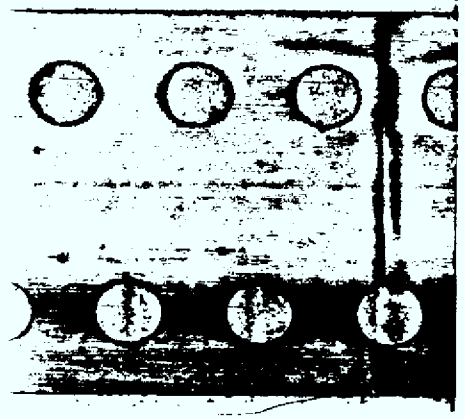
On the other hand, the Supreme Court decisions are enthusiastically supported on these grounds. (1) It came to the rescue of constitutional civil liberties that have been abridged by Congress and the Executive in a surge of lawless "anti-communism." (2) The "clear and present" danger from international communism by which the court previously has justified less sweeping interpretations of the Bill of Rights has passed. (3) The dire consequences of the decisions that many have predicted will not follow; they never have when prophesied. (4) Congress has the power to maintain the purposes of the invalidated legislation and the essentials of its investigatory function. (5) And nothing in the decisions weakens adequate national security.

As the old saying is, time will tell.

## THE SUPREME COURT'S CHANGING MAKEUP—JUSTICES OF THE PAST QUARTER CENTURY







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# HIGH COURT HAS MADE A NEW HISTORIC TURN

## This Shift is Toward a Renewed Concern for Personal Rights

By LUTHER A. HUSTON

Special to The New York Times.

WASHINGTON, June 23—The primary function of the Supreme Court is to relate the law to the Constitution.

How it performs that function varies with the personnel of the court at any given time. History is replete with incidents of a court of today discarding a constitutional interpretation of a court of yesterday.

No more notable example can be found than the high court's ruling in the school segregation cases. There the court of 1954 discarded the separate-but-equal doctrine laid down by the court of 1896.

The present court is less disposed than some of its predecessors to stick to "stare decisis," which means, roughly, stand by the decisions of the past. If any description fits the court of today it is that it makes up its own mind, whether on the basis of law or its own idea of how the law should be applied.

By and large, this is a court that believes that the Constitution and the law should be interpreted in the light of changing concepts of political and social problems.

One thing stands out, however, with regard to the present court. More than any of its recent predecessors, it is independent of other branches of the Government. It doesn't care who it steps down.

### Washington Comment

A comment heard in Washington this week after the high court had acquitted five minor Communist leaders and ordered new trials for nine others and had set aside the conviction of a labor leader for contempt of Congress was that if a few more "Eisenhower radicals" were appointed to the tribunal, it would wreck both the Legislative and Executive branches of the Government.

Eisenhower appointees do not dominate the court as yet. There are nine members and General Eisenhower has appointed only four of them.

It is significant, however, that at least three of the Eisenhower appointees have joined in recent major decisions with Justices who were appointed by President Franklin D. Roosevelt to strike down administrative enforcement procedures of laws enacted during the Truman Administration. The two Truman appointees remaining on the court have been the dissenters.

Of the members of the present court, Justices Hugo L. Black, Felix Frankfurter and William O. Douglas were Roosevelt appointees. President Truman named Justices Harold H. Burton, a Republican, and Tom C. Clark to the court. Eisenhower appointees are Chief Justice Earl Warren, and Justices John M. Harlan, William J. Brennan Jr., a Democrat, and Charles Evans Whittaker.

It is illogical and unsafe to bet any Justice at any time in any specific category, like liberal or conservative.

"TILT"


Drawing by The Boston TRAVELER

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But there is a discernible pattern of judgment in Chief Justice Warren's court. And it is a pattern that appears to have changed with the Eisenhower appointees.

No one familiar with Chief Justice Warren's political record as Governor of California could have expected him to bring to the high court an arch-conservative viewpoint.

### Bloc in Court

It has surprised many, however, and dismayed some, that Chief Justice Warren has so often been found in alignment with Justices Black and Douglas, who came to court as avowedly New Deal liberals.

So, if there is a bloc on the court that can be classified as "liberal" it consists of Chief Justice Warren and Justices Black and Douglas, each of whom came to the court with differing personal backgrounds, political experience and educations.

In such recent decisions as the du Pont-General Motors antitrust case and the ruling that the military could not try civilians accompanying the armed forces for capital or infamous crimes committed abroad, another Eisenhower appointee has lined up with this so-called

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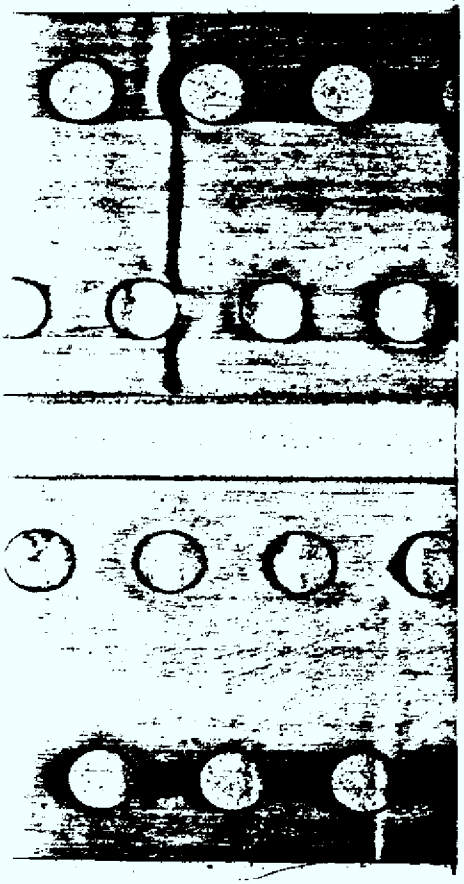


"liberal faction." He is Justice Brennan, who was appointed on his judicial record as a member of the Supreme Court of New Jersey.

There are many who contend that social philosophies, rather than profound legal knowledge or sound judicial experience predominate in the opinions of the court's liberals. That appraisal has not been applied, however, to Justice Harlan, the second man named to the court by President Eisenhower.

It has been said of Justice Harlan that if he can give a liberal application to the law he will do so but in any case he will stick to what he believes to be the law.

**Newest Appointee**

The fourth Eisenhower appointee, Justice Whittaker, has not been on the court long enough to warrant an estimate of where he will fit in any division of the court into categories.

Justice Frankfurter came to the court out of the turbulent days of the Roosevelt New Deal. Perhaps more than any other sitting Justice he is steeped in constitutional lore and equipped with a wide knowledge of Congressional history and administrative law. The safest thing to do with him, however, is not to place him in any particular category but just to classify him as "Mr. Justice Frankfurter."

When Justice Clark was named to the court, he was regarded as something less than a hide-bound conservative. He had served as a Justice Department attorney in the Roosevelt days, and as Attorney General in the Truman administration.

In recent decisions, such as the Watkins and Smith Act cases this week, he has been the sharp dissenter.

It would be inaccurate to draw any conclusion from Justice Clark's position in these cases, however, other than that his background and experience have convinced him that the high court should not lightly invalidate laws designed to make thorny the path of the criminal or strike down procedures of law enforcement agencies—unless there is injustice to individuals is clearly demonstrable.

**'Conservative' Listing**

Logic might compel the listing of Justice Burton as the sole "conservative," as the term is generally applied, on the court. He wrote a well-reasoned dissent from the majority decision in the du Pont antitrust case and joined Justice Clark in dissents in other cases where he felt that the majority was overturning established precedents or unnecessarily restricting the operations of Congress or executive agencies.

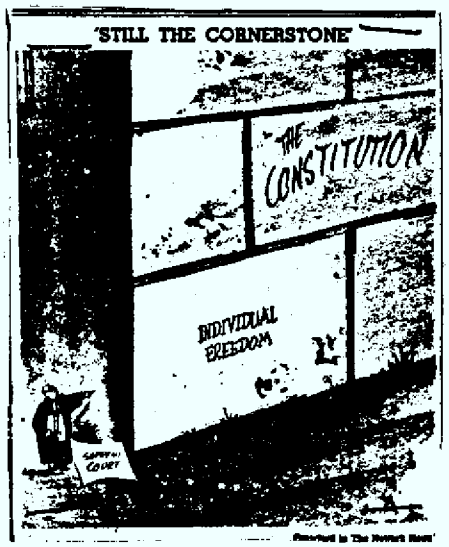
The court is scheduled to end its present term in a few weeks. Just what has been its contribution to constitutional law undoubtedly will be a subject of discussion in law reviews and bar association meetings—and in Congress—for an indeterminate future. Careful study and painstaking analysis is essential to a final appraisal.

**Individual Rights**

A permissible generality, however, is that whenever the present court has decided a constitutional issue it has placed political, academic and individual freedoms ahead of corporate or property rights or legislative and executive enactments and procedures.

It has interpreted the Constitution with emphasis on the Bill of Rights wherever those amendments to the national charter could be applied.

This is because the men who sit in judgment are the product of an era that witnessed the emergence of a new and worldwide regard for human freedoms wherever they came in conflict with traditional regard for the rights of property. Some of those who sit on the high court have been leaders in the development of this era.


'STILL THE CORNERSTONE'
THE CONSTITUTION
INDIVIDUAL FREEDOM

MOMENTOUS CHANGE

# The Supreme Court's New Liberal Swing

By DANIEL M. BERMAN

The Supreme Court, except for the Girard case hearing set for July 2, is closing down its regular season tomorrow. As far as vocal elements in Congress and the administration are concerned, the recess is coming not a moment too soon. A few more Decision Days like the last would be hard to take.

In a series of momentous actions on Monday, the Court put its sister branches of government on notice that their days of freewheeling subversive-hunting are over. Congressional committees, the Department of Justice, and the various State legislatures came in for severe tongue lashings as a new liberal majority on the Court asserted its strength.

Until recently, the liberal Justices were in a distinct minority. Readers of Supreme Court opinions were accustomed to a weekly refrain: "Mr. Justice Black and Mr. Justice Douglas, dissenting." Hugo L. Black and William O. Douglas, two of President Roosevelt's appointees, had found themselves increasingly isolated as their fellow Roosevelteans moved to the right and as President Truman placed conservatives like Fred M. Vinson, Tom Clark, Harold H. Burton and Sherman Minton on the Court.

But today Justices Black and Douglas find that their years in the wilderness are over. Overnight the situation has changed, and they now constitute the nucleus of a new liberal alignment on the Nation's highest court. Their astonishment at this turn of events must be particularly great because their liberal allies have been selected by a Republican President—Dwight D. Eisenhower.

THE 'NEW COURT'—Seated, from left: Justices William O. Douglas and Hugo L. Black, Chief Justice Earl Warren, Justices Felix Frankfurter and Harold H. Burton. Standing: Justices William J. Brennan, Jr., Tom C. Clark, John M. Harlan and Charles E. Whittaker.

### Eisenhower Picked Four

During his years in office, Mr. Eisenhower has named four Justices to the Supreme Court—one short of a majority. His first appointee was Earl Warren, a former governor of California and the 1948 Republican vice presidential candidate. Nominated to succeed Chief Justice Vinson, who had been chosen by President Truman, Chief Justice Warren discovered that his constitutional views were not far from those of Justices Black and Douglas.

President Eisenhower's second Supreme Court appointment went to John Marshall Harlan, grandson of a famous Justice who had dissented vigorously when the Court upheld racial segregation in 1896. On some issues, Justice Harlan seemed considerably to the right of his Chief Justice. Numerous eyebrows were raised, however, when he wrote the 1956 opinion holding that President Eisenhower had acted illegally in extending the loyalty-security program to non-sensitive Government departments.

Two more vacancies have been filled by the President within the past year. The first, created by the retirement of conservative Justice Minton, went to William J. Brennan, Jr., of the New Jersey Supreme Court. The conservatives' loss was the liberals' gain, for it soon became apparent that Justice Brennan was an intellectual ally of the new Black-Douglas-Warren bloc.

The President's most recent appointment went to Charles Evans Whittaker of Kansas City. Justice Whittaker has not been on the Court long enough to betray his political philosophy. It is true that he comes to Washington with impeccably conservative credentials. But after his experiences with Chief Justice Warren and Justices Brennan and Harlan the President will probably not be too astounded if Justice Whittaker, too, turns out to be something of a maverick.

### Spoke for Liberals

The fruit of these appointments is the fact that the most significant of recent liberal opinions have been written by Eisenhower appointees:

● Justice Brennan delivered the opinion in the Jencks case, in which the Court held that if Government witnesses have given statements to the Federal Bureau of Investigation in a criminal case, the prosecution must show these reports to the defendants or the case will be dismissed.

● Justice Harlan wrote the opinion in the Yates case, freeing five Communists who had been convicted under the Smith Act and ordering a new trial for nine others. He also announced the Court's decision that former Secretary of State Dean Acheson had acted illegally in discharging John Stewart Service on loyalty grounds.

● Chief Justice Warren administered the coup de grace with his opinions in the Watkins and Sweezy cases. In the former, he reversed the conviction of a labor leader who had defied the House Un-American Activities Committee when it demanded that he inform on associates who had been Communist Party members. In the Sweezy case, he upheld a Socialist editor who had refused to tell a one-man committee of the New Hampshire legislature about an academic lecture he had delivered at the State university.

It is faith in democracy and the Bill of Rights rather than any sympathy with radicalism which underlies the libertarian stand of the Eisenhower Justices. Their theory is that, although there would undoubtedly be less crime if a policeman were stationed in every home, the sacrifice of privacy and other values would make the bargain a bad one. They are generally willing to take their chances on the side of freedom.

They appear to share this sentiment expressed by Justice Black on Monday:

"The First Amendment provides the only kind of security system that can preserve a free government—one that leaves the way open for people to favor, discuss, advocate or incite causes and doctrines, however obnoxious and antagonistic such views may be to the rest of us."

### Clark Is Dissenter

The Justice who has been most offended by the court's rising liberalism is Tom Clark, Attorney General under President Truman. Justice Clark was the author of the Attorney General's list of subversive organizations. He usually feels that security considerations are more important than the constitutional rights which citizens invoke.

During the past two months, his disagreement with the new court majority has become more apparent with every decision day:

● On April 29, the court held that the Government may not question an alien awaiting expulsion except about matters directly relating to his availability for deportation. Justice Clark dissented, but only Justice Burton supported his view that the Attorney General was being stripped of a vital power.

● The following week the justices ruled that a lawyer could not be prevented from taking a bar examination merely because he was once a Communist Party member. Justice Clark was once again in dissent.

● On May 13, the court reversed the convictions of two men and a woman accused of harboring a Communist who had fled in order to avoid a prison term for violating the Smith Act. The guilty verdict was overturned on the ground that the FBI had conducted an illegal search of the defendants' home. Again Justices Clark and Burton were in the minority.

● A week later, Justice Brennan wrote the opinion which reversed the conviction of a labor leader who was accused of lying when he swore in his Taft-Hartley affidavit that he was not a Communist. Justice Clark wrote a solo dissent, in which he said: ". . . Those intelligence agencies of our Government charged in law enforcement may as well close up shop, for the court has opened their files to the criminal and thus afforded him a Roman holiday for rummaging through 'confidential' information as well as vital national secrets."

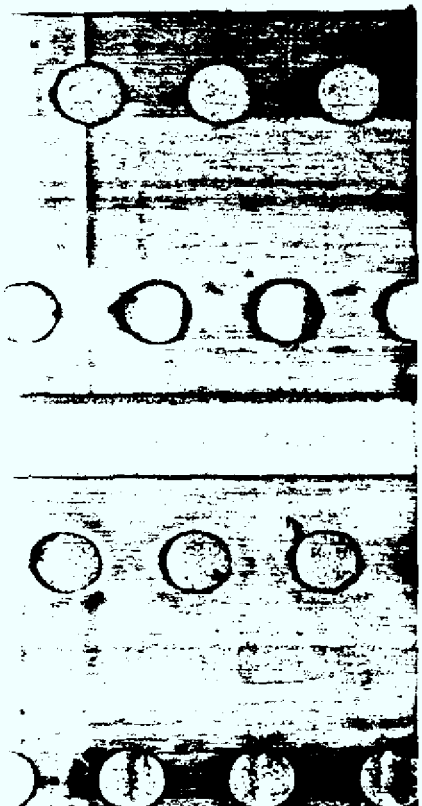
On last Monday, Justice Clark dissented from three important "subversion" decisions. In two of the cases he stood alone, and in the third he was joined by Justice Burton. Among other things, he accused his colleagues of making the judiciary "the grand inquisitor" of congressional investigations.

Thus, the ironic fact is that the Eisenhower administration, fighting a rear-guard action to preserve its anti-subversive program against libertarian attack, must depend on two Truman appointees—Clark and Burton—for support on the court.

The liberals are in a stronger position than they have been in a decade. Chief Justice Warren and Justices Black, Douglas and Brennan have to gain support from only one more justice to constitute a majority in any case. In civil liberties matters, Justices Harlan and Frankfurter will often beat them.

The Warren-Black-Douglas-Brennan coalition seems to hold firm in antitrust cases, also. The same four justices recently held that du Pont has exercised illegal monopolistic control over General Motors.

Thus, this Capital, which boasts many strange sights, has another paradox to exhibit today: The spectacle of a Republican President unwittingly restoring the liberal balance of a Supreme Court which had been pushed far to the right by his Democratic predecessor.



WEEKLY SUNDAY NIGHT BROADCAST OVER
AMERICAN BROADCASTING COMPANY STATIONS

By George E. Sokolsky, June 23, 1957

GOOD EVENING. THIS IS GEORGE SOKOLSKY TRANSCRIBING ON THE FORCES AND EVENTS OF THESE DAYS. BUT FIRST MAY I PRESENT OUR ANNOUNCER FOR A MOMENT.

The Great Communist Victory

The U. S. Supreme Court has handed down a series of decisions during the past few weeks which have given the Communists of this country a victory such as they have not experienced ever before in American history. It is a clear mandate for them to continue their propaganda, their infiltration and their penetration throughout our land without restraint.

In some aspects, these decisions are so far-reaching that they may benef kidnappers, forgers, and other malefactors. It would rather indicate that there are too many theoreticians and too few practical lawyers on the Supreme Court ben The danger is great and the country should be alerted to the danger.

Of course, the very worst decision was the Jencks Case according to whi a defendant may demand to see the FBI files upon which the case against him is based. This means that FBI files are no longer secret and the vast amount of mat rial in them may, under certain circumstances, be ordered by judges to be made available to the defendant's counsel. Judges have been doing this since the Jenc decision came down. I heard of one lawyer who applied it locally to a labor boar case. Obviously, it can be applied to kidnapping, murder and all other cases. From the standpoint of abstract justice, there may be a reason for this. From th standpoint of practical law-enforcement, it means that the lawyer can frighten of or blackmail all the witnesses against his client. We saw that in the Vic Riesel case, when the prosecution had to drop the case against an alleged hirer of the acid thrower because all the witnesses had been encouraged by someone to shut up. They would not talk in open court, under oath. In a word, law-enforcement is al- ready being weakened; the Jencks decision turns our country into an anarchy by opening up the FBI files. There can be no limit to the mischief that this decisi can do.

In the other Communist decisions, the Supreme Court got itself entangle in the verbiage of Marxist ideology with which apparently the learned judges are not too familiar. For instance, they apparently do not believe that just advocat ing force and violence means very much. What a fellow who advocates force and violence must do is to show how he plans to upset the government by force and violence. Of course, Karl Marx, Frederick Engels, Bakunin, Lenin, Stalin, Mao Tze-tung, William Z. Foster in the United States and literally hundreds of other Communist leaders have written an enormous library of works to establish force and violence and everything related to the Communist movement, which Commun ist movement has been carefully blueprinted and all the documents are available. The latest is Mao Tze-tung's speech telling how he killed 800,000 Chinese to esta lish his revolution. I fear that Mao's figures are modest -- very modest. In th kind of revolution Mao has been managing, the killing of 800,000 human beings is next to nothing.

Presumably, what the brethren on the Supreme Court want is that each individual dope who is asked by a Congressional committee whether he is or was a Communist and believed in the overthrow of the American government by force and violence must also say how he is going about it. It would be like asking a Republ lican or Democratic ward-heeler what he would do when Eisenhower or Stevenson is

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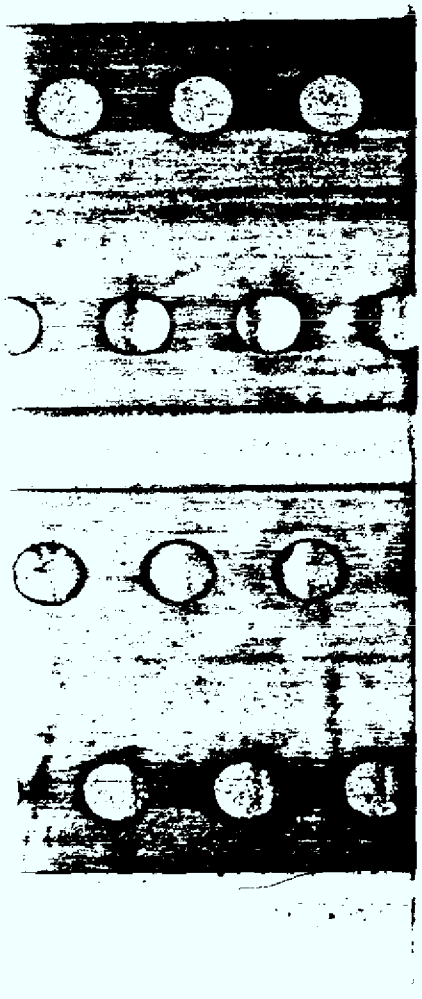

elected President. The usual club-house bum will look for a cush job in governmen and probably never get it. But he will stick by his party and do its dirty work because that is all that he is fitted to do.

Among the Communists it is even moreso. The man or woman down the line is an agent of an international conspiracy designed to overthrow every government by whatever means the devils in Moscow employ, but he is never consulted. By a process called Democratic centralism an elite moves upward to the top and then it is expected that all under them will obey orders. Now, the Kremlin is employing a combination of threat and charm. Khrushchev started a new tone of charm on the C.B.S. telecast but the threat is there all the time. The American Communist find charm a very difficult instrument to use, although he is excellent as a liar. Under the Watkins Case decision in the Supreme Court, the Communist is now privilege to lie all he likes because he may lie by silence. He may not be required to answer a question which could include the name of another Communist. He may refuse to answer such questions. A man may lie by silence without committing perjury. I is a great advantage.

Therefore, when you analyse it, what can he be asked? Let me put it to you this way: Suppose a witness were asked: Is it true that you were present in particular house in San Francisco where plans were being laid to steal the atom bomb? Suppose he answers, yes. Then he is asked: Who else was there? He may reply that by virtue of the Supreme Court of the United States he need not answer. Now this is not a far-fetched example. I am citing an instance which could come u at any time.

Wait until this is carried down to state court levels. There you will see the effects of such careless, political decisions. One would imagine that som of the Supreme Court justices are campaigning to run for President in 1960 and are looking for the so-called liberal vote. Well, you can imagine what you like about these brethren, but their decisions need some clarification or we shall be left without law in this country and our law-enforcement agencies, already hamstrung by inadequate appropriations and shortage of manpower, will be utterly helpless. Instead of law-enforcement, we shall have a perilous condition of local judges basin decisions in criminal cases on the Communist decisions of the United States Supreme Court. For in this country, a felony is a felony no matter of what kind and the Smith Act made membership in the Communist Party a felony. So is murder. So is kidnapping.

# # #

Admittedly our system of law is peculiar and difficult. In many European and Asiatic countries, there are special laws for political offenders. In Soviet Russia, the political offender is treated altogether differently, and usually worse than an ordinary criminal. As a matter of fact in a Communist country there are more crimes against the state than against the individual. In the United States such distinctions are not made, except in civil suits involving Courts of Claims. There is only one political offense against the United States and that is treason in time of war. Treason is defined in the Constitution. It is a crime difficult to prove and the punishment is death. In the case of the Rosenbergs, treason was extended to peace-time and the penalty was death. The Rosenberg trial is the classic example of the relationship of Communism and treason. Alger Hiss was never tried for anything but perjury and his conviction was for that.

It may be that the only offense for which agents of the Kremlin in this country can be held hereafter is treason and on the rare occasions when that can be

established in a court under the rules of evidence, the penalty will have to be death. Only an American citizen can commit treason against the United States. It would be interesting to know how many Americans practise dual citizenship. And so, all the Congressional committees, all the state investigations engaged in trying to discover whether they can uncover the continuing Communist conspiracy to harm America had better bow to Earl Warren's Supreme Court and its political opinions. Perhaps the House Committee on Un-American Activities which has served this country so long will not be killed dead by Justice Warren and Justice Brennan. Or maybe, someday, the United States will again get an American Supreme Court.

# # #

IN JUST A MOMENT, I'LL BE BACK WITH YOU.

# # #

It was thrilling to read the decision of Judge McCarraghy in the Girard Case. But don't count your chickens before they're hatched. The State Department and the Defense Department, frightened by the Formosa riots, will try everything possible to hand this boy over to the Japanese for trial. The Japanese only want Girard to save their face, to show that they are as important as a NATO country.

Therefore, we must be ever vigilant and be prepared to fight up and down the line for William S. Girard. It could have been your son.

# # #

THANK YOU. THIS IS GEORGE SOKOLSKY. GOOD NIGHT.

-oOOo-

0-19 (Rev. 8-7-56)

## 'Oyez, Oyez!'

## Court on Liberties

At the stroke of noon last Monday in the United States Supreme Court the nine justices came onto the bench in their white-marble courtroom — Chief Justice Earl Warren first, the others following in order of seniority. After the "Oyez!" of the court crier they sat, and the Chief Justice called for the admission of new lawyers to practice before the court. He then turned to Justice John Marshall Harlan and nodded. That was the signal for Justice Harlan to begin reading aloud the day's first decision.

This opening routine of a "decision day" gave no hint of the great significance of two of the rulings which were to follow. They were decisions in which the Judiciary stood against the Legislative and Executive branches on behalf of the civil liberties of citizens.

In one of the decisions the court placed new limits on the lengths to which Congressional investigating committees may go. In the other, the court charted a narrower course for Government prosecution under the 1940 Smith Act, which prohibits advocating the violent overthrow of the Government.

The decisions seemed to confirm the emergence in the court of a new majority sensitive to questions of infringement of the Bill of Rights. That majority is composed, more or less consistently, of three Eisenhower appointees—Mr. Warren, Justice William J. Brennan Jr. and Justice Harlan—and two holdovers from the Roosevelt era—Justices Hugo Black and William O. Douglas.

They appear to have wrought a pronounced change since the years when, under the late Chief Justice Fred M. Vinson, the court tended to be cautious about taking civil liberties cases and conservative in its stands on the cases it did take. The four justices who have gone —Vinson, Jackson, Minton and Reed—were usually with the majority in those cases.

### Ban on Segregation

Many observers trace the beginning of the change to October, 1953, when President Eisenhower appointed Mr. Warren to succeed Mr. Vinson as Chief Justice. Seven months later the court issued its unanimous decision against racial segregation in the public schools—the most sweeping of a series of decisions broadening individual freedoms. The court has since outlawed segregation in public transportation, restricted the Government's security-risk program to employes in "sensitive" jobs, barred the states from prosecuting persons who advocate violent overthrow of the Government, limited the secrecy of Federal Bureau of Investigation records in criminal trials and curbed military jurisdiction over servicemen's dependents in criminal cases.

Controversial and far-reaching decisions usually stimulate sharp criticism of the Supreme Court. Last week's two major decisions were not exceptions. In their wake came charges that the court was making law, that the justices were enforcing their personal views instead of interpreting the Constitution, that the court was setting itself above the legislative and executive branches of the Government. There was talk of legislation canceling the effect of the Smith Act decision. There were charges that the decision affecting Congressional committees would cripple Congressional investigations.

Justice Jackson declared shortly before his death that "perhaps the most delicate, difficult and shifting of all balances which the court is expected to maintain is that between liberty and authority." The decisions of last week indicate more strongly than ever that the present majority of the court will put weight on the side of liberty.

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New Leader

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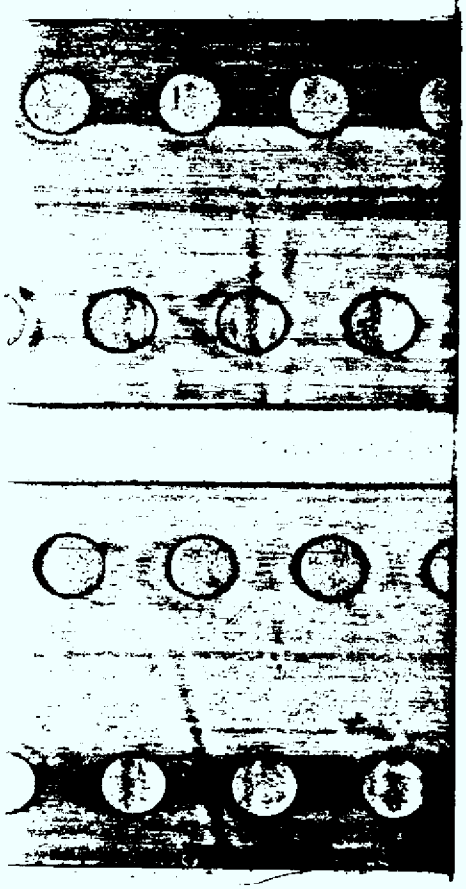


## The Watkins Case

One of the parliamentary traditions which the U. S. inherited from Britain is the right of legislatures to investigate for guidance in writing laws. The Supreme Court of the United States, recognizing that tradition, has been slow to set limits on the authority of Congress to inquire.

But another great tradition of democracy, won at a fearful price in torture and injustice, is the right of individual citizens to enjoy the liberties spelled out in the Constitution's Bill of Rights.

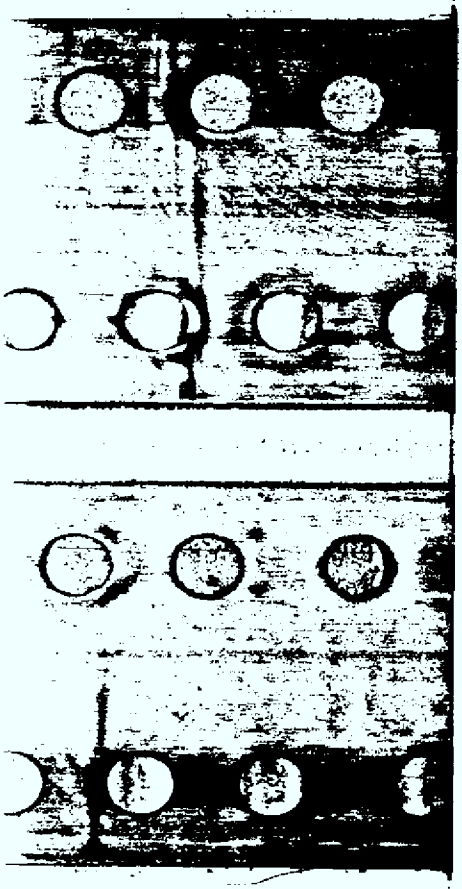
In the period since World War II, these two great traditions have come increasingly into conflict. The threat of Communist subversion turned Congressional committees to an area of investigation infrequently touched before—the investigation of the political activities of individuals. Inevitably, the question of where to draw the line between the broad power of Congress and the liberties of individual citizens came before the Supreme Court. Years ago the court set the Fifth Amendment's protection against self-incrimination as a limit on Congressional questioning. But some witnesses before Congressional committees have invoked the First Amendment's protection of free speech, or have challenged the right of a committee to inquire into personal beliefs and associations. The legality of these claims has been in doubt.

John T. Watkins was such a witness when he was called before the *House Un-American Activities Committee* in April, 1954. He was a labor official and had admitted cooperating with Communists between 1943 and 1947. Before the committee he freely answered questions about himself but refused to discuss "persons who may in the past have been Communist party members • • • but who to the best of my knowledge and belief have long since removed themselves from the Communist movement." He gave this explanation of his stand;

> I do not believe that such questions are relevant to the work of this committee, nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities.

The committee and the House cited Mr. Watkins for contempt of Congress. The Justice Department obtained an indictment against him for violating a law which requires anyone called before a Congressional committee to answer "any question pertinent to the question under inquiry." Mr. Watkins was convicted of the charge in May, 1955. His sentence, which was suspended, was a fine of $100 and a year in jail. He appealed, through to the Supreme Court.

With other Congressional committees encountering other witnesses who took stands similar to Mr. Watkins', it soon became apparent that the Supreme Court's decision in the Watkins case would be pivotal in defining the scope of Congressional inquiries.



## Rights Defined

Last Monday the court ruled 6 to 1 that Mr. Watkins should not have been convicted. Chief Justice Earl Warren, for the majority, made these points:

*First*, that Congressional authority to investigate is very broad but does have limits, notably the Bill of Rights. The court said:

> There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.

*Second*, that the area which a committee may investigate must be delineated clearly by the parent body—the Senate or House. The court said:

> It would be difficult to imagine a less explicit authorizing resolution [than the one creating the Un-American Activities Committee]. * * * The committee is allowed, in essence, to determine its own authority * * *. [Committee members] may act pursuant to motives that seem to them to be the highest. Their decisions, nevertheless, can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it.

*Third*, that Congressional committees are restricted to acquiring data to guide the House or Senate in legislating. The court said:

> No witness can be compelled to make disclosures on matters outside that area.

*Fourth*, that Mr. Watkins had no way of knowing what legislative question was under inquiry and whether the questions asked him were pertinent to it. The court said:

> [Watkins] was thus not accorded a fair opportunity to determine whether he was within his rights in refusing to answer.

"The conclusions we have reached in this case will not prevent the Congress, through its committees, from obtaining any information it needs for the proper fulfillment of its role in our scheme of government," Justice Warren declared. "A measure of added care on the part of the House and the Senate in authorizing the use of compulsory process and by their committees" exercising that power would suffice."

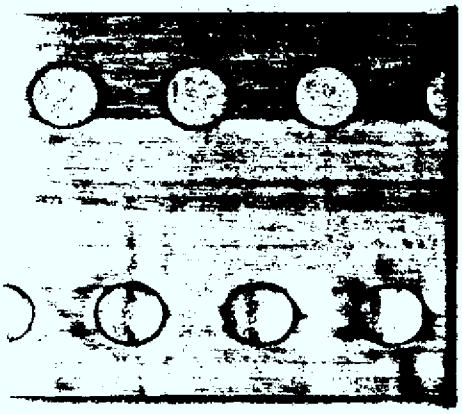
## Clark's Dissent

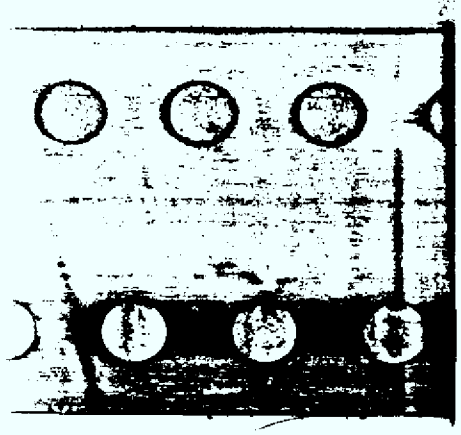
Justice Tom C. Clark declared in dissent that the majority decision was a "mischievous curbing of the informing function of the Congress." The majority, he said, "has substituted the judiciary as the Grand Inquisitor and supervisor of Congressional investigations."

The committees on which the decision will mainly fall are those which investigate subversive and criminal activities. Sharp criticism of the decision came from some members of those committees. The top members of the Senate Internal Security Committee—Senator James O. Eastland, Democrat of Mississippi, and Senator William E. Jenner, Republican of Indiana—said that the court is "undermining our existing barriers against Communist subversion." Senator John L. McClellan, chairman of the Senate's special committee on labor racketeering, declared that "what this country needs most is a Supreme Court of lawyers with a reasonable amount of common sense."

Representative Francis E. Walter, the Pennsylvania Democrat who heads the House Un-American Activities Committee, opened a hearing in San Francisco with a statement criticizing the court for its "invasion of the legislative field." Witnesses before the committee indicated one consequence of the court's ruling. They refused to testify without knowing the relevancy of the questions.

What happens next is not clear. Some committees may seek to ignore the decision. But that certainly would cause witnesses to invoke the decision in appeals to the courts, where they would be upheld if the case seemed to fit the standard of the Watkins case. That would eventually force committees to operate with clearly defined legislative purposes and to ask questions pertinent to those purposes. It also is possible that the Senate and House will attempt to conform to the decision by redefining, with an attempt at precision, the jurisdiction of their committees. In any event, the reverberations of the Watkins decision are likely to be heard for a long time.





## The Smith Act Case

The Alien Registration (Smith) Act of 1940 makes it a crime (1) to "advocate overthrowing any government in the United States by force or violence"; (2) to "organize or help to organize" any group that advocates the violent overthrow of the government; (3) to belong to any such group "knowing the purpose thereof."

These Smith Act provisions have served as the main basis for the Government's legal crackdown on the leaders of the Communist party. The crackdown began in 1948, when the Government won indictments against eleven top party leaders for conspiracy to advocate forcible overthrow of the Government. In 1949, after a nine-months-long jury trial, the eleven were convicted and sentenced to fines and prison terms. In 1951 the United States Supreme Court ruled, 6-to-2 (Vinson speaking for the majority, Black and Douglas dissenting) that the convictions were valid and that the Smith Act was constitutional as applied in the case.

Then the Government began employing the Smith Act against second-string and regional Communist leaders. In all, 145 have been indicted, eighty-nine convicted. The cases of thirty-eight are pending.

Among those convicted were fourteen West Coast Communist leaders. They appealed to the Supreme Court on the ground that the Smith Act had been improperly applied to them. Last week the court set aside their convictions, freeing five outright and ordering new trials for the remaining nine.

The decision—a six-to-one ruling—was based upon arguments that the majority conceded were "often subtle and difficult to grasp." In a sharp dissent, Justice Tom Clark said the distinctions were "too 'subtle and difficult'" for him. And the majority itself was divided on several points. Justices Warren and Frankfurter joined Justice Harlan, who wrote the majority opinion. Justices Black and Douglas concurred but reiterated their view that the Smith Act was unconstitutional. Justice Burton also concurred but with one reservation.

## Majority's Points

The majority made these points:

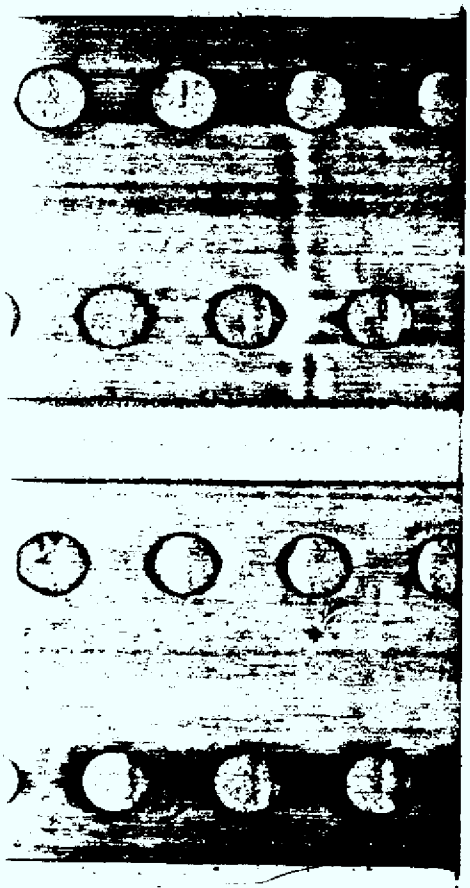
*First*, That the fourteen West Coast Communists had been charged not only with conspiracy "to advocate" the violent overthrow of the Government but also with conspiracy "to organize" the Communist party and that the "organize" charge was invalid. (It was on this point that Justice Burton disagreed.) The court said:

> We should follow the familiar rule that criminal statutes are to be strictly construed and give to "organize" its narrow meaning, that is, that the word refers only to acts entering into the creation of a new organization, and not to acts thereafter performed in carrying on its activities, even though such acts may loosely be termed "organizational." * * * Since the Communist party came into being in 1945 [in its present form] and the indictment was not returned until 1951, the three-year statute of limitations had run on the "organizing" charge.

*Second*, that during the trial of the fourteen, neither the Government nor the trial judge made any distinction between advocating the violent overthrow of the Government as an abstract doctrine, which is not a crime, and advocating it in a way calculated to incite unlawful action, which is a crime. The court said:

> The essential distinction is that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something. * * * The Smith Act does not denounce advocacy in the sense of preaching abstractly the forcible overthrow of the Government. * * * [In the original Smith Act case of the eleven Communist leaders] the jury was properly instructed that there could be no conviction for "advocacy in the realm of ideas." [But in the West Coast case] the trial court [insisted] that all advocacy was punishable "whether in language of incitement or not."

Once the court had ruled out the "organize" charge and narrowed the "advocacy" charge, it examined the evidence remaining against each of the fourteen Communists



The majority found there was no evidence left to justify a retrial for five of them and it therefore directed their acquittal. As for the remaining nine, the court said that if a jury were to give the evidence "its utmost sweep" and resolve "all conflicts in favor of the Government," the Government might win a valid conviction. Accordingly, it ordered a new trial for the nine.

## Opposing View

In his dissent, Justice Clark attacked the majority's interpretation of the word "organize" and implied that the argument over the "advocacy" charge was "an exercise in semantics." He concluded that none of the Communists should have been acquitted because they were guilty of the *same* crimes as the original eleven party leaders whose convictions the Supreme Court had upheld.

In general, it is agreed, last week's decision places certain limits on the Smith Act and spells out some of the standards of proof required to convict under it. Sixty-one persons are appealing their convictions and they are now expected to cite the majority ruling.

As for pending and future Smith Act prosecutions, the "organizing" charge has been ruled out—unless Congress broadens the "organize" clause to cover present Communist activities. The "advocacy" charge is still good provided the Government can prove that the defendants tried actually to "incite" illegal action. "It is difficult to perceive," said the majority, "how the * * * intent to * * * overthrow [the Government by force] could be deemed proved by a showing of mere membership or the holding of office in the Communist party."

The whole tone of the decision caused speculation about the constitutionality of the "membership" section of the Smith Act. Four persons have been convicted under it; two have argued their cases before the Supreme Court. The court is due to make a decision on them next [illegible]

## THE SUPREME COURT REDEFINES CIVIL LIBERTIES ON TWO FRONTS

IN CONGRESSIONAL INVESTIGATIONS

IN SMITH ACT CASES

SUPREME COURT OF THE UNITED STATES

No. 301.—October Term, 1956.

John T. Watkins, Petitioner, v. United States of America. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. This was freely conceded by the Solicitor General in his argument of this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the Congress.

SUPREME COURT OF THE UNITED STATES

Nos. 4, 7 and 8.—October Term, 1956.

Oleta O'Connor Yates, Henry Steinberg, Lorraine Skerven Stack, et al., Petitioners, v. United States of America. | On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

We are thus faced with the question whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not.

House Un-American Activities committee hearing in San Francisco last week (top) and a group of Communists arrested under Smith Act (below).

Where Congress' Rights End

# The Court Struck a Blow for Conscience

By Max Freedman

English law was the root source of American civil rights, and England is still the historic citadel of those rights. Freedman is Washington correspondent for the Manchester Guardian, and this is his interpretation for his English readers of last Monday's precedent-making Supreme Court decision in the Watkins case.

THE RELATION of the Bill of Rights to the actions of congressional committees came before the Supreme Court for the first time in clear and unmistakable form in the disturbed period after 1945. In Quinn v. United States, the Court held in 1955 that the power to investigate, though broad, is subject to recognized limitations. After enumerating various restraints, it added that "still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights."

At issue in that case was the use of the Fifth Amendment, protecting one against self-incrimination. The Watkins case, just decided by the Supreme Court, extends this limitation to the First Amendment, which shelters personal rights.

It is often tempting, but almost always misleading, to make large deductions about changes in the Court's philosophy by concentrating on changes in the Court's membership. The dominant fact, obscured by current controversy, is the continuity of the Court's thinking in recent years on the enduring themes of personal freedom. The Watkins case, in fact, does not mark an abrupt change in the Court's philosophy but merely an extension plainly foreshadowed in previous decisions.

The central issue in this case concerns the restraint which the Supreme Court has placed on congressional committees when they touch the protected freedoms enshrined in the Bill of Rights.

IT IS important to realize that Watkins never took shelter under the First Amendment when he appeared under subpoena for the two members of the House Un-American Activities Committee. He simply asked for a court decision to determine whether the committee had the right to put these questions to him and to hold him in contempt for refusing to answer them in the absence of this judicial verdict.

Watkins first already exposed himself. He freely admitted numerous associations with Communists over a span of years. He refused to answer only when the questions concerned other individuals who, to his "best knowledge and belief," had since left the Communist Party.

The Justice Department challenged Watkins' position on various grounds. In the first place, it argued that the committee was entitled to have its questions answered because these replies might have given it useful clues about the nature and magnitude of Communist subversion. Secondly, the First Amendment never was intended to protect anyone from exposure to public criticism or indignation, nor was it designed to allow a witness to take refuge under its principles to shield other people from public humiliation or attack.

Finally, the department argued that "the power to investigate is broader than the substantive authority which may eventually be exerted by the investigating body, for not until the whole region of facts has been canvassed can it be determined where the boundaries of regulation should be drawn. Judicial inquiry into a committee's legislative purpose must therefore not be restrictive or hostile but must take account both of the powers of Congress and of its pressing need to inform itself broadly."

IN ITS BRIEF to the Supreme Court, the American Bar Association took roughly the same view. It too argued that "pertinency" in a committee investigation must always be given a broader interpretation than "relevancy" in a criminal trial.

In explaining what it meant by a "valid legislative purpose," it advanced the familiar doctrine that a committee does not have to limit its investigation to "legislation in actual contemplation," nor is its power to be measured by the recommendations for legislation which it may or may not choose to make.

Neither the Justice Department nor the American Bar Association treated the principle raised by Watkins as a question of conscience. Both interpreted his silence as a protection for other people. Both made the mistake of ignoring the torment which one suffers when confronted under compulsion with the choice of turning informer or else standing in peril of being indicted for contempt.

Both ignored the authority of the Bill of Rights, or, more precisely, made it yield to the mandates of security. Both placed security before freedom. Both were held to be wrong, for the Supreme Court ruled that national security cannot be bought at the price of personal freedom.

THE COURT was told that a committee sometimes must engage in exposure because that is the only sanction open to it. This argument may be valid for a committee of Congress, but why should it prevail with the Supreme Court?

The entire authority of Congress cannot invade by law the freedoms guaranteed in the First Amendment. Why should a committee, a subordinate agent, have the power to do by investigation what Congress itself cannot do under any statute? By its decision in the Watkins case, the Supreme Court has decreed that the Bill of Rights must restrain any committee once the scope and method of its investigation brings it into collision with protected personal rights.

The Court remarked that it is "obvious" that a person called upon to answer questions before a committee, under risk of perjury or contempt, must be satisfied that the questions are as pertinent as they would have to be under the Due Process Clause in a criminal trial. This rule, it must be confessed, has never been obvious to Congress.

Indeed, the Justice Department reminded the Court that "the strict standards of definiteness applicable to criminal statutes have never been thought applicable to rules or resolutions establishing congressional committees and defining their powers. If this contention (of Watkins) were sound, no congressional committee would have a sufficiently specific grant of authority to sustain the conviction of any witness who refused to give testimony before it."

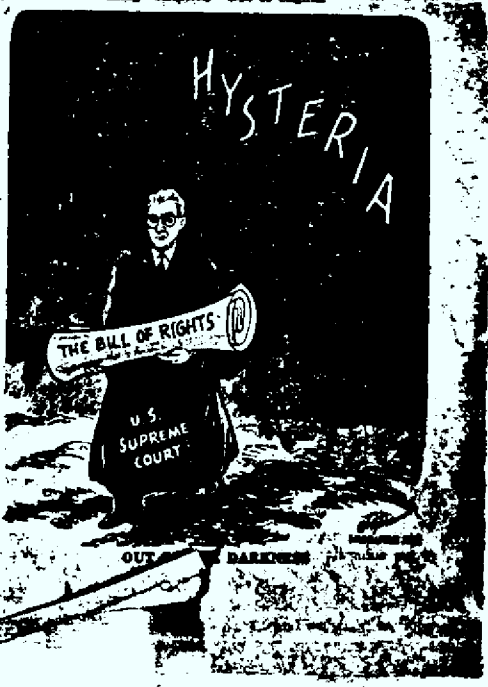
BEFORE RAISING a cry about the rights of Congress, one should remember the precise scope of the Watkins decision. It concerns only those activities which affect an individual's freedom under the Bill of Rights. Congress remains completely free to investigate and publicize corruption, maladministration and inefficiency in all Government agencies.

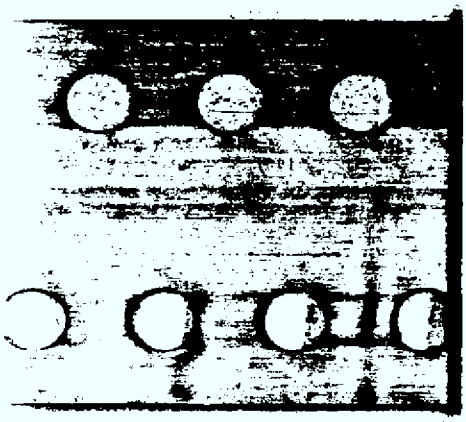
This "informing function" of Congress, so essential to full public knowledge, remains entirely unimpaired and unabridged by the Watkins case. Committees are merely placed under judicial notice that they cannot ignore the Bill of Rights, or push it aside in something that must yield to the claims of national security or the administrative convenience of Congress.

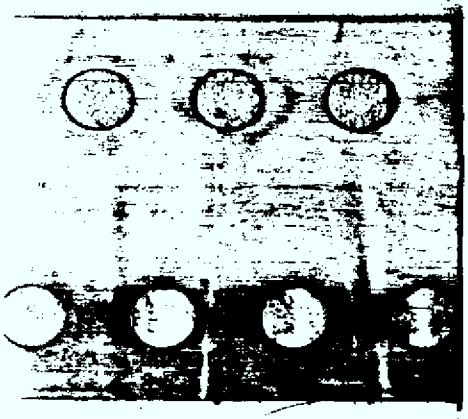
In his dissenting opinion, Justice Clark said that many other legislative committees had authorizing resolutions or charters of authority as vague and general as those under which the House Un-American Affairs Committee operated. Justice Frankfurter, in his concurring opinion, conceded that an "implied authority" for the committee's questions might be "squeezed out" of the repeated acquiescence by Congress in the committee's work. But even then, Watkins could not be charged with contempt.

FOR THE COMMITTEE'S questions suffered from "the vice of vagueness"; they were not clearly pertinent to the subject under inquiry; they failed to rest on a frankly established and valid legislative purpose; they did not give Watkins an adequate opportunity for knowing, at the very moment the questions were put, and knowing in a "forthright" rather than a cloudy way, that he was in fact denying pertinent information to Congress.

Therefore the Supreme Court ruled that Watkins could seek the protection of the First Amendment, that he must be cleared of contempt and that Congress in its investigations must scrupulously respect the Bill of Rights.







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# These Days

## The Supreme Court

By George Sokolsky

A13

IN MOST cases in a court of law, there must be a loser and the loser and his friends are usually unhappy and often try to explain the decision by suggesting that the judges are stupid or corrupt. It is human nature to speak ill of those who have to sit in judgment. But when in a court the United States is consistently the loser, the subject requires very profound consideration. Maybe the United States needs an American Supreme Court.

Sokolsky

The long list of Communist cases had to be decided some day and it has for months been argued by Communists and anti-Communists how these cases would go. However, nobody quite anticipated that the Court would hold that FBI files could be made available to the counsel of defendants under any circumstances. The worst thing about this case is that it involves not so much Communists, who after all are more of a public nuisance than a personal menace, but kidnapers, forgers, bankruptcy frauds and all sorts of other criminals. And it involves the prospect of blackmail by unscrupulous lawyers.

Furthermore, when the United States Supreme Court hands down a decision, lawyers quote it in their own interest and it works its way as a precedent into state courts. I heard the other day of a fast-thinking lawyer who used the Jencks decision in a state labor board hearing and got away with it.

***

AFTER making it easier for kidnapers and other criminals, the Supreme Court, in effect, destroyed the Smith Act and got itself into the question of overturning a Government by force and violence which requires quite a study of Marxist ideology and language. As I look over this Court, I would say that the only member of it who could be expected to have read the literature on the subject would be Justice Felix Frankfurter. The rest have never indicated a particular penchant for profound philosophic scholarship. I wonder how many of the brethren could undertake to debate whether a Communist does intend to overthrow the Government by force and violence, citing the enormous literature on the subject, starting with the writings of Bakunin and Marx and Engels and concluding with the massive output of Mao Tse-tung and his believable boast that he had to kill 800,000 of his countrymen to make his revolution a success.

However, what the Supreme Court says on a subject is temporarily binding, until Congress passes legislation to correct judicial error or the court reverses itself. Justice John Marshall was often beset by doubts, but he invariably resolved them in favor of the United States. Justice Oliver Wendell Holmes once wrote:

"When a question has been decided by the Court, I think it proper, as a general rule, that a dissenting judge, however strong his convictions may be, should thereafter accept the law from the majority and leave the remedy to the legislature, if that body sees fit to interfere . . ."

***

THAT WILL, of course, be the view of sitting Federal and state judges who will take the position that the Supreme Court having decided that a man may engage in a conspiracy without being bound to describe the nature of the conspiracy by indicating who else was in it—that is law. I am not worried that this decision will let Marilyn Monroe's husband off the hook; I am concerned that Dioguardia's lawyers will come into court and [illegible] case against the acid-throwers by maintaining that a man, pleading guilty, need speak only about himself, but not the whole truth when the truth requires him to name his colleagues in crime.

It is an interesting point of law arising from the fact that in the United States there is no distinct political crime and no separate political punishment. If a man commits a felony, it is a felony. The court now holds that force and violence need be accompanied by a blueprint as to how the force and violence are to be committed. Had anyone believed that the Court did not know about force and violence, he might have drawn up an enormous brief on the subject, citing only American sources. But it is unbelievable that none of the brethren on the Supreme Court bench ever read "Political Affairs," "Mainstream," the "National Guardian," the "Daily Worker" and similar publications of which there are many in this country.



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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 JUN 24 1957

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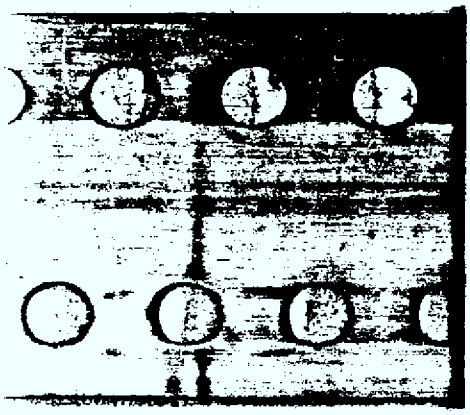

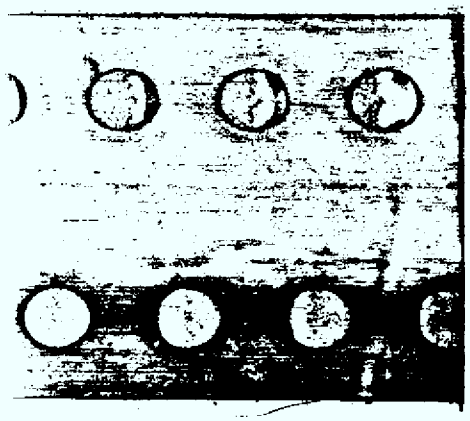

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Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

BAUMGARDNER

140

(CONTEMPT)

THE SUPREME COURT VACATED THE CONTEMPT CONVICTIONS OF THREE WITNESSES WHO WITHHELD INFORMATION FROM HOUSE OF SENATE INVESTIGATORS. THE CONVICTED INDIVIDUALS WERE HARRY SACHER, NEW YORK LAWYER WHO FIGURED IN THE 1949 CONSPIRACY TRIAL OF TOP COMMUNISTS AND OF FLYNN, NEW YORK, PRESIDENT OF THE UNITED PUBLIC WORKERS AT THE TIME HE REFUSED AND LLOYD BARENBLATT, FORMER VASSAR COLLEGE INSTRUCTOR, (CONTD) BRIEF WHEN CITED THE WATKINS DECISION HANDED DOWN BY THE COURT LAST WEEK WHICH HELD THAT WITNESSES MUST BE APPRISED OF THE PURPOSE FOR WHICH THEY ARE BEING QUESTIONED.

THE CASES GO BACK TO LOWER COURTS FOR FURTHER PROCEEDINGS. JUSTICE

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WASHINGTON CITY NEWS SERVICE

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# Court Rulings Called Setback For Red Probes

SUN VALLEY, Idaho, June 24 (AP).—The president of the National Association of Attorneys General said today that decisions by the Supreme Court "have set the United States back 25 years" in its effort to control communism.

"The Supreme Court," said Attorney General Louis C. Wyman of New Hampshire, "has sanctioned protection of the dark corners of individual associations with persons disloyal to America and has made infinitely more difficult, if not impossible, the taking of sworn testimony relating to subversive activities."

In his prepared address, Mr. Wyman referred to Supreme Court decisions relating to the Smith Act.

The Supreme Court last week dismissed Smith Act violation charges against five defendants and ordered new trials for nine others convicted of plotting to teach and advocate violent overthrow of the Government.

"A majority of the Supreme Court of the United States," he said, "has held that at least as far as good moral character is concerned, membership in the Communist Party is apparently considered a mere matter of political association privilege under the First Amendment.

"It is tragic to see such judicial undermining of national security and federal-state relations, as well as of the very foundation of a free America's right to protect itself."

Mr. Wyman recommended that the association take four steps "if the United States Supreme Court continues with the type of decision that has been handed down of late."

He listed them as:

1. Clarification of the Tenth Amendment "to protect States' reserved powers in more certain terms."

2. Giving the States "a greater voice in confirmation of appointments to the Supreme Court than now exists through the United States Senate."

3. Enactment of laws "designed to insulate against judicial legislation in derogation of State sovereignty."

4. Preparation of legislation "designed to undo as great a portion of these recent decisions as is possible short of constitutional amendments."

Two of the convention's principal speakers canceled their appearances at the last minute, and Mr. Wyman said it was because of the Supreme Court ruling. They were Louis Nichols, assistant to FBI Director J. Edgar Hoover, and J. Lee Rankin, United States solicitor general.

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N. Y. Journal American
N. Y. Times
Wash. Post and Times Herald
Wash. News
Wash. Star A-5
N. Y. Herald Tribune
N. Y. Mirror
N. Y. Daily News
Daily Worker
The Worker
New Leader
morning ed.

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# Roadblock

The U.S. Supreme Court's decision to open confidential files of federal investigative agencies to all defendants has discouraged and all but stopped the narcotics control program.

The tremendous accomplishments in this vital field prior to the incomprehensible decision had, for the first time in history, raised hope for eradication of the filthy business of dope use and sales.

As United States Narcotics Commissioner Harry J. Anslinger reports, the new federal narcotics act has been in effect less than a year, but in that short time the number of known addicts in the country has been reduced by 10,000 victims.

The further dramatic effect of the act has been that the risks of the evil traffic in dope have been so drastically increased and its profits diminished that the end of it as a major menace to America was in sight.

Then came the Supreme Court decision which dried up 85% of the sources of information upon which the government depends for arrests, prosecution and conviction.

★

As W. R. Hearst Jr. wrote in his "Editor's Report" in the Sentinel and other Hearst Sunday newspapers, the ruling will have "a disastrous effect on narcotics prosecutions as well as security cases. Most such prosecutions are based on evidence from informants and it is imperative, for their own safety, that their identities be protected."

dope ? Boston Dic
Record 3
6/20/57

Milwaukee Sentinel
Milwaukee, Wisconsin
June 24,1957
George A. Tracy, Managing Editor

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Mr. Hearst quoted in support of this position from the minority opinion of Justice Tom Clark that not only the Narcotics Control Bureau but the Federal Bureau of Investigation and all other federal law enforcement agencies might just as well "close up shop, for the court has opened their files to the criminals and thus afforded them a Roman holiday for rummaging through confidential information as well as vital national secrets."

This fantastic roadblocking of national security and health endangers America at all levels of national life.

In the case of narcotics, it condemns uncounted thousands of young men and women and mere children to degradation and destruction, to moral and physical disintegration, inseparable from the lowest form of criminality known to mankind.

As Mr. Hearst wrote, this is a situation in which "Congress can act and should act quickly," for the security of America and the salvation of American youth.

It will get the Congress more quickly to this important task, in his opinion, "if you who read this take the time to jog your own representative or senator into some action."

# A Good Work Goes On

The Supreme Court, under the chief justiceship of Earl Warren, means business in its protection of the Constitution's Bill of Rights. On the last regular decision day of its 1956-57 term, the high tribunal handed down another sheaf of rulings that reinforces those of a week ago in behalf of freedom as a way of life.

Three contempt of Congress citations were set aside and the United States Court of Appeals in Washington was instructed to reconsider the cases in the light of the voiding of the citation against Illinois labor leader John T. Watkins.

In another decision the Supreme Court vacated convictions for conspiracy against six Detroit "second string" Communists under the Smith Act. The case was sent back to the Sixth United States Court of Appeals at Detroit for reappraisal in the light of the decision last week in the California Communist cases which saw the outright dismissal of the cases against five Communists and the return for reconsideration of the cases of nine more.

Other decisions handed down Monday included three in which the Justices split all the way from 5-to-4 to 7-to-2 on state and federal obscenity laws. In each case the law was upheld but it is interesting to note that Chief Justice Warren joined Justices Black, Douglas and Brennan in dissent in the New York case. The Chief Justice is compiling a notable record for independence of thought and action on the high bench.

This week's decisions involving Communists or former Communists show no more sympathy for the Communist regime than did those of a week ago. The Supreme Court ruled the way it did only because its members know that there cannot be a double standard. Their purpose is to see that justice is done to all, regardless of political interest or activity or doctrine.

Meantime the president of the National Association of Attorneys General has made the extreme charge that the Supreme Court's decisions of recent weeks "have set the United States back 25 years" in its efforts to control Communism.

This official, State Attorney General Louis C. Wyman of New Hampshire, goes on to say that the Supreme Court

> has sanctioned protections of the dark corners of individual associations with persons disloyal to America and has made infinitely more difficult, if not impossible, the taking of sworn testimony relating to subversive activities.

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Title: ST. LOUIS POST-DISPAT
ST. LOUIS, MISSOURI
Character:

ST. LOUIS POST-DISPATCH
ST. LOUIS, MISSOURI

Date: 6-25-57
Edition: 2 star final
Author: editorial

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This charge simply does not hold water. The Supreme Court as now constituted contains four Eisenhower appointees—Chief Justice Warren of California and Justices Harlan of New York, Brennan of New Jersey and Whittaker of Missouri. Not a one of these jurists is "soft on Communism" any more than are the five other Justices. All are as loyal and as patriotic as their critics. All are concerned that official zeal to control Communism not be allowed to erode away the freedom of all citizens.

The Supreme Court has not, as Mr. Wyman charges, deliberately "sanctioned protections" for disloyal persons. What it has done is to declare that due process of law cannot be lost sight of in the war on subversion.

If Mr. Wyman wants to help strengthen this nation against Communist inroads he will read the text of the opinions he complains against and then, having learned what the Supreme Court is doing and why, contribute his share to the defense and protection of our cherished Bill of Rights. There is no Bill of Rights in Soviet Russia.

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UP78

(BRICKER)

THE CHIEF SPONSOR AND THE LEADING OPPONENT OF THE BRICKER AMENDMENT CLASHED TODAY OVER WHETHER THE SUPREME COURT RECENTLY WIPED OUT ANY NEED FOR THE CONTROVERSIAL PROPOSAL.

SEN. JOHN W. BRICKER, LAUNCHING ANOTHER BID FOR CONGRESSIONAL APPROVAL OF HIS AMENDMENT TO LIMIT THE EFFECTIVENESS OF TREATIES AS DOMESTIC LAW, CALLED THE HIGH COURT'S RULING "POLITICALLY MOTIVATED AND WHOLLY GRATUITOUS REMARKS."

SEN. THOMAS C. HENNINGS JR. (D-MO.), LEADER OF THE SUCCESSFUL FIGHT WHICH TURNED BACK A SIMILAR PROPOSAL BY A ONE-VOTE MARGIN IN 1954, ARGUED THAT THE SUPREME COURT CUT THE GROUND FROM UNDER THE PROPOSAL AND THAT ITS BACKERS ARE NOW "BLUFFING."

THEY PRESENTED THEIR ARGUMENTS BEFORE HENNINGS' SENATE JUDICIARY SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, WHICH BEGAN PUBLIC HEARINGS ON BRICKER'S 1957-MODEL PROPOSAL.

CORE OF THEIR ARGUMENT WAS THE SUPREME COURT RULING JUNE 10 WHICH SET ASIDE THE CONVICTION OF MRS. CLARICE COVERT, WHO WAS CONVICTED BY COURT MARTIAL IN ENGLAND OF KILLING HER HUSBAND, A SERVICEMAN. THE COURT RULED SHE WAS ENTITLED TO TRIAL BY JURY.

ASSOCIATE JUSTICE HUG BLACK, WRITING THE CONTROLLING OPINION FOR HIMSELF AND THREE OTHER JUSTICES, SAID THE CONSTITUTION IS SUPREME OVER THE 1942 EXECUTIVE AGREEMENT WITH BRITAIN WHICH PROVIDED FOR COURT MARTIAL TRIALS OF U.S. SERVICEMEN.

BRICKER SAID THE AGREEMENT DID NOT COVER DEPENDENTS OF SERVICEMEN AND THAT THE UNIFORM CODE OF MILITARY JUSTICE OPERATES ONLY IN CASES NOT COVERED BY INTERNATIONAL AGREEMENT.

"IT WOULD BE MANIFESTLY FOOLISH TO RELY ON THE POLITICALLY MOTIVATED DICTA OF FOUR JUSTICES OF THE SUPREME COURT AS ADEQUATE PROTECTION AGAINST THE LOSS OF FUNDAMENTAL HUMAN RIGHTS," BRICKER SAID.

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44 JUL 1 1957

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WASHINGTON CITY NEWS SERVICE

*Today in National Affairs*

# Questions Asked on Writing Of Supreme Court Opinions

By DAVID LAWRENCE

WASHINGTON, June 24.—Who really writes the decisions of the Supreme Court Justices? Do they use "ghost writers," as Presidents occasionally do? Should the public be told what part of a decision is actually written by a Justice and what part is the composition of his law clerk? Is this a part of the "right to know" privilege which the press has been insisting on lately?

These questions have arisen not only because of the occasional expressions and phrasing which appear in Supreme Court opinions that seem conspicuously different from the accustomed writings of a Justice in his previous career, but because the whole subject has just been opened up by the Commission on Government Security.

Lawrence

This commission of twelve prominent citizens, appointed by the President and by the Senate and the House, issued last week a recommendation that hereafter the judicial branch of the government should "take effective steps to insure that its employees are loyal and otherwise suitable from the standpoint of national security."

Can it be that the commission was thinking about Alger Hiss, who served in the 1930s as a law clerk to a Supreme Court Justice now dead? There were said to be discussions about this and its implications among the members of the commission before it reached its conclusions. Here is what the commission says in its formal report:

"It is fundamental that there should be no reasonable doubt concerning the loyalty of any Federal employee in any of the three branches of the government. In the judicial branch, the possibilities of disloyal employees 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.

"There appears to be no valid reason why an employee of the judicial branch should not be screened, at least as to his basic loyalty to the United States. Certainly the judiciary proper and the public generally should have the assurance that the men and women who carry the administrative responsibilities of the courts or assist in the preparation of decisions are loyal, dependable Americans."

"The commission therefore recommends, as in the case of the legislative branch, that the judicial branch and the executive branch endeavor to work out a program under which adequate investigation or screening can be provided for all judicial employees."

One member of the commission on security recorded a "vigorous dissent" on this phase of the problem. He is James P. McGranery, formerly a Federal judge and later Attorney General in the Truman Administration. He writes that "no evidence was presented at commission conferences tending to indicate" that there ever was any judge on the bench anywhere in the Federal courts who was thus imposed upon.

It will be news to many people that the Supreme Court Justices are dependent to some extent on their law clerks in writing their opinons. For years it has been an open secret around Washington that the big Eastern law schools selected their top scholars for a year's service as "law clerks" to Supreme Court justices. Today, when so-called "liberalism" amounts almost to a fanaticism, some of the law-school professors engage in active campaigns to advance publicly the views with which they indoctrinate their students.

The book on the Fifth Amendment written by Dean Griswold of the Harvard Law School was exploited and widely distributed by the "Fund for the Republic." In its annual report, the same foundation admits that, out of the $5,000,000 it has already spent, much of it has been for distributing literature of this kind and other "educational" materials on the subject of "Communism" and Congressional investigations. What part do such so-called "liberal" law profesors play in selecting law clerks for Supreme Court justices?

Maybe the Congress ought to appropriate enough money so that each Justice of the Supreme Court would enjoy the bipartisan luxury of two so-called "liberal" and two so-called "conservative" law clerks. Maybe the Supreme Court opinions would be better balanced then. At least, they might be more accurate as to facts. Last week, for example, Chief Justice Warren's opinion criticizing Congressional investigations said that "in the decade following World War II, there appeared a new kind of Congresional inquiry unknown in prior periods of American history" and that "this new phase of legislative inquiry involved a broad-scale intrusion into the lives and affairs of private citizens."

Just why it was not realized by some one who went over the manuscript that Representative Martin Dies, Democrat, conducted for seven years—from 1938 to 1945—exactly the same kind of hearings for the House Committee on Un-American Activities as were conducted "in the decade following World War II" is somewhat puzzling. Did the law clerks fail to read anything about those seven years of the Dies Committee? What the Justices evidently need to worry about in connection with "law clerks" is not "security" but accuracy.

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N. Y. Times
Daily Worker
The Worker
New Leader

Date JUN 25

1957

0-19 (Rev. 9-7-58)

DAVID LAWRENCE

# On Supreme Court Employes

## U. S. Commission's Report Urging Steps To Insure Loyalty of Aides Is Cited

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N. Y. Mirror
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N. Y. Times
Daily Worker
The Worker
New Leader

Date JUN 25

Supp B New York Journal Amer 6/23/57

O Supreme Court

# Green Light for Reds


File 4-cm

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JUN 25 1957
CCC MORNING EDITION
EDITORIAL PAGE
EDITOR:
WARREN WOOLARD
ARTIST
BURRIS JENKINS, JR

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BAUMGARDNER

# VOICE OF THE PEOPLE

*Please give name and address with letter.*

**CONTROVERSIAL COURT**

Manhattan: The recent Supreme Court ruling which threw out the cases against several American Communists was a good ruling for all Americans who believe in freedom of speech, decency, honesty and the Bill of Rights. The Supreme Court was interested in FACTS not in hysterical and lying propaganda. Except for the evidence of paid informers and professional witnesses the Government didn't have a single shred of evidence that these Communists advocated any violence against our Government. The morons who believe screaming headlines against American Communists sincerely believe that the Communists not only advocated but actually done terrible things against the American Government. When you ask these birdbrains for facts they are stumped. AL SILVERSTEIN.

Manhattan: The recent Supreme Court decisions represent a bright ray of sanity through the noxious miasma of a decade of Congressional inquisition, witchhunt hysteria and character assassination. Generation of Americans to come will remember June 17, 1957, as a great day for democracy and as a palinode for McCarthyism.

ARNOLD M. GALLUB.

Brooklyn: I note that a certain self-portrayed "ex-Communist" editorialist, who once devoted some 400 words to the "nightmare in Hungary" without ever using the word Communism, was one of the first to applaud the Supreme Court decisions which gave American Communists a field day. LENSMAN.

Brooklyn: Leave unions alone, says John L. Lewis. So what if the leaders are stealing from their suckers? Leave the traitors free, says Earl Warren. So what if they do steal our secrets and give them to their friends? I say the people elected Congress to make the laws and the rules. Who elected John L. Lewis and the Supreme Court?

JOE SMOKOVICH.

**RATS vs. CONGRESSMEN**

Manhattan: The gall of Congressman Rayburn! While slaughterhouse and hangman Khrushchev gets unrestricted use of television facilities in the U. S. A., Rayburn demands that the House committee investigating un-American activities stop televising these rats who would overthrow our Government. Maybe Rayburn doesn't want the American people to know too much about the Communist conspiracy, hmmm?

A. BUTLER.

Wash. Post and Times Herald
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N. Y. Mirror
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The Worker
New Leader

Date JUN 26 1957

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44 JUL 2 1957

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TOP CLIPPING
DATED 6-19-57
FROM N.Y. Times
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## Screams and Shrieks

Regrettable though they are, there is nothing surprising about the shrieks from the Eastlands in the Senate and Masons in the House against the Supreme Court. Not only could the outcries be foretold, but almost the very language.

One resolution in the Senate proposes a constitutional amendment to subject the Supreme Court members to Senate approval every four years. Another in the House calls for impeachment proceedings against all members of the Supreme Court. The House protesters are so outraged that they have even overlooked making an exception of Justice Clark who has been a busy dissenter of late.

It is not the business of the Supreme Court to defend itself against these attacks. (Such a vituperative letter against the *Post-Dispatch* appears on this page.) But they ought to be answered when they represent the views of members of Congress. An able and effective answer to the unreasoned blasts against the desegregation decision was prepared by a committee of the bar under the chairmanship of former Republican Senator George Wharton Pepper of Pennsylvania.

If the screams continue a new nationwide group with distinguished, representative laymen as well as members of the bar and educators ought to draw up a statement on the vital role of the Supreme Court in our federal system. The Eastlands, Jenners, Mundts and Masons do not speak for all the United States and the sooner that is made plain the better.

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Character:

ST. LOUIS POST-DISPATCH
ST. LOUIS, MISSOURI

Date: 6-26-57
Edition: city
Author: editorial

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## Justice Lawrence

Almost every day lately we have been treated to a new diatribe against the Supreme Court by that eminent "jurist" David Lawrence. Now Mr. Lawrence suggests that the judges of the Supreme Court should be elected for limited periods rather than appointed for life. This is supposed to be the punishment of the judges for handing down decisions which do not appeal to Mr. Lawrence.

I am not a lawyer and, therefore, not really qualified to address myself to the merits of the cases in question but it seems to me that the very nature of an action before the Supreme Court, or any other court, involves differences of opinion and uncertainties regarding legal questions and constitutional interpretations. Unless the Supreme Court exercises original jurisdiction, most of the cases have gone through lower courts and still all doubts have not been resolved. Therefore, when a case finally comes to the Supreme Court someone will be made unhappy. One of the two litigants must lose the case. Now Mr. Lawrence thinks that the Supreme Court decided wrong in some recent cases. Had the court decided the other way no doubt some other people, maybe without access to a syndicated column, would have felt unhappy. Mr. Lawrence seems particularly unhappy that the Court did not stick to old precedents. Of course if the court would always be obliged to do that we would still have slavery and child labor in the United States. Mr. Justice Harlan changed his mind in one case. Is that unconstitutional?

All of the above only means that Mr. Lawrence is an opinonated man who does not understand the function of the Supreme Court in a democratic society, but when he, as he does, suggests that Justices Black and Frankfurter are friendly to people who have had "past associations" with Communists, he is, in my opinion, way off base. Freedom of the press, which is protected by the Constitution and the Supreme Court, allows him to write as he does but such fanciful statements and implications should not go unchallenged. On the other hand it is really unnecessary to defend either the Court or the individual justices. Scribblers like Mr. Lawrence come and go, but the Supreme Court endures.

George K. Schueller.

According to David Lawrence, the Supreme Court has crippled the effectiveness of congressional investigations. By one sweeping decision, it has opened the way to Communists, traitors, disloyal citizens and crooks of all kinds in business and in labor—to "refuse to answer" any question which the witness arbitrarily decides for himself is not "pertinent" to a legislative purpose.

For the most part as Mr. Lawrence says, the Supreme Court justices live in legal "vacuums." They display a curious "unawareness" of the actual operations of Communist subversion.

During these perilous times, does any man or group of men, charged with the terrible responsibility of decisions vital to the very life of our nation, have a moral right to live in any kind of a "vacuum", even if he can?

Do we not have a right to expect that our leaders, particularly men appointed to high, life-time positions, accept the responsibility to inform themselves thoroughly on the "actual operations of Communist subversion?" Particularly when they are in a position to hand down decisions having a direct bearing on whether Communism shall or shall not flourish in our American system of government?

Lila D. Sonnemann

* * * *

Some readers took David Lawrence to task for his use and understanding of the word "etiology."

It is obvious from Mr. Lawrence's column June 20 that the lesson in semantics did not sink in. Mr. Lawrence always has been a bit peculiar in his understanding of meanings that come fairly easy to the run of the mill individual. His latest rampage is eloquent proof of the fact. In this column he takes off on Chief Justice Warren, saying that he "consistently follows the radical line."

In most dictionaries and in most minds the word "radical" refers to the advocacy of extreme measures and, to use the definition in Webster's Collegiate Dictionary, advocacy of "sweeping changes in laws." Justice Warren's whole career, including his present service on the Supreme Court, has exemplified anything but radicalism. He is a moderate, middle-of-the-road individual, sometimes liberal, sometimes conservative.

Mr. Lawrence has what what might be characterized as a "mote" in his mind. For a number of years now he has been running and rerunning an editorial in his U. S. News & World Report entitled, "Conservative Liberalism vs. Radical Liberalism." Not once does he ever go into the possibility that there also may be a form of "radical conservatism." That is Mr. Lawrence's mote, if not his myopia.

There are courses in most of the local universities in semantics I am sure. My advice to Mr. Lawrence: A refresher course.

Walter B. Smalley

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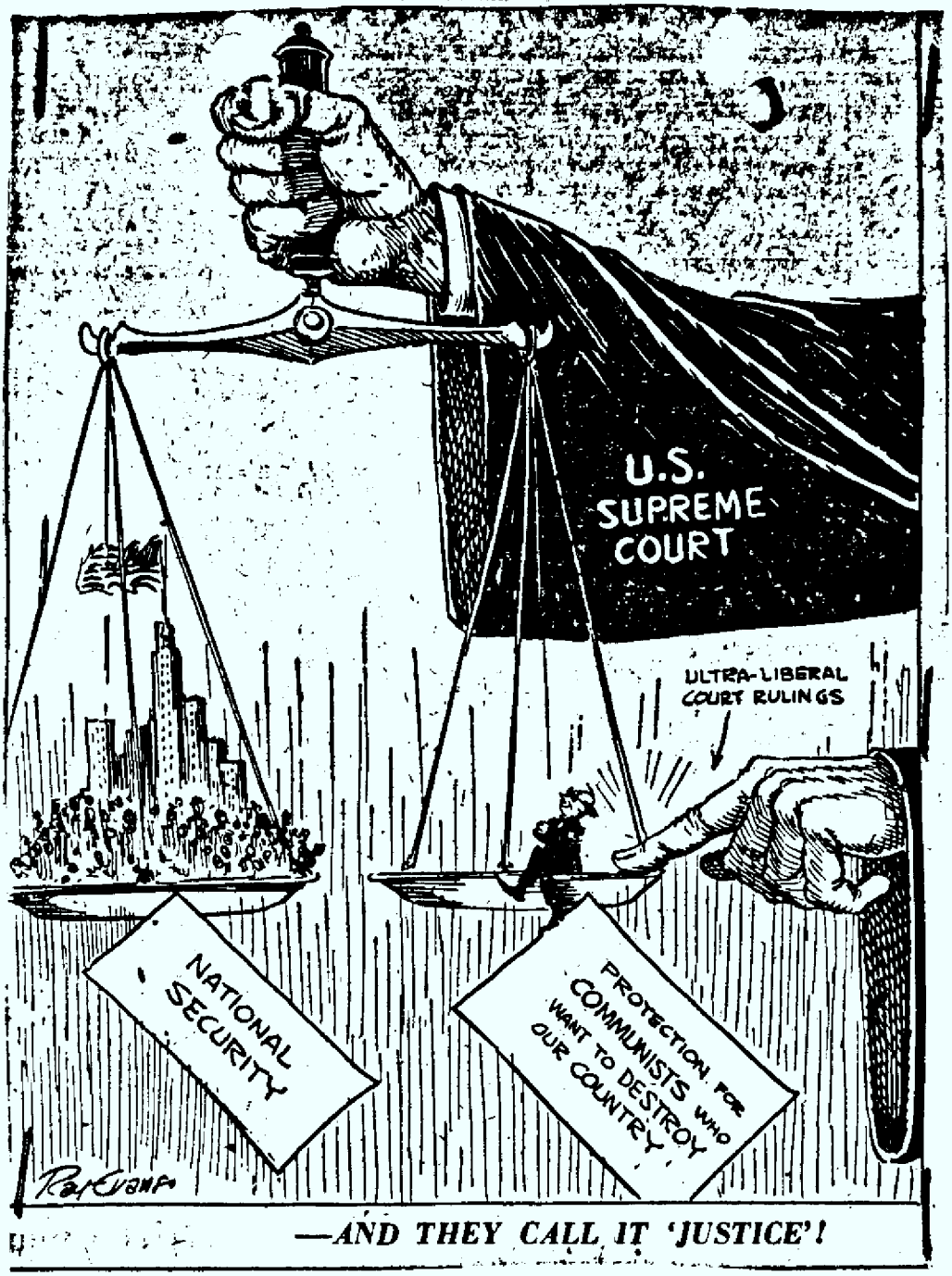


—AND THEY CALL IT 'JUSTICE'!

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It's Actually Happening . . . and That's Hard to Believe!

BAUMGARDNER

CLEVELAND PLAIN DEALER
Cleveland, Ohio
June 26, 1957

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# More Bad Ones

THE SUPREME COURT gave aid and comfort to the Communists in another series of decisions yesterday.

It based its ruling largely on the precedents established last week by three decisions which weakened the power of the Smith Act and severely curtailed the rights of investigating bodies in questioning witnesses.

The Court reversed the contempt conviction of the president of a union which was expelled from the CIO as Communist-dominated. He had refused to give the Senate Internal Security Subcommittee a list of members.

Other cases vacated the Smith Act convictions of six persons of conspiracy to overthrow the Government and reversed the contempt convictions of a Michigan teacher and a New York lawyer who refused to say if they were members of the Communist Party.

The rulings tie in with the Watkins decision last week when the Court held that in dealing with witnesses a congressional committee must have specific legislative aims and ask questions pertinent to them.

It is timely that these latest decisions coincided with the meeting of the National Association of Attorneys General, comprising men in the front line of the fight against subversion.

SAN FRANCISCO EXAMINER
San Francisco, Calif.
Date: JUNE 26, 1957
Edition: FINAL
Managing Editor: LISTON
von EBERSTEIN
Publisher: CHARLES KEYER
Author:
Case:

Classification:

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44 JUL 19 1957

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Attorney General Louis C. Wyman of New Hampshire, president of the association, said the recent decisions of the Court "have set the United States back 25 years" in its efforts to combat the Communist menace.

FINALLY, we call your attention, to the finding of the Senate Security Committee that the Communist Party in this country is still "a disciplined agent of Moscow" despite the attempt at its convention a few months ago "to hoodwink the public" into the belief it had split with the Kremlin and no longer advocates the forcible overthrow of the United States Government.

We doubt if any responsible group of Americans has been "hoodwinked."

Other than the majority of the Supreme Court, that is.

# Has Congress No Power To Expose?

Six Justices of the United States Supreme Court last week ruled that John Thomas Watkins, an organizer for the United Automobile Workers Union, was not in contempt of Congress when he refused to tell a House subcommittee the names of members of the Communist party he had associated with in the period between 1942 and 1947.

His lawyers insisted that to reveal these names was exposure "for exposure's sake," and that Congress had no right to do so. The Supreme Court, by a majority of 6 to 1, agreed with Watkins' lawyers and Chief Justice Warren, who said:

"There is no congressional power to expose for the sake of exposure."

It is only fair to point out that other authorities have held otherwise. For example, Associate Justice Frankfurter, when he was a law professor at Harvard, wrote an article for the New Republic called "Hands Off the Investigation." It said, in part:

"The power of investigation should be left untrammeled, and the methods and forms of each investigation should be left to Congress and its committees, as each situation arises. * * * It is highly important that even innocent transactions in the general field of fraud and suspicion be explained in order to separate the sheep from the goats. The question is not whether people's feelings here and there may be hurt, or names 'dragged through the mud' * * *"

Last week, Justice Frankfurter voted against the position that author Frankfurter stated so vigorously.

Justice Hugo Black, when he was a Senator and making a reputation as chairman of several investigative committees, defended the exercise of the broad powers that the Supreme Court vetoed last week. In an article he wrote for Harper's Magazine, he called attention to the "enormous pains that investigators must go to to get at the facts." Those involved won't "come forward with a frank willingness to furnish the truth. * * * It is damning," he wrote.

"Every conceivable obstacle is put in the way of the investigators," he pointed out accurately. And they must be armed with the authority to overcome them, he argued.

Last week, Justice Black threw out the window the arguments so ably advanced earlier by author Black.

Justice Clark, in his one-man dissent from the majority opinion, called attention to these earlier utterances of his colleagues. The Frankfurter article was written when Congress was digging into the Teapot Dome scandal; the Black article when the Senate was investigating lobbying.

Investigations of government scandals and lobbyists are important. So is the investigation of the Communist party, and its infiltration into government bureaus, labor unions and any organizations.

Thanks to the recent Supreme Court decision, it will be impossible to throw on subversion the same informative spotlight of publicity that exposed the Teapot Dome scandal and the

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*Why the Supreme Court Decided Congressional Investigators Must Stay Within Limits of the Constitution*

# The Emergency Is Over

By WALTER LIPPMANN

In the Watkins case, the Supreme Court, with Chief Justice Warren delivering the opinion of the majority, has tried to set down certain limits on the rights and powers of congressional investigating committees.

LIPPMANN

We must describe the opinion in this tentative way. For the limitations are stated in general terms, and no one can know how they will in the future apply specifically in concrete cases.

In practice, the application will depend on how much each particular committee is willing to accept, how much it is determined to stretch the limitations, and whether the court will be disposed to construe the limitations strictly or loosely.

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However, we have in the Watkins decision a powerful assertion of a principle which will influence the conduct of committees, the attitude of witnesses, the actions of the court, and the general posture of public opinion.

The principle is that a witness, who believes that his constitutional rights are being abused, may appeal to the courts for protection.

The question now before the country is whether this principle is constitutional and is in the public interest.

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Those who are opposed to the decision must say that they do not think that a witness should be able to appeal from a congressional committee to the courts. this is, in substance, what Justice Clark, the lone dissenter, seem to think—that for the courts to intervene is a usurpation of power, and that, as a matter of fact, it is not in the public interest that the judiciary should "supervise" congressional investigations.

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Justice Clark, who regards the decision as "mischievous," comes very near saying that congressional committees are a law unto themselves, and that there should be no appeal from them to the court for the protection of the constitutional rights of the individual witnesses.

"Perhaps," he says, "the rules of conduct placed upon the committees by the House admit of individual abuse and unfairness. But that is none of our (i.e. the court's) affair. So long as the object of the legislative inquiry is legitimate (!) and the questions proposed are pertinent (!) thereto, it is not for the court to interfere with the committee's system of inquiry."

This is a masterpiece of confusion. For it begs the question before the court.

In the Watkins case was there individual abuse and unfairness because a particular phase of the inquiry was not legitimate or because the questions put to Watkins were not pertinent?

It is not entirely clear what Justice Clark really thinks. But apparently, it is that the court must assume that what a committee does is legitimate and that the question it puts are pertinent, and that if they produce "individual abuse and unfairness," it is none of the court's affair.

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On the broad constitutional issue, Justice Clark holds that it is a "trespass upon the fundamental American principle of separation of powers" for the courts to concern themselves with individual abuse and unfairness. But is it really an American principle that the separation of powers is absolute, so absolute that a committee of Congress cannot be called to account for the lawfulness of what it does?

Surely, the American principle is that Congress is not a sovereign body, accountable only to itself, but that it is under the law of the Constitution—of the Constitution as interpreted by the courts and as it may be amended by the people.

The ultimate issue raised by the Watkins case is not constitutional. It is—if we are quite candid—whether in order to combat the Communist movement, which would if it could destroy the American government and the American social order, it is necessary to encourage or to permit congressional committees to proceed outside the Constitution.

Can the Constitution be defended only by extra-constitutional means, or can it be defended within its own terms?

It has been on the grounds that there was a desperate emergency that many sober and conservative men have supported or connived at McCarthyism.

The Watkins decision is addressed to this particular kind of extra-constitutional investigation, of which the object is to outlaw by exposure and pitiless publicity all behavior which might assist, might favor, might tolerate the spread of Communist propaganda.

These investigations are not addressed primarily to illegal acts, to espionage and subversion.

They are addressed to activities which are not—strictly speaking—against the law and could not be prosecuted in a court. These investigations are not carried on for the purpose of informing Congress how to make new laws. Quite the contrary. It is evident that laws prohibiting these activities would be in open conflict with the Constitution.

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There being no legal way to suppress such activities as propaganda, infiltration, and fellow-traveling, Congress with the support of public opinion, has created committees which are designed, among other things, to suppress by intimidation what cannot be suppressed by due process of law.

The Supreme Court has waited a long time—some 10 years—before it has intervened in what is unconstitutional process, reported to on the grounds that fire must be fought with fire, that the end, which is to stop the spread of Communism, justifies any means.

I do not think the long patience of the court shows that the Eisenhower court is more liberal than the Roosevelt-Truman court, but rather that the times have changed.

The emergency—if there was one which could not be met by lawful means—is over, and the presumption is now that investigating committee must work within the limits of the Constitution.

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

# Freeing of Mallory Called Loophole for Criminals

Assistant Attorney General Warren Olney said yesterday that the dismissal of the rape case against Andrew J. Mallory because of a Supreme Court decision "clearly demonstrates that a great many very serious crimes will go unpunished."

The chief of the Justice Department's criminal division said these cases would go unpunished "not because the truth cannot be ascertained but because of the procedures that have to be followed to develop the facts."

Mr. Olney was talking about the police practice of questioning suspects between their arrest and their arraignment. Under the Supreme Court decision, confessions growing out of headquarters questioning for that purpose is barred from the trial of a case.

**"Won't Listen to Truth"**

Mr. Olney said the court is supposed to have its judgments rest on the best truth it can get "but the court will not listen to the truth for reasons that have nothing to do with the guilt or innocence of the defendant."

Mr. Olney said it was hard to guess the impact of the decision as its meaning reaches all the Federal courts but he predicted it will be extreme.

"This opinion," he said, "says in so many words that police can't question a suspect after his arrest. The place where the impact of this decision will be greatest is in the gangster crimes. It is the real hardened professional criminals who will take advantage of this. The housewife who shoots her husband usually confesses to the first person who comes along. This decision won't affect her.

"But when dealing with criminal groups, police will be unable to question the hirelings who are caught first about the higher-ups they want to reach."

**Foresees New Law**

Mr. Olney said he could see no alternative but to seek a law spelling out exactly what law enforcement officers can and cannot do in arrest and arraignment procedures.

The way for such a law is already being paved on Capitol Hill. The Senate Judiciary subcommittee charged with improving criminal justice in the Federal Courts is known to have been studying arrest and arraignment procedures for months. Under the chairmanship of Senator O'Mahoney, Democrat of Wyoming, the subcommittee is expected to hold hearings this fall on preliminary drafts of a number of proposed changes in Federal rules and laws.

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The Star called United States Attorney Paul Williams in New York to find out how the decision affected him.

"We have not followed the practice that seems to be outlined here by the Supreme Court," he replied. "In many instances, in New York, a person is arrested in the evening and not arraigned until the next day and in the course of the night, he has given a confession. So far, these confessions have been admitted."

**Thorny Issue Here**

Actually, because of decisions of the Court of Appeals here, the question of how long a person can be detained before he is arraigned has been more of a bugaboo here than elsewhere. Several confessions have been thrown out and a new trial ordered because the court felt there had been "unnecessary delay" between arrest and arraignment.

Even before the Mallory decision, the District's Council on Law Enforcement had launched a study to determine whether a new law should be sought. Now, the chairman of the council, George L. Hart, jr., says this is no longer a local problem as it was in the past when the Court of Appeals here had gone further than any other circuit.

He said he was writing to the criminal law section of the American Bar Association requesting that group to study the impact of the decision.

**Hit "Unnecessary Delay"**

The Supreme Court based its decision on its interpretation of Rule 5 (a) of the Federal Rules of Criminal Procedure. This rule requires that the arrested person must be brought "without unnecessary delay" before the nearest available committing magistrate.

Twice in its decision, the court referred to the will of Congress which approved the rules. At one point, referring to an earlier opinion, the decision said:

"In order adequately to enforce the congressional requirement of prompt arraignment, it was deemed necessary to render inadmissible incriminating statements elicited from defendants during a period of unlawful detention."

At another point, the decision said:

"The requirement of Rule 5 (a) is part of the procedure devised by Congress for safeguarding individual rights without hampering effective and intelligent law enforcement."

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On the basis of these statements in the decision, United States Attorney Oliver Gasch said he believed the Supreme Court had given the Government an opportunity of submitting the problem to Congress.

"The Supreme Court," he said, "has clearly recognized the responsibility of Congress to lay down the rule. Therefore, Congress should made an examination to determine if effective and intelligent law enforcement is being hampered.

"Congress should write a law to safeguard the rights of the individual and make possible effective law enforcement in the public interest."

In questioning proponents of the Supreme Court decision as well as prosecutors and police, The Star found general agreement that the Mallory decision forbids police questioning much beyond booking procedures.

The decision did note that circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered by the accused is susceptible of quick verification through third parties."

The next sentence of the decision, however, warned that "the delay must not be of a nature to give opportunity for the extraction of a confession."

**"Free" Questioning Permitted**

A proponent of the decision analyzed it this way:

"Police can question people if they want to be questioned as long as they are free agents. A suspect can be brought to headquarters and questioned as long as he is free to walk out at any time. But as soon as he is under arrest, it is 'unreasonable delay' in arraigning him if police use any time to make a case against him.

"It is now illegal to grill an arrested person for two or three hours. That is questioning during illegal detention and the confession would be thrown out.

"If a prisoner confesses immediately after his arrest, it wouldn't kill the confession if he were not immediately arraigned. If he immediately confesses to one crime and then goes out to re-enact other crimes, the first confession would be allowed but the others would not.

"Police can still make cases, but they will simply have to use different procedures."

**Next Step Is Puzzle**

Both Mr. Gasch and Police Chief Robert V. Murray acknowledged that different procedures will have to be used but they were at a loss as to what procedures can be followed that will succeed in clearing the innocent and convicting the guilty.

Chief Murray said that 90 per cent of the success or failure of a case rests on questioning at police headquarters. He predicted if this decision is not changed by law, "our record of closed cases will be only 10 per cent of what it is now."

Mr. Gasch said that at least 25 per cent of the sex cases depend on confessions because there are seldom eye witnesses or fingerprints. In yoke robberies, particularly, he said, confessions are needed because the victim is usually attacked from behind and can't make an identification.

Chief Murray cited the rape-murder of an 8-year-old Northeast girl where 30 detectives have been at work rounding up possible suspects. Over 1,000 people have been questioned in the crime.

"What good will it do to bring in a good suspect, question him and get a confession if this decision stands?" he asked. "This decision says he must be arraigned immediately and not questioned after we arrest him."

**Procedure Explained**

Chief Murray explained past procedure in this way:

"If we have a suspect we bring him to headquarters. If we have any evidence pointing to his guilt, he is booked for investigation. Then he is questioned about the case. Any alibi he may offer is run out and very often that alone clears him of any guilt.

"If he was on the scene or had been seen with the victim, we ask him about that. We may have him take a lie detector test, if he consents. The lie detector has exonerated more men that it ever implicated.

"Very often, we can't complete the case before the man is brought in. In many heinous crimes, it would be a physical impossibility to complete the case under six to eight hours.

"Alibis must be checked. The prisoner must be confronted with his victim. There are blood and chemical tests, fingerprint checks, line-ups, ballistics tests. All this takes time which we now will not have.

"No one confronted with a serious crime is going to admit it unless he feels there is some evidence or circumstances pointing to his guilt. Very few come right in and admit the crime. They have to be shown the evidence linking them to the crime, either through witnesses who must be brought in or through such physical evidence as matching fingerprints or chemical analysis."

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**High Court Ruling Worries Police**

# U.S. Frees Man Doomed as Rapist; Confession Void, No Other Evidence

Andrew R. Mallory walked out of a death cell in District Jail a free man yesterday—more than three years after he was arrested for rape.

His conviction was overturned Monday by the Supreme Court in an opinion that has concerned police officials and many Government prosecutors. The Court held that a signed confession by Mallory was not valid because the youth was held by police too long before being arraigned, and he was not advised of his rights.

United States Attorney Oliver Gasch told Chief Judge Bolitha J. Laws yesterday that without the confession he did not think the Government had enough evidence to get a conviction in a new trial.

He said the victim of the attack suffered "physical and psychological injury" and added:

"To subject this innocent victim to the ordeal of testifying again about these distressing circumstances would be unfair to her and her husband unless there is a reasonable prospect of obtaining a conviction . . ."

Laws granted the motion for dismissal and Mallory was freed about two hours later.

Mallory, 22, went to the office of his attorney, William B. Bryant, a former assistant United States Attorney. He told a reporter he was too dazed to talk about his plans but added:

"I don't want to be around here much longer. I got an idea if anything happens on the streets, they'll be picking me up."

The case has thrown police and many Government law enforcement officials into a quandary. Many fear that the unanimous Supreme Court ruling tells the police they can't question a suspect after they arrest him.

Assistant Attorney General Warren Olney is known to believe that the decision will have its greatest impact on gangster crimes where hard-

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# Man Convicted as Rapist Is Set Free

ened professionals will take advantage of it.

Police Chief Robert V. Murray stuck to his contention that the decision "handcuffs" policemen and "renders them almost totally ineffective."

"If we had the Mallory case to do over again tomorrow we couldn't do a better job," Murray said.

Murray said that Mallory was advised of his rights before he dictated and signed his written statement on April 8, 1954. He said Mallory was told:

"You are now requested to give a statement of any facts known to you in connection with this matter. However, you are first advised that you are not compelled to make a statement, are not promised any favor or consideration for making one, and do so of your own free will. If necessary, the statement you make will be used for or against you at your trial. Having been so advised do you wish to make a statement?"

Mallory answered, "I want to," Murrary said.

**Breach of Rules Claimed**

Justice Felix Frankfurter said in the Court opinion that Mallory "was not told of his rights to counsel or to a preliminary examination before a magistrate, nor was he warned that he might keep silent and 'that any statement made by him may be used against him.'"

This backed up the contention of Mallory's lawyers that he was held in "deliberate disregard" of Rule 5 of the Federal Rules of Criminal Procedure.

This rule requires that an arrested person must be brought before a committing magistrate "without unnecessary delay." Mallory was questioned for 7½ hours before police tried to have him arraigned.

Frankfurter's opinion noted that the procedure outlined in Rule 5 was "devised by Congress to safeguard individual rights without hampering effective and intelligent law enforcement."

United States Attorney Gasch said he interpreted this to mean that Congress can change the wording in Rule 5 to allow police more leeway in questioning suspects.

**Congressmen's Views**

He and Murray are agreed that Congress should spell out what police can and cannot do in the arraignment of suspects.

Chairman Howard W. Smith (D-Va.) of the House Rules Committee said "there is considerable confusion about the Court's ruling not being specific. I don't know how to make it specific." He added he would be interested in a law that would clarify the question of "unnecessary delay."

"Obviously we cannot wait every time until three years after a man is convicted and then undo all the work that led to that conviction," he added.

Sen. John Sherman Cooper (R-Ky.), a former trial judge, said he thought the Mallory ruling was an "inevitable decision." He said it recognized that "police abuses," though not general, do exist. The Court's decision should go a long way toward preventing them, he added.

Sen. Joseph C. O'Mahoney, chairman of a special Judiciary Subcommittee on Improving the Federal Code, had no comment.

He said his staff has had the question of arrest-and-arraignment procedures under study for several months. Hearings are planned later this summer. Committee Counsel C. Aubrey Gasque said the research so far has included the problem of the length of time an arrested person might be held before arraignment.

Frankfurter's opinion left open the question of whether police can question a suspect after he is arrested but not arraigned.

He noted that "circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered by the accused is susceptible of quick verification through third parties."

The next sentence adds: "But the delay must not be of a nature to give opportunity for the extraction of a confession."

This is the sentence that has police stumped. They readily concede that at least 50 per cent of their felony convictions are the result of confessions.

They also point out that many of the cases do not involve on-the-spot arrests, especially in rape and sex cases where there are rarely witnesses.

**"Probable Cause"**

Frankfurter's decision noted that police must arrest on "probable cause."

"It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause,'" he wrote.

Detectives who worked on the case argue that Mallory was arrested on "probable cause." They said the rape victim told them her assailant wore a white hat. They said they learned from Mallory's nephew that Mallory had a white hat and had helped the woman in the basement before the attack. They began a search for Mallory and arrested him the day after the attack.

Murray said he would have further conferences with Gasch and "maybe some arrangement can be worked out so we can comply with the Court decisions and still do our job."

In the meantime, he added, his department would continue to operate as it has in the past.

**Test Fails**

In a related case, District Court Judge Henry A. Schweinhaut denied a motion to suppress an oral confession made in connection with an indecent liberties case.

John J. Dwyer, defense attorney for John H. Green, 33, formerly of 2332 N st. nw., based his motion on the Mallory case.

Green was arrested at 3 p. m. Jan. 30 at George Washington Hospital on charges of assault with intent to commit carnal knowledge of a 3-year-old girl and taking indecent liberties.

Police tried to question him at the hospital, but said he was too drunk. They took him to Police Headquarters and tried again at 4 p. m. and 6:30 p. m., but again he was too drunk, the Court was told, so he was locked up overnight.

At about 9:30 a. m. the next day police talked to him again and he made an oral confession, police said. He was arraigned about an hour later in Municipal Court.

Schweinhaut ruled that Green's detention was reasonable and did not induce a confession.

The jury convicted him of indecent liberties after Assistant United States Attorney Joseph M. Hannon withdrew the assault charge. The conviction carries a maximum sentence of 10 years.

By Frank Hoy, Staff Photographer

ANDREW J. MALLORY
. . . ruling frees him

# The Last Straw

By VINCENT JONES

If decisions by the United States Supreme Court within the past few years can be interpreted as a forecast of things to come, then Southern Senators fighting the vicious civil rights bill have nothing to fear when the measure meets the test of the nine men who are such ardent supporters and protector's of the people's rights.

Why the very idea of a federal judge having the authority to sentence a person for contempt without benefit of a jury trial. Will the nine men who have been so liberal in their interpretation of a people's rights permit such a travesty of civil liberties? Of course not.

What have they done to protect citizens against their governments, city, state and federal? Why has the Supreme Court become the self-styled paternalistic father and guardian of all human rights, when the Constitution specifically lists a Bill of Rights which adequately provides for the protection of every citizen's rights?

In the field of civil liberties, the Court has made many decisions of the past few years that have narrowed the limits to which local governments can go in interfering with the basic freedoms of their citizens.

Most historic of these decisions was handed down in 1954 when the Court moved into the legislative field and outlawed segregation in public schools on the ground that segregation meant discrimination and unfair treatment of citizens. The Court's decision outlawing segregated schools was perhaps prompted by Congress' inability to act in this matter but, at the same time, it wiped out prior Court decisions setting up the separate but equal doctrine of schools for Southern states as being fair, honest and practical.

The most recent, and shocking, example of the Court's determination to protect the rights of its citizens was the decision which freed five California Communists convicted of conspiring to advocate violent overthrow of the government.

In its ruling, the high court found that teaching the forcible overthrow of government as "an abstract principle, divorced from any effort to instigate action to that end" was not a violation of the Smith Act, under which the Communists were prosecuted and convicted.

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DOYLE JONES, JR. - EDITOR
VINCENT JONES - PUBLISHER

If teaching the forcible overthrow of our government is not punishable by imprisonment under the terms of the Smith Act, then Congress had best forget the President's tummyache and forthwith pass an amendment strengthening the measure, unless the whole nation wake up some morning with a belly full of Communist-inspired sabotage.

The Court's experiment in liberalism has penetrated nearly every facet of human relations, hamstringing the federal government in its attempt to ferret out security risks and punishing those Southern states who bear the great portion of the Negro problem.

The Court has defended a witness' right to invoke the Fifth Amendment in refusing to answer self-incriminating questions; ordered the opening of FBI secret files in prosecution by the Justice Department; made it more difficult for the Eisenhower administration to label government workers as security risks, and passed similar rulings in dozens of related cases in demonstrating their vigorous protection of citizens against the government.

To escape the dullness of consistency, or for some other reason, the Court reversed itself in one matter. It ruled that the will of an Eastern philanthropist who set up scholarships for members of the white race, was ineffectual since it violated the 14 amendment and did not include Negroes as well. But even here, the Court protected the Negroes.

So, sleep lightly, Southern defenders of the democratic life. Surely, the Court will protect its people against the violation of their liberties as provided in the civil rights measures now being considered.

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# Asks Supreme Court Curb

SUN VALLEY, Idaho, June 26 (AP).—Definite restrictions on the power of the Supreme Court were suggested today in a committee report to the National Association of Attorneys General.

"We propose," said Attorney General George F. Guy of Wyoming, chairman of the Committee on Federal-State Relations, "that Congress enact legislation that would say in effect to the Supreme Court: 'You cannot exert exclusive jurisdiction over a state law unless Congress specifically authorizes you to do so.'"

The use of interstate compact was considered in another phase of today's program. Speakers included representatives of the New York Joint Legislative Committee on Interstate Co-operation, Frederick L. Zimmerman, research director, and Mitchell Wendell, research consultant.

Mr. Zimmerman said: "The compact has some real merits but it should not be looked on as an alternative to Federal control. It can be the instrument for an effective working arrangement between states and the Federal government in solving mutual problems."

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