CAPITOL STUFF

By JOHN O'DONNELL

Washington, July 23.—One of the doctor's readers wags a monitory finger (perhaps threatening fist with an "I'll never read you again, you dog you," is a more accurate measure of his ire) but still has one casually interesting idea. Constant Reader writes, quaris: "You're so damned self-centered, always hammering away with your own bigoted, out-of-date ideas, that you never give yourself time to listen to what other people have to say."

OK pal, you may have something there. Let's take a look at the Capitol Stuff mailbag—always an easy day out on a dandy holiday.

Well, here's a letter—correction, copy of a letter—which landed in the White House last week, sent to President Eisenhower by New York State Republican Watson Washburn, a distinguished lawyer who supported Eisenhower to the hilt in both his White House campaigns.

Don't say we never read the other person's mail, as well as our own. Here's what Washburn wrote to Ike—and, may we observe, heather Washburn's views on the Supreme Court square with those of this reporter, as we've tried to suggest, from time to time, in gentle tones:

"Dear Mr. President:

"One of the most shocking indecencies perpetrated by the Roosevelt-Truman Administrations was the degradation of the United States Supreme Court. Up to that time the American tradition required the justices to be not only well versed in law but also to represent a cross-section of political opinion. F. D. Roosevelt and Truman violated both principles.

Justice Hugo Black
Called an "extremist"

"The people confidently expected you to rectify this shameful situation. I hope you are as shocked as they certainly are by your calamitous failure. Whereas the traditional Republicans and Democrats certainly represent together a majority of the country, you have not appointed even one of them to the court. Your appointee as Chief Justice quickly and permanently allied himself with the two left wing extremists, Black and Douglas. In 1952, it seemed impossible that the court could sink any lower in the estimation of lawyers and laymen; but since you took office it has done so.

Listened to a French Tribunal

"What is most alarming is that it has become increasingly bold week by week in giving aid and comfort to the Communist enemy in our midst. The court, with radical sympathies unrestrained by any regard for, or in some cases knowledge of, precedents, is behaving like a French revolutionary tribunal.

"You must feel a heavy responsibility in this crisis of our war against the Communist conspiracy at home. Unhappily, it is too late to think of correction by more care in future appointments.

"The crisis is much too urgent. In some minor respects legislation can meet it. Congress should long since have overruled the Nelson decision, which voided all state laws against subversion. But to curb the present dictatorial temper of the court majority it seems that a Constitutional amendment is needed, reading somewhat as follows:

" 'Nothing in this Constitution of the amendments thereto, shall be construed to permit any person to refuse to answer on any ground any question regarding the participation or membership at any time of such person or any other person: (1) in a conspiracy to aid any hostile foreign power; or (2) in any group or association which has as one of its objectives the overthrow of the United States government by force. In addition to such other penalties as may be provided by law, the Congress shall have power to provide suitable penalties for refusal to answer such questions.'

The Struggle That Is Troubling

"Neither the Fifth nor the First Amendment caused any difficulties until the conjunction of the Communist conspiracy with this revolutionary Supreme Court. Just as Lincoln suspended habeas corpus in the Civil War, so must we take such steps as are necessary to prevent enslavement in an infinitely more cruel struggle. You and the Congress ask the people to pay over forty billions a year for this purpose. Surely they are entitled to have all necessary measures taken for their defense which cost nothing.

"Respectfully yours,

"Watson Washburn."

And just to show we listen as well as talk, here's a voice from Mount Vernon, N. Y., where reader E. S. I. Camp of 36 Cottage Ave. says thanks "for your column on the significance of the victory by segregationalists in the Alexandria, Va., elections for the House of Delegates," and adds these thought-provoking observations:

"There must be many persons like myself who are completely disgusted with the 'brand name' Republicans and Democrats who are willing to sell the rest of the country down the river to get the support of the ADA and the NAACP.

"The late Sen. Taft was able to prove that it was not necessary to cater to these elements and I believe the defeat of Sen. Ives by Gov. Harriman, a man who had never been a candidate for public office, was due largely to the fact that Ives was so closely associated with the misnamed Fair Employment Practices Act of New York.

"I hope that you or some other political writer will dig out the statistics to show that bids for these block votes are not profitable and so wake up the party leaders.

"Very truly yours,

"E. S. I. Camp."

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

Capitol Stuff

By John O'Donnell

(NY Daily News, July 24)

file 4/Linv 62-27585-A

[redacted]

Washington, July 23----Constant Reader politely snarls: "You're so damned self-centered, always bellowing away with your own bigoted, out-of-date ideas that you never give yourself time to listen to what others have to say."

Well, here's a copy of a letter which landed in the White House and sent to the Cap Stuff mailbag. It was sent by N.Y. State Republican Watson Washburn, a distinguished lawyer who supported Eisenhower to the hilt in both his White House campaigns. He wrote the President:

"One of the most shocking indecenies perpetrated by the Roosevelt-Truman Administrations was the degradation of the U.S. Supreme Court. The people confidently expected you to rectify this shameful situation. I hope you are as shocked as they certainly are by your calamitous failure. Your appointee as Chief Justice quickly and permanently allied himself with the two left wing extremists, Black and Douglas. In 1952, it seemed impossible that the court could sink any lower in the estimation of lawyers and laymen; but since you took office it has done so. What is most alarming is that it has become increasingly bold week by week in giving aid and comfort to the Communist enemy in our midst. To curb the present dictatorial temper of the court majority it seems that a Constitutional amendment is needed, which would deny protection to any person refusing to answer questions regarding the participation or membership of any other person in a conspiracy to aid any hostile foreign power or in any group dedicated to the forceful overthrow of the U.S. Government."

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WARREN COURT KICKED IN TEETH

At the American Bar Association's big London get-together yesterday, an important ABA committee got up in public and kicked the Earl Warren Supreme Court right in the teeth.

Earl Warren

The group was the ABA's Committee on Communist Tactics, Strategy and Objectives; chairman, former Maryland Sen. Herbert R. O'Conor.

O'Conor and his colleagues turned in a detailed report keyed to the proposition that the Warren court is imperiling the nation by being too concerned about Communists' theoretical rights. The report calls on Congress for legislation which would simply wipe out a whole long string of the Warren court's decisions.

This legislation would:

Keep FBI files confidential;

Let Congressional committees investigate suspected subversives as freely as they investigate businessmen and labor leaders;

Allow the Government to fire security risks even out of non-sensitive public jobs;

Permit the Justice Department to query about-to-be-deported aliens on their connections with Communism;

Knock out the Warren court's ruling that the Smith Act of 1940 allows people to urge the Government's violent overthrow so long as they don't spell out how it is to be overthrown;

Empower schools, colleges, bar associations, etc., to deny employment or membership to persons who refuse to answer questions about past Communist activities.

* * *

The O'Conor committee accuses the Warren court—in ceremonious legal language, but its meaning can't be misunderstood—of setting up different standards in its treatment of Communists from the standards it applies to other persons and groups.

The report notes the great glee in the U. S. Communist Party over these decisions, and the speed with which the party is rebuilding, now that it has been saved by the Warren court from the knockout punch the Justice Department had hoped to deal it.

Courageous Committee

Chief Justice Warren himself is at the London ABA meeting.

That fact points up the courage these lawyers show in turning in this report. Many of them will be handling cases in the Supreme Court in future. All of them must know that judges can be and sometimes are as humanly vindictive as anybody else. Yet they have performed this public service regardless of the harm it may do to them personally.

Now that this committee of the powerful and influential American Bar Association has uttered, it is much to be hoped that Congress (many if not most of whose members are lawyers) will show similar courage at this session.

There is a "clear and present danger," as lawyers put it, that the Warren court will strike down all of our legal defenses against the criminal Communist conspiracy.

The court already has gone much too far along that road. Only Congress can reverse this perilous trend. It is time for Congress to get cracking.

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DAVID LAWRENCE

Jurists Look at Supreme Court

Chief Justices of State High Tribunals Reported Criticizing 'Transgressions'

Criticism from laymen and lawyers concerning recent decisions of the Supreme Court of the United States has lately been attracting much attention, but how do some of the judges throughout the country feel about the highest court?

There are not many opportunities for judges to discuss these matters publicly. But something that occurred the other day at the conference of the chief justices of the highest courts of each of the 48 States throws a light on this question. A substantial number of the State chief justices favored a resolution condemning in the severest terms some of the recent decisions of the Supreme Court of the United States.

Here is the full text of the resolution offered by Chief Justice Norman F. Arterburn of the Supreme Court of Indiana:

"Be it resolved, that it is our opinion that the United States Supreme Court has transgressed sound legal principles, and in particular, usurped fact finding functions in weighing the evidence in the recent cases of Konigsberg v. State Bar of California and Schware v. Board of Bar Examiners of the State of New Mexico.

"Moreover, the United States Supreme Court has encroached upon the jurisdiction of the State courts in holding, among other things, that applicants seeking admission to the bars of the State of California and New Mexico, in examination as to their character and fitness to practice law in those respective States, may refuse to answer questions or enlighten the examining board about their past connections and associations in particular with Communists and communistic organizations.

"We declare the past acts and associations of applicants do reflect directly upon their character and fitness and are matters relevant for consideration. Whether or not one who went through a long economic depression should have had the strength of character, moral fiber and stamina to withstand the emotional appeals of Communists—as most good citizens did—or whether as a weakling he succumbs to such propaganda, is relevant in the analysis and determination of the character of such individuals. The United States Supreme Court is wrong in holding that such acts are of no value in such determination.

"Decisions which are not founded on sound legal principles or common sense tend to undermine confidence in the judicial system and respect for the courts.

"We further state that one who is unwilling to give freely all relevant information regarding his history and past associations casts doubts upon his moral character and fitness to practive law in any State of this Union; and such refusal is a relevant factor to be weighed and considered by a fact finding body on character and flitness. We further declare that although the United States Supreme Court has the authority to fix its own standards of character and fitness to practice in the Federal courts we do not recognize nor concede that it may do so for the courts of the several States of this Union."

While almost a majority favored immediate adoption of the resolution, there were a number of justices who were in sympathy with it but felt that the subject should await a further report. Accordingly, a motion was made to appoint a committee to report back to the conference next year, and the resolution which was finally adopted declared that the chief justices were very much concerned with what the Supreme Court of the United States had ruled.

As for the decision in the Konigsberg case to which reference was made, this was decided by the Supreme Court of the United States by a 6-to-3 vote. Justices Frankfurter, Clark and Harlan dissented. In fact, Justice Harlan, in his lengthy dissent, wound up with this observation: "For me, today's decision represents an unacceptable intrusion into a matter of State concern."

Many Americans of the present day do not realize that criticism of the Supreme Court has been frequently expressed in past history and that perhaps the most severe castigation the high court ever got came from the pen of Thomas Jefferson. In a letter to a friend in 1820, he wrote:

"Having found, from experience, that impeachment is an impracticable thing, a mere scare-crow, they consider themselves secure for life; they skulk from responsibility to public opinion. . . . An opinion is huddled up in conclave, perhaps by a majority of one, delivered as if unanimous, and with the silent acquiescence of lazy or timid associates, by a crafty chief judge, who sophisticates the law to his mind, by the turn of his own reasoning."

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Early Ed.

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Mr. Trotter
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Miss Gandy

BAUMGARDNER

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(RELEASE AT 7 P.M. EDT)

(MORRIS)

NEWARK, N.J.--THE SENATE INTERNAL SECURITY SUBCOMMITTEE'S CHIEF COUNSEL CHARGED THE SUPREME COURT TODAY WITH "AGGRESSIVE ACTIVITY" THAT THREATENS THE INTERNAL SECURITY FUNCTIONS OF CONGRESS, THE FBI AND GOVERNMENT AGENCIES.

ROBERT MORRIS SAID THE COURT'S ACTION IN THE CASE OF LABOR LADER JOHN T. WATKINS WAS AN UNBRIDLED EFFORT BY THE JUDICIARY TO MOVE INTO THE LEGISLATURE'S DOMAIN.

HE REFERRED TO THE COURT'S REVERSAL OF THE CONVICTION OF THE MIDWEST LABOR LEADER FOR CONTEMPT OF CONGRESS. WATKINS HAD REFUSED TO TELL THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE THE NAMES OF PERSONS HE KNEW TO BE COMMUNISTS. THE COURT RULED THAT WATKINS' PRIVACY HAD BEEN VIOLATED IN A CONGRESSIONAL EFFORT AT EXPOSURE FOR EXPOSURE'S SAKE.

MORRIS TOOK ISSUE WITH THE COURT'S RULING IN A SPEECH ON A NEW ANTI-COMMUNIST TELEVISION PROGRAM CALLED "ZERO-1960!" ON STATION WATV IN NEWARK. THE PROGRAM IS SPONSORED BY THE BLUE ARMY OF OUR LADY OF FATIMA, A RELIGIOUS MOVEMENT CONDUCTING A CRUSADE OF PRAYER FOR PEACE TO COMBAT COMMUNISM.

"UNLESS THE CONGRESS DOES SOMETHING TO ASSERT ITS POWER AGAINST THIS AGGRESSIVE ACTIVITY ON THE PART OF THE SUPREME COURT, THEN I FEAR VERY GREATLY FOR THE INTERNAL SECURITY FUNCTIONS, NOT ONLY OF THE CONGRESS BUT ALSO OF THE FBI AND THE SECURITY AGENCIES OF THE GOVERNMENT," MORRIS SAID.

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Jenner to Offer Bill Curbing High Court

By the Associated Press.

Senator Jenner, Republican, of Indiana, urged Congress yesterday to strip the Supreme Court of the right to hear appeals of cases involving State or Federal charges of subversion, or contempt of Congress.

"I will introduce legislation immediately to remove the Supreme Court's appellate jurisdiction in the matters listed above," he said in a speech denouncing the court on many scores.

"I beg Senators to consider it speedily," he added.

Senator Jenner said such a step would be constitutional. He quoted Article 3 of the Constitution that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The Indiana Senator said that as he reads these words, they tell Congress that it has "full, unchallengeable power to pass laws immediately which would deprive the Supreme Court of appellate jurisdiction, both as to law and fact," in cases in these fields:

1. Cases involving purposes, functions, and practices of congressional committees, including punishments for contempt of Congress.

2. Purposes, functions and practices of agencies in the executive branch "established with the approval of Congress to deal with problems of subversion" in Federal employment.

3. All laws and executive regulations established by the legislatures and executive agencies of the several States to deal with problems of subversion within their borders."

4. Rules adopted by school boards to "deal with problem of subversion among teachers."

5. Rules of State courts and State boards of bar examiners governing the admission of citizens to the practice of law.

Senator Jenner said he was proposing this legislation because he believes the court is "undermining efforts of the people's representatives at both the national and State levels to meet and master the Communist plot."

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Date JUL 27 1957

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Judicial Family Rift

One of the more serious criticisms of the Supreme Court's performance at its recent session has come from the chief justices of the States—a group which can hardly be accused of partisan or sectional carping.

Meeting in New York a few days ago, the State chief justices expressed deep concern over the trend of Supreme Court decisions in matters bearing upon the relations between the States and the Federal establishment. In particular, the State judicial officers were perturbed by two Supreme Court rulings which reversed the highest courts of New Mexico and California in cases involving the eligibility of applicants to practice law in those States. The question was referred to a committee composed of the chief justices of Maine, Massachusetts, Arizona, South Carolina, Puerto Rico, Ohio and Wisconsin. This committee, in turn, proposed that the conference state its ". . . profound concern for the retention and exercise of the constitutional powers of State governments," and recommended the appointment of a special committee "to examine the role of the judiciary as it affects the distribution of powers between the States and the Federal Government . . ." Thirty-two of the 42 chief justices present indorsed this proposal.

Criticism of this sort, coming from chief justices representing all sections of the country, is not something to be brushed aside. For the highest judicial officers of the States would not indulge lightly or capriciously in criticism of the highest judicial officers of the Federal system. The report of this special committee, if it follows the line of discussion at the New York meeting, may well exercise a substantial restraining influence on the tendency of the Supreme Court to whittle down, in decision after decision, the powers which had been thought to reside in the States.

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Date JUL 27 1957

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JUDGE MORRIS

The Supreme Court Aids Reds in Our America

By DR. RUTH ALEXANDER

As I was saying last Sunday, our department of defense advised our Senate subcommittee on Internal Security, May 8, that "under existing legislation," it could not meet the complex security problems arising in the vital areas of public utilities and communications, which are manned by employes of private companies, such as the Western Union and the Radio Corporation of America, RCA.

In case of war or the imminence of war, these fields are a natural for espionage and sabotage, and we should tremble in our boots at what a few persons "disposed" to commit these acts could do to us overnight.

On June 26, in response to the information from our Defense Department, this Senate subcommittee, under Sen. Roman Hruska and counsel judge Robert Morris, attempted to question two employes of RCA, previously identified under oath as Communists, and members of the American Communications Associations, ACA, a trade union bargaining agent, which was kicked out of the CIO for alleged Communist leadership. In return for Senatorial politeness, the committee got cooperation zero. It ran straight into the road blocks set up by the Supreme Court in its June 17 rulings. The witnesses droned out the monotonous and impertinent reply "I decline to answer" for some 22 pages of testimony at taxpayers expense. And the Senate was powerless to compel them to reply. They were advised by their lawyer that they were completely within their constitutional rights when they invoked protection of the first amendment, as interpreted by the Supreme Court.

Since the passage of the First Amendment in 1791, loyal Americans have interpreted it as liberty under law, not anarchy, and rarely has it been abused. But since the successful revolution in Russia in 1917, we have witnessed the slow growth of a new kind of citizen—disloyal Americans.

•

OUR CONGRESS met this threat, which has not yet materialized but remains a constant potential in the background of our lives, by passage of the highly 'pertinent' Smith Act, which declared that the advocacy of such treason was itself a crime. Now along comes the 'liberal' Supreme Court and knocks the Smith Act into a cocked hat.

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Jenner Says Court Aids Red Cause

By the Associated Press

Senator Jenner, Republican of Indiana, says Supreme Court decisions of the past 18 months have "utterly shocked this Nation" because they interfere with the country's internal security.

That, he said yesterday, is why he has introduced legislation to strip the Court of the right to hear appeals of cases involving State or Federal charges of subversion, or contempt of Congress.

In a radio-TV interview on NBC's Meet the Press, Senator Jenner said he doesn't want to "curb or handicap the court." However, he said, the high court has gone "rampant" and has "done more to help the Communist cause in this Nation than anything that has happened in the last quarter of a century."

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44 JUL 31 1957

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Supreme Court Critics

Maryland's former Governor and Senator, Herbert O'Conor, is chairman of an American Bar Association Committee with a mouth-filling name—the Committee on Communist Tactics, Strategy and Objectives. This committee, with the approval of the ABA members, if their applause is a trustworthy guide, now has joined the Chief Justices of the States in criticism of the line that the Supreme Court has taken in some of its recent decisions.

This criticism has nothing to do with such emotion-charged rulings as the court's school desegregation decision. Nor does it fall into the category of intemperate name-calling. It is, instead, an expression of concern by competent and responsible men who think that the court, in its zeal to safeguard "theoretical individual rights," may have made it impossible for our Government to carry out "the first law of mankind—the right of self-preservation."

What this comes down to, as we understand it, is a clash of opinion with respect to the gravity of the threat of Communist subversion. In its original Smith Act decision the court held that the Communist conspiracy was a "clear and present danger" to our national security. But with changing times and a change in judges, this position apparently has been abandoned. As of today, the court does not appear to think that communism poses much of a threat to this country, and its recent decisions have made it difficult if not impossible for the Department of Justice and congressional committees to pursue their work of prosecution and exposure of Communist activities.

Mr. O'Conor's committee and, to a lesser extent, the Chief Justices of the States, dissent. They say they are just as anxious as is the Supreme Court to safeguard individual rights. But they contend that this can be done and should be done without crippling the power of the States and the legislative and executive branches of the Federal Government to protect the country "against Communist infiltration and aggression."

The debate on this point frequently centers on the Supreme Court's decision in the Jencks case, and we think it is very much to the point. In that ruling the court majority held that a defendant in a criminal case, under circumstances which were not spelled out with sufficient clarity, was entitled to examine the confidential files of the FBI. This decision expressly disapproved the practice of permitting the trial judge to examine the files to ascertain what material was pertinent to the defendant's case and letting him examine that—but only that—material.

For our part, we do not see why a Federal trial judge cannot be trusted to make available to a defendant all of the confidential reports in a file that are relevant to his defense and that he therefore is entitled to see. This would safeguard the rights of an accused person and also prevent fishing expeditions through the confidential files, which could destroy the effectiveness of the FBI.

The Jencks case is one of some 15 rulings which have evoked the current criticism of the court. This responsible criticism, in our opinion, is a healthy thing, and we hope it will lead to corrective action—either by the court itself or by Congress.

62 AUG 7 1957

Barbara

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N. Y. Journal-American
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Early Ed.

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Supreme Court Critics AID

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Date JUL 30 1957

52 OCT 16 1957

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The Jencks case is one of some 15 rulings which have evoked the current criticism of the court. This responsible criticism, in our opinion, is a healthy thing, and we hope it will lead to corrective action—either by the court itself or by Congress.

Senate Oil for a Neglected Lamp of History

By ARTHUR KROCK

WASHINGTON, July 29—The ... debate over the pending ... rights bill submitted by the A... istration, and the discussion of ... gressional measures to coun... some recent Supreme Court ... sions, have blown the dust off ... ters in American history that have been generally forgotten. In the process it is evident that a number of Senators, editors and reporters have gone profitably back to school on the subject. But how much the discussions have revived public interest in and knowledge of its country's foundations is another matter entirely.

The principal reasons why this must remain a question without a quick answer are these: 1. The issues in the equal rights bill over which Senators are contending are rooted in judicial process, and therefore are exceedingly difficult to report in terms non-lawyers will understand. 2. The American people have been conditioned to the belief that the jurisdiction of the Supreme Court extends to whatever limits it prescribes for itself and cannot be reduced without violating the Constitution.

Part III Legalities

Because of the first reason it is very doubtful whether there is general understanding of the legal objections that were an important cause of the rejection of Part III in the equal rights bill. Though these objections were exhaustively stated in the Senate debate, and reported at great length in the press, they are hard going for the lay chronicler and the lay reader. Part III gave the Attorney General authority to invoke, in the name of the United States for any citizen, the judicial process of injunction in racial desegregation matters whether or not the citizen sought this service. Also it empowered him to apply for injunction before the fact of violation on the ground that it was "intended." And it made the Federal courts the enforcement arm of their own injunctions in these cases.

These legal innovations, after their effects had been described at length to the Senate by opponents, were rejected by a large majority. But most Senators are lawyers, and all had an opportunity to be educated on the issues at first hand. Both of these advantages were denied to most citizens who followed the debate, however studiously.

A Clear Power

The several indications—some appearing in television interviews of members of Congress—that pro... Supreme Court have a shock impact on the lay public reveal a broad un... ...y with the Constitution. In ... ...on of the discussions that ... ...ed in recent Supreme Court ... there is no such require... ...echnical legal knowledge as ... ...d to comprehend the issues ... ...rt III of the equal rights ... facts are simple: the Con... gave Congress the power ... ...rol the court's jurisdiction. ... ...ere is a movement in Con... ...o assert it. ... Probably it will not be asserted to ... the court, as Senator Jen... ...er would, from reviewing cases involving contempt of Congress and state or Federal charges of subversion. And Congress is more likely to counter some recent decisions by legislation, as it has the power to do, than to abridge the court's appellate jurisdiction. But the movement does not "violate" the Constitution, either in letter or in spirit, as some who have criticized it appear to believe.

The Precedent

The Supreme Court itself since 1797 has accepted the broad power of Congress to fix the area of its appellate jurisdiction. The authority is specifically given in Section 2, Article III, of the Constitution, and the traditional procedure of the court was to exercise its function only where acts of Congress had conferred it. The precedent was established in *Wiscart v. Dauchy*, where the court held that in the absence of a specific statute it lacked jurisdiction. Even the dissenter, Justice Wilson, who generally contended that the court's appellate area derived from the Constitution, and therefore could be exercised without a specific act of Congress, agreed that this exercise would be invalid if Congress excluded the area in which it was made.

The Later Record

Later Chief Justice Marshall, in *Durousseau v. the United States*, agreeing with Justice Wilson on the source of the court's appellate jurisdictional powers, ruled, however, that Section 2, Article III, granted Congress control of this without exception. And in the famous key case—*ex parte McCardle* (1869)—after the Supreme Court had taken a habeas corpus writ under advisement Congress withdrew its jurisdiction over that particular type of habeas corpus proceedings, and the court then dismissed the case for lack of authority to review.

If and when the study of American history in the schools and colleges is sufficiently stressed and well enough taught to produce a population as familiar with it as the average educated Briton is familiar with his own ..., the current movement in Congress will at once be recognized as within the Constitution and the laws and perfectly respectable as such.

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In The Nation

Senate Oil for a Neglected Lamp of History

By Arthur Krock

(NY Times, July 30)

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Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. [redacted]
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

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Washington, July 29----The Senate debate over the pending equal rights bill submitted by the Administration, and the discussion of Congressional measures to counteract some recent Supreme Court decisions, have blown the dust off chapters in American history that have been generally forgotten.

But how much the discussions have revived public interest and knowledge of its country's foundations is another matter entirely. The principal reasons why this must remain a question without a quick answer are these: 1) The issues in the equal fights bill over which Senators are contending are rooted in judicial process, and therefore are exceedingly difficult to report in terms non-lawyers will understand. 2) The American people have been conditioned to the belief that the jurisdiction of the Supreme Court extends to whatever limits it prescribes for itself and cannot be reduced without violating the Constitution.

The several indications that proposals to limit the juriddiction of the Supreme Court have a shock impact on the lay public reveal a broad unfamiliarity with the Constitution. The Constitution gave Congress the power to control the court's jurisdiction, and there is a movement in Congress to assert it. Congress is more likely to counter some recent decisions by legislation, than to abridge the court's appellate jurisdiction. But the movement does not "violate" the Constitution, either in letter or in spirit, as some who have criticized it appear to believe.

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CAPITAL REPORT

Ike Appointees Backfire

By FULTON LEWIS, JR.

WASHINGTON, July 30 — President Eisenhower has more reason for concern about the Supreme Court than appears on the surface, because the trend of decisions is not accidental. It is part of an established pattern which can be expected to continue—as demonstrated by a recent Washington dinner conversation.

The lady in question must remain anonymous, but she is the wife of a top-drawer Presidential adviser. The affair was formal. Chief Justice Earl Warren was seated at her right. In voluble mood, he reminisced about his service in Washington. When he and Mrs. Warren first arrived from California, he said, they were desperately lonely. They found Washington a cold place.

As Chief Justice, he was unfamiliar with his job. It was a long time since he had direct contact with law practice. He was groping to get his feet on the ground, and desperate to get his teeth into his work.

One man, alone, befriended and took him in, and to that man, he said, he feels an undying and unrepayable gratitude.

The lady listened as he built the story with dramatic romanticism—how they had philosophized together, socialized together, studied cases together. There had been a stimulating meeting of minds. Finally, he reached the climax:

"That man is Felix Frankfurter."

TO THIS, add the failure of Attorney General Brownell to adequately screen the background of William J. Brennan of New Jersey, and Ike has his answer. Two of his four appointments have soured on him. With Frankfurter, Hugo Black and William Douglas already on the other side, he has provided himself with an opposition court.

And there is no relief in sight. Frankfurter was talking retirement several years ago, but his health has picked up and the talk is no more. Black is as chipper as when he was appointed 20 years ago. Douglas has the constitution of an ox.

Warren's appointment was, of course, in repayment of a political debt. He delivered the California delegation to Ike at the Chicago Convention of 1952, and thus clinched the Eisenhower nomination. Attorney General Brownell, as floor manager, had agreed to let Warren name his own reward. The California Governor sat comfortably in his Sacramento palace until the vacancy occurred, then claimed it.

But by the time the Brennan vacancy came along, Brownell should have learned. Warren was already demonstrating the ill wisdom of political appointments to the supreme bench, and Mr. Eisenhower already was muttering to friends that Warren was far too left to suit him.

Brownell says now that he picked William J. Brennan because he wanted a Roman Catholic Democrat from New Jersey. The reason for these specifications is obscure. In any

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event, Deputy Attorney General William Rogers came up with Brennan's name, and said he was highly recommended by the late Chief Justice Arthur Vanderbilt of the New Jersey Supreme Court, one of the most respected figures of the American bar.

ACTUALLY, Vanderbilt had recommended Brennan not for a judgeship, but for a position on Rogers' study commission on speeding up procedures in the Federal courts, on which subject Brennan had made an outstanding contribution in the New Jersey courts. Rogers found him personable, hard-working, and helpful so far as the study was concerned.

As to Brennan's political and social philosophy, he made no inquiries. A simple reading of the man's past speeches and statements would have identified him, implacably, for what he turned out to be. They blueprinted the whole story.

This explains the series of "modernist" decisions, wrecking the existing structure of court procedures, threatening the effectiveness of the FBI, imperiling every informant who ever contributed to FBI files, and paralyzing the investigative processes of the Congress.

Brownell frantically asks for legislative corrections, with one house of Congress tied up in filibuster and the other eager to go home. Assistant FBI director Louis Nichols is dispatched to London to get the American Bar Assn. on helpful record.

But the real trouble cannot be undone; two political appointments.

JUSTICE WARREN
Too far left.

PRES. EISENHOWER
For Ike's taste.

Virtue Overdone

AT their London convention, our American lawyers were given a report from their special committee on the communist problem.

It charged that 15 recent Supreme Court decisions have acted to tie the Government's hands in its efforts to stamp out communist subversion.

Cited, among others, were decisions which:

- Open up confidential FBI files.
- Restrict ability to fire security risks.
- Curb the investigating powers of Congress.
- Prohibit the states from enforcing anti-sedition laws.
- Prevent conviction for teaching overthrow of the Government by force.

The first law of mankind, says this committee, is the right of self-preservation. It called for a "proper degree of balance between authority and liberty."

Here, of course, is the rub. What is a proper degree of balance?

A recent article by Capt. Stephen E. Jones, USNR, is to the point.

Security measures, Capt. Jones wrote in the monthly magazine of the U. S. Naval Institute, are simply a system of self-defense—devices short of armed force for protecting the country.

"Any system that society develops for its protection," he wrote, "may be fraught with individual instances of inconvenience and even injustice. These are grounds for attempting to improve its operation—not for throwing it out. The only real question is: Are these instances of injustice excessive, or the result of bad faith?"

Whatever the system, it must be geared to the danger. That, it seems to us, is how you answer the question of "proper degree." The communist threat is real and unrelenting. In the words of another Supreme Court decision, it is a "clear and present danger." The theft of our bomb secrets is among the more spectacular illustrations.

We spend billions to deter the communists from armed aggression. If we permit them to accomplish their purposes by subversion, what good is our military defense?

"We are essentially a peaceful and peace-loving nation," wrote Capt. Jones, "but we have little interest in being—or becoming—a corpse, however virtuous."

He added that "One thing we can be sure of: If the system of government that stands for fair play in government is uprooted and goes down, we have little to hope for from the system that will take its place."

That, we think, is the real nub of the issue.

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In the Mailbox

COURT RULINGS

Those recent disliked Supreme Court decisions meant little to me until someone explained that Communists now can use the 5th Amendment to withhold the names of the Communists they know, while patriots who worked with the FBI at risk of life and limb to uncover them must be openly identified in court.

What sort of judicial sense is this?

JACK ROGERS.

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Court Rulings Peril Law Enforcement, Says Parker

WASHINGTON, Aug. 1.—(AP)—A spokesman for the nation's top law enforcement officers told Congress today "a highly organized numerical minority in the United States is attempting to undermine the effectiveness of our police forces."

Los Angeles Police Chief William H. Parker, representing the International Association of Police Chiefs, made his charge in attacking a recent Supreme Court decision which he said "threatens to destroy modern law enforcement."

Testifying before a House judiciary subcommittee, Parker said if organized moves against the police "are successful, we will soon lose the ability to police ourselves and the result will be that the people will not get the protection they deserve."

Parker and Acting Chief Melvin H. Leach of the United States Park Police, Washington, spoke against allowing the Supreme Court's interpretation of the law in the "Mallory" decision to remain on the books.

The court in that decision five weeks ago voided the confession of a convicted Washington rapist, Andrew Mallory, on the grounds the police held him too long for questioning before arraigning him. Mallory, who had been under a death sentence, went free.

The subcommittee, headed by Rep. Willis (Democrat), Louisiana, is studying the effect of the decision and the need for legislation.

LOS ANGELES EXAMINER
AUG 2 - 1957
CCC MORNING EDITION

WILLIAM H. PARKER
LOS ANGELES POLICE CHIEF

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Judge Hayes Raps Rulings Of High Court

Hits 'Open Files' In Banquet Speech

By Dick Creed
Staff Reporter

Middle District U.S. Judge Johnson J. Hayes of Wilkesboro took the U.S. Supreme Court to task here last night for its recent ruling that defendants in a case are entitled to look into certain files of law enforcement agencies attempting to convict them.

In a speech before the closing banquet of the North Carolina Police Executives Association, Judge Hayes said, "If I am ever confronted with a case in which the prosecution is required to bare its evidence of the defendant, I will dismiss the case."

He told the law enforcement leaders from across the state that "I am disturbed just as much as you are" by certain recent rulings of the Supreme Court.

"Law enforcement officers are men charged with discovering . . . who is violating the law" and bringing them into court for trial, Judge Hayes said. "I do believe that our highest court in the land has recently rendered some decisions calculated to hamper the officers in performances of their duty."

He said that "all of us should be happy" that the Supreme Court is trying to "protect our individual liberties" but "not if it is to endanger the liberties of all."

It is a "hazardous thing," he said, to allow an accused person or his lawyer to inspect "confidential" files of law enforcement agencies. "An inherent danger exists," he said, "if an offender can find out who reported him."

He also took issue with another Supreme Court decision which made certain tactics of law enforcement officers violations of the law of search and seizure.

See Hayes, Page 8, Col. 4

Hayes Raps Open Files Decision

Continued from Page 1

He cited the high court's ruling that an officer who had information that marijuana trade was going on in a hotel, and who entered a room after smelling marijuana fumes, could not testify in court because he entered the room without a search warrant.

"Judges should recognize," he said, "that we have officers who are experts in certain fields just as doctors and lawyers are experts in certain fields."

In their efforts to "protect the rights of the individual," he said, officers should be allowed to "use common sense."

"I am a believer that the law in its conception and wisest administration is the only hope of American liberty," he said.

The Supreme Court cannot be expected to issue opinions to "please all of us," he said, because it is made up of "human beings."

He added that he did not believe that the court ever had "political motives," as charged by some critics, in rendering decisions.

He charged the police delegates to "set examples as law officers in the communities you are in." As American citizens, he said, "it is our duty to uphold the law."

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Constitution Limits Congress In Altering High Court Rulings

By CHARLOTTE MOULTON,
United Press Staff Writer.

WASHINGTON, July 5.—Congress is about to undo, or at least modify, one of the Supreme Court's highly disputed decisions of last month. This is the Jencks decision in which the court held that a defendant must be given access to reports made to the FBI by informers who testify against him in federal court.

What are the circumstances in which the Congress can reverse a Supreme Court decision.?

And what is the legal background of the Jencks decision?

In general, Congress can limit or reverse Supreme Court decisions however it chooses so long as it stays within the framework of the Constitution.

On constitutionality, the high court has the last word and can reverse Congress. In Marbury V. Madison, one of the most famous of all its opinion, Chief Justice John Marshal established the principle that the court may review laws passed by Congress. That was in 1803 when the court was only 14 years old. It marked the first step towards a powerful federal bench.

Two Ways Open.

There are two ways for legislators to thwart the court. One is immediate and direct: To pass a law that does the opposite of what the court rules.

The long range but more drastic method is one Congress has been historically reluctant to employ: To enact legislation (1) limiting the court's jurisdiction; or (2) increasing or reducing its membership.

Congress took the first route on the hot political issue of Tidelands oil after the high court in 1947 ruled that the United States—not the states—owned the valuable deposits outside the low-water mark.

In 1953 President Eisenhower signed a bill guaranteeing state ownership of all submerged land out to the three-mile limit. The next year the court refused to entertain a challenge to the new law on the ground that Congress may do as it pleases with U.S. property.

Court Packing.

The second method was attempted by President Franklin D. Roosevelt in his court-packing plan of 1937. His supporters in Congress introduced legislation to add a member for each incumbent who was 70 or over. The failure of this bill to

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CLIPPING FROM THE
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RE: JENCKS DECISION

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pass was Mr. Roosevelt's first severe political defeat.

There appears little likelihood that Congress will initiate any sweeping limitations on the present court despite legislators' fulminations. But it seems intent on passing a law to modify the Jencks decision.

The court ruled on June 3 that when a witness summoned by the government in a criminal trial has previously made reports about the case to the FBI (the witness in question in the Jencks case specifically was an erstwhile FBI undercover agent), then the defense must be given access to those reports to the FBI. The idea is that the defense then can check whether the witness tells the same story in court that he told in his previous reports.

This seems like forcing one side in a law case to supply ammunition to the other side. It is an extension of old legal principles.

The demand by the defense for such papers stems from a common law right to attack the credibility of an opposition witness; and from trial practices that have developed over the years in federal courts.

Justice Is Duty.

One of the main considerations—noted in the court's opinion—is that the government is not an ordinary litigant. The government's duty is not just to win cases but to see that justice is done.

Justice William J. Brennan Jr. ruled in the Jencks case that only defense counsel can decide whether his purpose will be served seeing reports made to the FBI agents or informers who are testifying. Prior Supreme Court rulings had left this decision up to the trial judge.

Attorney General Herbert Brownell Jr., in urging legislation to modify the Jencks decision, pointed out that he agreed "in principle" with what the court was trying to do in protecting defendants' rights.

Mr. Brownell said the FBI were greatly upset, however, because the Jencks decision set no plain boundaries. Some lower federal court interpreted it as giving defense lawyers access to entire FBI "raw" files concerning a case. The Justice Department and FBI Director J. Edgar Hoover have vowed never to release these files, which contain hearsay and rumors as well as established data.

Would Restore Power.

The solution urged on congress by Mr. Brownell—and approved by Senate and House committees—would restore to trial judges the power to decide which reports must be handed over to the defense and would put other limits on the Jencks decision.

The proposed new law would require disclosure only of those parts of a witness' report to the FBI that relate to testimony he had given against a defendant. The trial judge would inspect the witness' report withheld from the defense.

If the government balked at turning over the portions held by the judge to be relevant, then the bill would empower the judge to strike out the witness' testimony or declare a mistrial.

Justice Brennan's opinion in the Jencks case did not rest on a premise that any constitutional right of the defendant was involved. If the proposed bill is enacted, a new legal test might well raise this point.

WHAT TWO CRITICS SAY ABOUT COURT'S RULINGS ON REDS

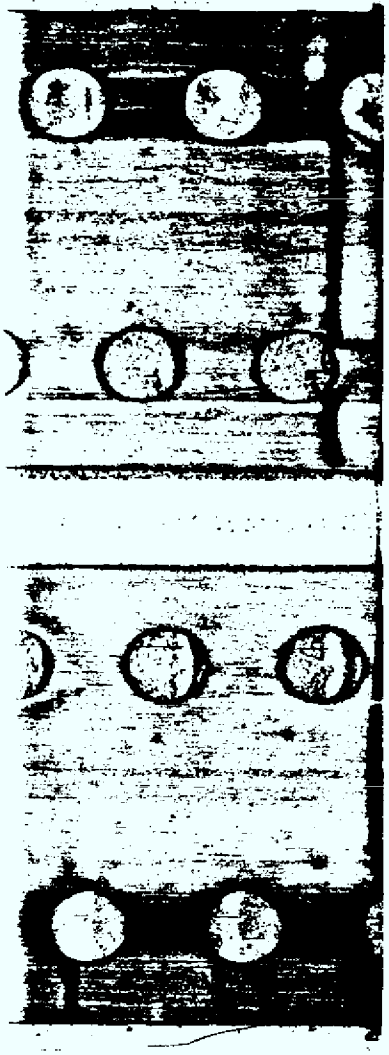
Views From a State Attorney General and a U. S. Senator

New criticism of the U. S. Supreme Court is being voiced in Congress and elsewhere.

One critic is Louis C. Wyman, attorney general of New Hampshire and president of the National Association of Attorneys General.

Mr. Wyman describes the effect of recent Court decisions on State laws, and declares that the Constitution is being "tortured out of all rational historical proportion."

Another critic is Senator William E. Jenner, Republican, of Indiana. Senator Jenner says that recent decisions weaken national security, are "judge-made law . . . subject to no review."



by Louis C. Wyman

President of the National Association of Attorneys General

No matter the precise phrase, there is little doubt but what the Constitution—that great instrument through which Americans have devised perhaps the most satisfactory method of community living under a government of law and not of men—is being tortured out of all rational historical proportion by decision after decision of the United States Supreme Court.

These decisions, in their cumulative aspect, seek by fiat of five appointed Justices to substitute a philosophy of government patently contrary to that contemplated by George Washington and the great figures of our early constitutional period. Such fiat involves certain basic assumptions concerning what is best for the American way of life and, through these decisions, in effect amends the Constitution to the point of usurping what has always heretofore been considered as the proper function of the constitutional convention in our pattern of government.

Such decisions must further confound and confuse our youth who seek and deserve real understanding of the true relationship between state and individual, between Communism and capitalism.

In recent years, even months, this country has witnessed the curious phenomenon of a Supreme Court decision on one day and a bill in Congress to set it aside on the next. Were such measures and developments peculiarly local in isolated cases they would be readily understandable, but protests and outcry against these decisions have mounted from North to South and from East to West, across the length and breadth of the United States. Most recent is that group of cases decided June 17, 1957.

What was originally drawn as a compact between the States to create a Federal Government with certain express powers which were delegated in the compact—called a Constitution—threatens by decision of the High Court to become a one-way ticket to a federal bureaucracy in which the position and authority of the individual States becomes less and less with every passing year.

No one questions that the powers expressly granted to the Federal Government in Article 1, section 8, are powers best exercised by federal authority for the common good. But when those powers are extended by the exercise of some sort of civil-liberties preoccupation or underdog complex into the kind of decision that resulted in *Griffin v. Illinois* or *Pennsylvania v. Nelson; Schware v. New Mexico; Konigsberg v. California; Jencks v. United States; Watkins v. United States; Sweezy v. New Hampshire,* and *Yates v. United States,* we face a common problem of the highest magnitude. This problem is the State's interest in its own survival.

The public record of Communist subversion, both in this country and in many other countries around the world, is notorious. It is equally notorious that responsible agencies within and without federal and State governments have repeatedly confirmed that the Communist Party in this country is an arm of the Communist Party in the Soviet Union, with the objective of alteration of the form of government of the United States to a Communist state—whether or not through an intermediate step of socialism—to be attained by force and violence if necessary.

If our United States is to have any semblance of realistic national security—not essentially by guns or even bombs but through awareness of possible subversion and nonforgetfulness of the absolute enmity to the principles of freedom which has always characterized world Communism—the highest court of the United States should not even hint that membership in the Communist Party is a mere matter of political association, much less hold, as it has in *Yates v. United States,* that a subjective test is to be applied to advocacy of force and violence to overthrow the Government of this country, and that the Smith Act permits advocacy of forcible overthrow, short of incitement of direct action to that end.

A majority of the Supreme Court of the United States 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, privileged under the First Amendment. *No matter* protestations of words in the

. . . Court has caused "dangerous instability in our law"

opinion to the contrary—as the dissent points out—one cannot read the Konigsberg decision without observing that this is exactly what the High Court has done by telling a State court that, on such a record, there can be no reasonable doubt of the good moral character of an applicant for admission to the bar who refuses to answer the question of whether or not he is, at the time of his application, a member of the Communist Party in this country!

If this were not enough, the High Court denied the right of the Legislature of New Hampshire to inquire into the actual content of a required-attendance lecture at a State university with Communists and Communist-front organizations, who had written that violence to preserve the Soviet System was justified but that violence to preserve the capitalist system was doubly damned—once for itself and once for its purposes, as well as more.

This latter decision was rested on the astonishing ground, in part, that there was no assurance that a legislature which had delegated the investigation to an attorney general wanted answers to the questions put; that this lack of assurance evidenced an abuse of authority in the face of a legislative resolution stating, "The Attorney General is authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable. . . ."

• • •

No matter the phrasing of words nor the rationale of individual members of the majority, it is plain that the elements of partnership between State and federal governments in the investigation of subversive activities have been sharply limited, if not destroyed. Mere questioning in legislative fact-finding does not stigmatize. It is the answers to questions that count. If the questions are pertinent and relate to a vital concern of the State, they should be sanctioned, not struck down. The mere asking of relevant questions in fact-finding into possible subversion cannot destroy legitimate free speech.

Without being disrespectful, I believe it is a fair comment to characterize the language of the majority in the Sweezy decision as pure sophistry. The individual citizens in America must feel frustrated and helpless in the face of such reasoning reaching a conclusion contrary to the literal right of the governed to self-preservation.

Democracy has the right of self-preservation. Freedom does not, and cannot, mean freedom to destroy freedom in this country. Preservation of academic freedom and the American way of life does not require the judiciary to constitute the campus an insulated cloister wherein the relevant question may not tread in seeking to detect the presence or absence of a virus that would potentially destroy both academic freedom and the American way of life.

We are lawyers. That we happen to be attorneys general for the moment is either our good or poor fortune, as the case may seem to each of us. As lawyers, we must have respect for the law and confidence in the integrity, ability and enlightenment of our judiciary. The situation of the law in the field of federal-State relations, and particularly in the field of subversive activities, has never in the history of the United States descended to as low a point in terms of lack of public confidence as it has reached today.

MR. WYMAN

While, of course, I cannot speak for the Department of Justice, it must be apparent to anyone with a balance wheel in his head that the recent decisions relating to Communism and the Communist Party; the tragic delay in disposal of the Subversive Activities Control Board orders relating to the Communist Party registration under the Internal Security Act of 1950; the requirement that confidential files and reports to the Federal Bureau of Investigation—which may include classified material—shall be open carte blanche to cross-examination in all criminal cases, including prosecution for subversion; the decision that the board of bar examiners in New Mexico were required against their judgment to have in their bar association a man who had a record of previous membership in the Communist Party and previous criminal activities; the decision that the California bar may not deny membership to an applicant who refuses to answer whether he is presently a member of the Communist Party; decisions relating to extensions of federal control in the water cases; the decision requiring compulsory transcripts to the indigent in a State court in Illinois, and decisions in derogation of State labor laws not touching interstate commerce—all these have brought about a dangerous instability in our law, a lack of confidence in government and in the judicial structure of this nation.

That this has been accompanied by such spectacles as those recently presented by the abuse of the Fifth Amendment by Dave Beck and his son for purposes for which most assuredly it was never intended does not help this unhappy situation.

What are people to think of the law when they read about such conduct on advice of counsel? What kind of a law do we *have that* can permit defiance of common sense to the extreme that it cannot sufficiently define a point in testimony at which the Fifth Amendment begins to apply?

Must a lawyer always tell a client, "You can't even admit to knowing your own father lest under the doctrine of the Rogers case you may be construed to have waived your right to claim the privilege"? This is nonsense. It is bad public relations for the law.

It is in the interest of improvement of the administration of justice as well as restoration of public confidence in Government that, at the earliest possible time, there should be a decision clearly, rationally and firmly spelling out that the Fifth Amendment means what it always should have been plainly held to have meant, namely, that a truthful answer, if given, is honestly believed by the witness to possibly furnish a link in a chain of evidence which might lead to his conviction for a crime not outlawed by the statute of limitations, and nothing less. The Fifth Amendment is not a shield against informing nor a barbiturate for twinges of personal conscience.

• • •

Co-operation between the States and the Federal Government is a two-way street. If the Federal Government wants co-operation from the States, then the judiciary should permit extension of real co-operation to the States, for the proof of the pudding is in the eating.

If the bar association of the State of New Mexico does not want a former Communist and a former criminal as one of

. . . "Politics should be left out of judicial decisions"

its members, the Supreme Court of the United States should not force it to do so.

If the bar association of the State of California does not believe that an applicant for admission to the status of officer of the court—sworn to uphold the State and federal constitutions—who refuses to say that he is not a member of the Communist Party at the time of his application is not of good moral character, the Supreme Court of the United States should not tell the State of California that, on such a record, there is no reasonable doubt of his good moral character, simply because the witness contended that he did not advocate or believe in force and violence generally. Perhaps the bar examiners did not believe him.

If a legislative committee investigating subversion in New Hampshire questions a person who gave a required-attendance lecture at a State-supported university, seeking to find out whether directly or indirectly he advocated force and violence to adolescents of impressionable age, the Supreme Court should not tell the State legislature that it may not so inquire.

And finally, under no circumstances—in the delegated field of interpretation of the Smith Act—the Supreme Court should not permit exclusion from that Act advocacy and teaching of forcible overthrow of the Government as an abstract principle short of incitement.

Effects of Court's Rulings

Words may be combined like keys on a piano to play a tune according to the conception of the pianist. Although there is an old saying that "sticks and stones may break my bones but words can never hurt me," words from the highest court in the world are translated into action all over the United States and in those places under United States influence—which includes a goodly portion of the world.

Such a play on words makes infinitely more difficult judicial establishment of an intelligible dividing line between free speech and advocacy of subversion, and offers encouragement to those enemies of the American way of life who, like termites in the foundation, are never seen and seldom heard until the day the house falls in.

This nation is composed of many languages, many races, many creeds, living together under a document which permits a good deal of give and take. The very flexibility of the Federal Constitution has insured its continued strength against stresses and strains which, in other lands, have seen as many as 17 governments fall in two years. This document must not continue to be interpreted in such a manner as to throw out of kilter the great divider between the powers of the States and the Federal Government—the Tenth Amendment.

We State attorneys general are responsible, through our national association, for asserting our best efforts that the course of history in the United States shall be turned from a direction of paternal federalism to one of enlightened cooperation between sovereign States and the Federal Government, each working in its own sphere with recognized division of authority.

I believe that, if the United States Supreme Court continues with the type of decision that has been handed down of late, that the National Association of Attorneys General should support at least four specific courses of action:

First: The preparation of language clarifying the Tenth Amendment, to protect States' reserved powers in more certain terms—with its immediate recommendation to all 48 State legislatures.

Second: That a method be devised whereby the States shall have a greater voice in confirmation of appointments to the Supreme Court than now exists through the United States Senate.

The more one observes the path of the growth of America, the more compelling becomes the conclusion that politics should be left out of judicial decisions, and persons without prior judicial experience should not be appointed to the Supreme Court.

While 300 years ago it might have been appropriate for a scholar writing with quill pen to observe that "the law is a ass, a fool," we can no longer afford to have this considered to be the fact by people in a kinetic, dynamic society troubled with the awful awareness of the fact that society controls technologically the means to destroy itself, without at the same time having devised the means to live together in peace and trust.

Third: Specific continued support of legislation of the general nature of S. 654 and H.R. 3, as amended, designed to insulate against judicial legislation in derogation of State sovereignty.

Fourth: The appointment at this conference of a special committee on internal security, instructed to immediately confer with the interested federal agencies and with other national groups, including the American Bar Association, with a view to preparation of legislation for introduction at the current session of Congress, designed to undo as great a portion of these recent decisions as is possible short of constitutional amendment.

The chairman of this special committee should be further instructed to present the committee's recommendation to the permanent executive committee of this association and, with its approval and authority, to appear before the Congress of the United States in support thereof.

On any theory, a determined few on the Supreme Court of the United States have by these decisions mortgaged, if not destroyed, the reasonable attempts of hard-working, loyal Americans, including such as J. Edgar Hoover and the Federal Bureau of Investigation, Francis E. Walter and the congressional committees, and State legislative fact-finding committees—whose methods in the great majority of cases have in no sense or manner been either unfair or overreaching—to keep check on the extent of Communist penetration and subversion in America.

These decisions have set the United States back 25 years in its attempt to make certain that those loyal to a foreign power cannot create another Trojan horse here.

Protecting "Disloyal Persons"

Beyond even this incredible, compelled conclusion is the dismaying fact that the Supreme Court has sanctioned protection of the dark corners of individual association with persons disloyal to America, and made infinitely more difficult, if not impossible, the taking of sworn testimony relating to subversive activity in the United States.

By equating lawful politics with Communism, it has been suggested to America and to the world that Communists and Communism may not, in fact, be subversive of our way of life at all—which is certainly contrary to the public record of Communism, which has proven to an overwhelming majority of Americans that Communism is the mortal enemy of freedom everywhere.

. . . Wyman: There is "undermining of national security"

There is no need to torture the memories of surviving loved ones to establish these facts.

On issues of loyalty to State and nation, the life of every citizen by American law should, and must, be an open book.

Gentlemen, the situation is serious, even appalling. These decisions strike a mortal blow at the very foundations of the American way, at the very principles in which we believe, those same principles that, when the "chips are down," find all loyal Americans ready to risk their very lives to defend and preserve. It is tragic to see such judicial undermining of national security and federal-State relations, as well as of the very foundation of free America's right to protect itself.

Foregoing are excerpts from an address by Mr. Wyman, president of the National Association of Attorneys General, at the 51st national conference of that organization, Sun Valley, Ida., June 24, 1957.

Senator Jenner's View—

"COURT HAS CHALLENGED AUTHORITY OF CONGRESS"

Following is an excerpt from an address by Senator William E. Jenner (Rep.), of Indiana, on the floor of the Senate, July 26, 1957:

There was a time when the Supreme Court conceived its function to be the interpretation of the law. For some time now, the Supreme Court has been making law—substituting its judgment for the judgment of the legislative branch.

There was a time when a Justice of the Supreme Court might dissent in a case of first impression, but could be relied upon to decide the next case involving similar points in accordance with the prior decision of the Court, notwithstanding his own prior dissent. This was because Justices of the Supreme Court respected the Court and respected the principle of *stare decisis*. Nowadays individual members of the Supreme Court are constantly busy defending their own positions, and a Justice who files a minority opinion on a particular point can usually be expected to stick to that opinion whenever the point is raised, thus keeping the Court constantly split.

—United Press

SENATOR JENNER

By a process of attrition and accession, the extreme liberal wing of the Court has become a majority. And we witness today the spectacle of a Court constantly changing the law, and even changing the meaning of the Constitution in an apparent determination to make the law of the land what the Court thinks it should be.

Laymen and lawyers, the legislative branch and the executive branch of Government, have come to recognize the predilection of the Supreme Court for making new law. Even the lower courts have come to expect it, with the result that it has become commonplace for decisions to be held up in lower courts waiting for the Supreme Court to make some new law that will apply to the case.

A particularly flagrant example is the case of Albert Blumberg, convicted in March, 1956, of violation of the Smith Act, but not yet sentenced, and now likely to be turned loose through application of the new doctrine enunciated by the Supreme Court in the Jencks case.

A jury convicted Blumberg in March of 1956; and in May of 1956 Judge Kraft in Philadelphia heard argument on a defense motion to set aside the verdict and for an acquittal. Judge Kraft never acted on that motion, and is free now to apply the Supreme Court's decision in the Jencks case to the facts and issues of the Blumberg trial held a year ago last March.

The Jencks case, as you know, is one of a group of very recent decisions which have gone even farther and faster than the Court ever has gone before in the direction of the left.

There can be no doubt that the total effect of these decisions of the Supreme Court has been to weaken the Government's efforts against Communism and subversives.

By some of these decisions, antisubversive laws and regulations have been rendered ineffective. States have been denied the right to fight subversion, and have been denied the right to bar Communists from practicing law. Violators of federal antisubversive laws have been turned loose on flimsy technicalities. Confidential files of the FBI and of other investigative and law-enforcement agencies have been opened up to "fishing expeditions" by defendants and their counsel. The Court has challenged the authority of Congress to decide upon the scope of its own investigations and the right of a congressional committee to make up its own mind about what questions to ask its witnesses.

Many pending cases may be affected, and an undetermined number of cases already settled may be reopened, as a result of recent decisions of the Supreme Court, regardless of what Congress may find it possible to do toward curing the situation, because while Congress cannot make a new law that will affect a case already tried, the Supreme Court can and does. The Supreme Court can change overnight a rule of law a hundred years old, and can make the new rule apply to all cases under way, and provide a basis for reopening cases already tried which involved the point covered by the new rule.

There is no way for Congress to invalidate or repeal a decision of the Supreme Court of the United States, even when that decision is legislative and policy-making in nature. Congress can in some cases strike down judge-made law by enacting new law, or by correcting the Court's error respecting the intent of Congress, by a new declaration of intent. This power of the Congress should be exercised to the maximum, of course; but it will not fully meet the situation. The Court has become, for all practical purposes, a legislative arm of the Government, and many of its feats are subject to no review.

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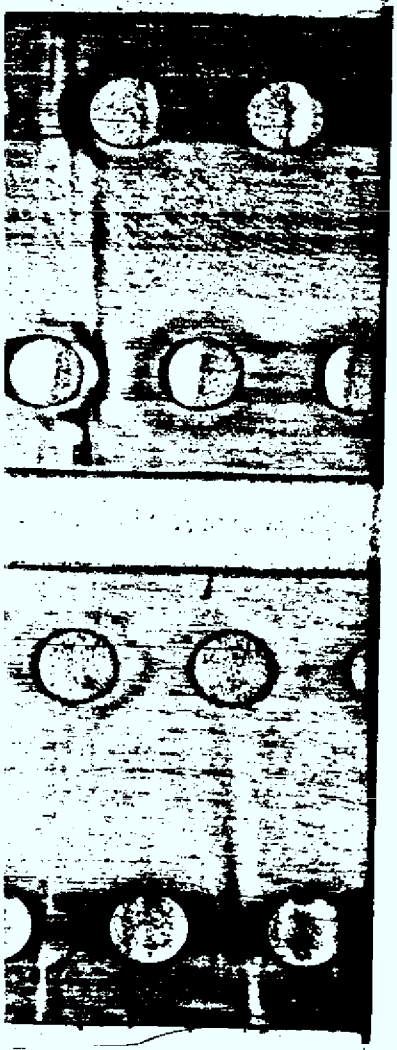

0-16 (Rev. 8-7-56)

Seasoned Judges Asked For the Supreme Court

TO the N. Y. Herald Tribune:

Macaulay said: "Men are never so likely to settle a question rightly as when they discuss it freely."

Discussion is the road to truth.

I am a layman but have accepted my own assignment to be critical of some of the Supreme Court's recent decisions. Many others have misgivings parallel to my own respecting the drastic "liberal" attitude of the Supreme Court.

Should the saying, "To the victors belong the spoils," apply to the appointment of judges?

The original blame for recent Supreme Court "laws" attaches to the President and Senate, who have put these inexperienced reformers of society on the court.

No one should be named to the court who is not a seasoned judge with at least ten years' experience on a state supreme court or United States Court of Appeals. The Senate should be the watchdog, and use great care to decide whether a Presidential appointee to the Supreme Court is qualified. It has not done this.

None of Ike's appointees qualify as experienced judges. Warren was never a judge, and apparently his appointment was largely political. Harlan had only one year on the bench. Brennan, appointed two weeks before the 1956 election, had only four years on the bench. Whittaker, apparently a pretty good man, was an unknown, with about three years' experience on the bench.

Charles Evans Hughes An Exception

Not one of the nine was a seasoned judge before being appointed.

The fault lies with Roosevelt, Truman, Eisenhower and the Senate Judiciary Committee.

Occasionally a man like Charles Evans Hughes, who has never had judicial experience, turns out O. K. But Hughes was a lawyer anyway, one of the top two or three in the United States.

Even a left-winger, named as United States district judge, generally acquires a feeling of responsibility to the Constitution after years on the bench. But to name men with little or no judicial experience to the United States Supreme Court is a crime against the people.

Redeeming society is not a job for Supreme Court judges. That should be left to Congress, the state legislatures and the people. The Constitution says: "All legislative powers herein granted shall be vested in a Congress."

Criticism of recent decisions won't do much good (but some), unless it is directed at the people who nominate and confirm appointments to the bench.

I think these judges have an unconscious "guilt complex." They have gone so far in rewriting the Constitution and laws on big questions, like integration, interstate commerce, and general welfare, that they salve their consciences by leaning over backward as "strict constructionists" with respect to the supposed rights of individuals.

Supreme Court And Free Enterprise

To the Supreme Court, free enterprise is a fine thing until it becomes successful; then the court, not Congress, assumes the right to regulate its size—to decide whether a business is to grow, to stand still, or to become smaller. But that is devastating to a "government by law, and not by men."

The late eminent Justice Brandeis, of the Supreme Court, once said: "Our government, for good or ill, teaches the whole people by its example."

When unqualified men are appointed by Presidents merely for political purposes, the result creates a lack of confidence in the Supreme Court's rulings.

A far-reaching proposal is being considered by the American Bar Association's committee on the Federal judiciary, recommending that Federal judicial appointments be "completely removed from the area of political patronage," and that "appointments should be made from among judges and lawyers possessing the highest qualifications."

This is of the greatest import when we consider the vital function of the Supreme Court to interpret laws. The high court should give long consideration, respecting any decision to undermine the Constitutional direction of our way of life.

The Supreme Court has no right, under the Constitution, to act as a legislative body.

E. P. HUTTON.

New York, Aug. 6, 1957.

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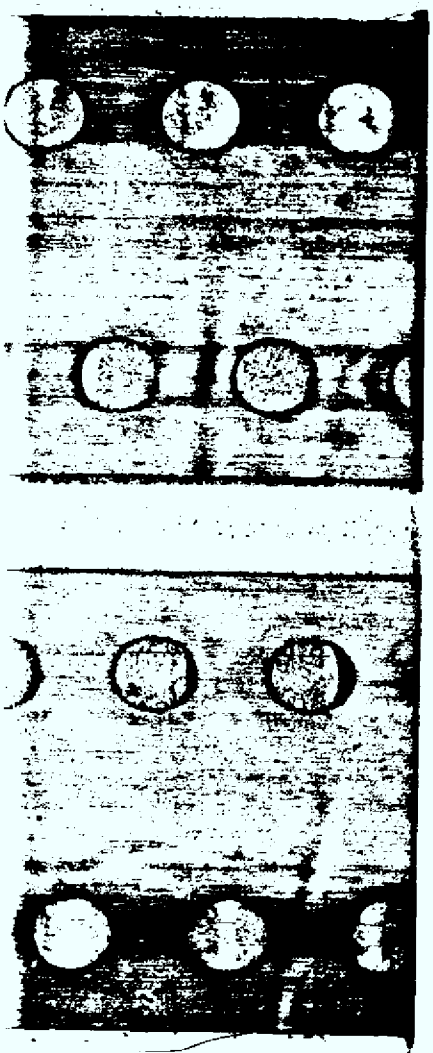
New Leader

Date AUG 10 1957



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Bar Urges Full High Court Law

WHITE SULPHER SPRINGS, W. Va., Aug. 10 (AP).—The Virginia State Bar Association called on Congress today to prevent the United States Supreme Court from rendering decisions when less than a majority of its members are present.

A resolution passed at the closing business session of the association's 67th annual meeting here said "important decisions of the Supreme Court have at times been given with less than a majority."

It urged Congress to enact a law, or amend existing ones, to prevent this from happening.

Vital decisions of the High Court should be made with a "full bench," the resolution said. It suggested that the judges of the several circuit courts of appeals be designed to sit in rotation to fill Supreme Court vacancies that occur from time to time.

Kuykendall Elected

J. Sloan Kuykendall of Winchester earlier had been unanimously elected president of the VSBA, succeeding Edwin B. Meade of Danville. David J. Mays, Richmond lawyer and Pulitzer prize-winning biographer, was named president-elect, a new office. He will become president of the association next year.

The convention was to end tonight with an address to the final session by Gen. Alfred Gruenther, president of the American Red Cross.

As a result of joint resolutions of the Virginia General Assembly addressed to the State bar association, the association today officially indorsed several proposals dealing with prospective State laws.

For the most part, the association upheld recommendations of the legislation and law reform joint committee of the association and the Virginia State bar.

Insanity Issue

One proposal indorsed today was that insanity should not be grounds for divorce in Virginia, as an existing statute provides. On this question, the association membership ignored a committe recommendation to the contrary.

Also the association urged that it should be left up to each individual court to decide whether divorce cases should be handled by a special commissioner. In addition the attorneys rejected the idea of giving divorce courts the right to divide the real estate of persons seeking a divorce.

A committee recommendation to the effect that court reporters should not be required in all courts of record in the State was reversed. The membership decided that court reporters are necessary in all the courts.

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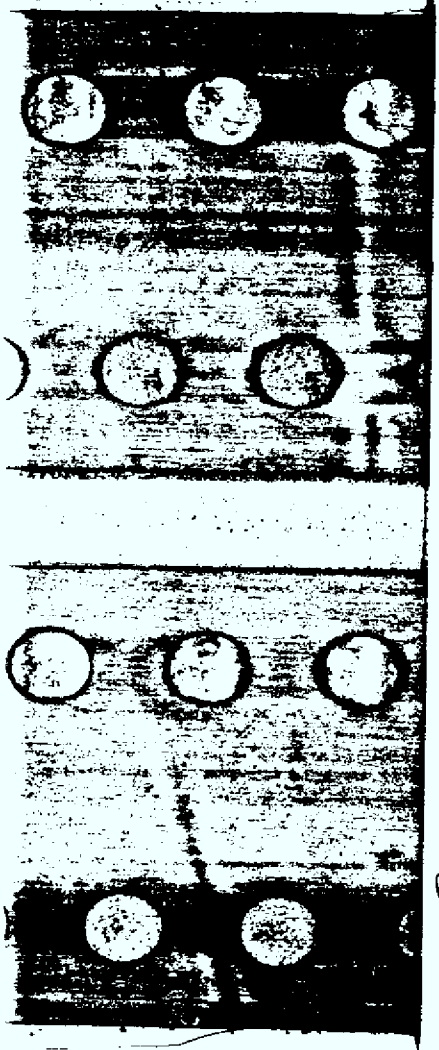

RED DANGERS SEEN IN HIGH COURT RULINGS

Manion Notes Protests Across Nation

Under Chief Justice Warren, the United States Supreme court's decisions "have invited the serious charge that its strictest construction of constitutional safeguards is reserved for Communists and Communist sympathizers," Clarence Manion declared last night. He spoke over W-G-N and the coast to coast Mutual network.

"In the senate and thruout the country," Manion said, "there is a rising clamor of protest against the gratuitous assertion of power by federal judges generally, and particularly by the judges who now compose the Supreme court.

Holds Laws Nullified

"The unwavering consistency with which the present Supreme court has nullified the effectiveness of federal and state laws against communist subversion and encouraged the hostility of pro-communist witnesses before congressional investigating committees has subjected the court justices to a storm of bitter criticism in Congress and out.

"Sen Jenner [R., Ind.] has called these Supreme court decisions a victory for treason and has introduced legislation to strip the court of its present power to review judicial decisions in a variety of cases where communist subversion is an issue."

Manion then turned to the Supreme court's action in permitting Japan to try an Ottawa, Ill., soldier, William S. Girard, in the death of a Japanese woman.

"Justices Underestimated"

"In legal circles," he said, "there was a general expectation that the Supreme court would lean over backwards to give the soldier the same meticulous constitutional coverage that it previously had extended to a score of Communists who had appealed to its judgment from convictions in state and federal courts. But the lawyers had underestimated the imperious isolation in which these lifetime, last-word justices now operate.

"The eight justices who remained in Washington to hear the Girard case brushed off its important constitutional issues in a hasty, unsigned, but unanimous decision which effectively turned the civil rights of a million American service men over to the tender mercies of Mr. Dulles' state department.

"In the Girard case, the Supreme court effectively decided that foreign service men are made second-class citizens and that they do lose their constitutional rights when they are sent to foreign countries, but the decision fails to explain why this has happened and is deliberately misleading in its citation of authority for this important conclusion.

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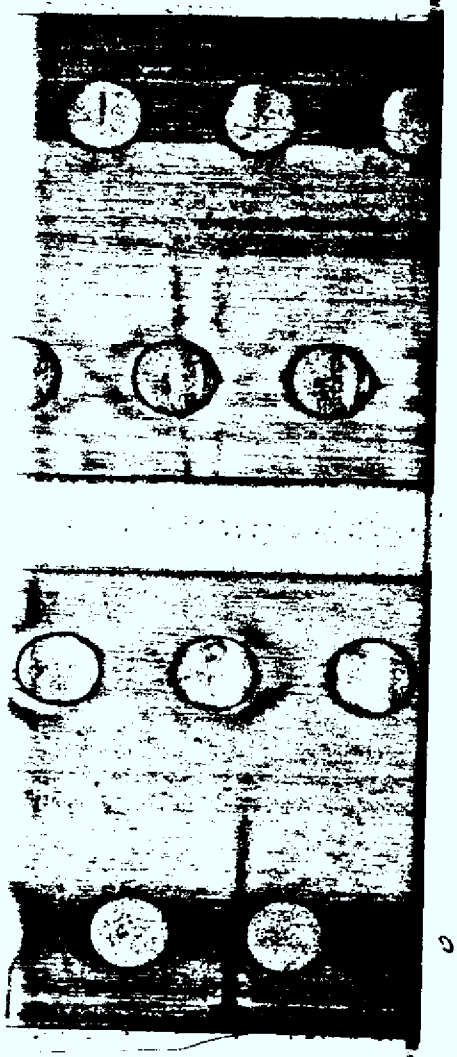
Supreme Court



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Today in National Affairs

Recent High Court Rulings Called Damaging to Nation

By DAVID LAWRENCE

WASHINGTON, Aug. 14.—Somewhere the several Justices of the Supreme Court of the United States are on vacation, but it is hoped that they have time to read the newspapers and learn of the damage that has been done to the security of the United States by some of the decisions recently rendered by a majority of the court. Justice Tom Clark, himself a former Attorney General, can take satisfaction from the fact that he vigorously dissented and predicted the injury that would follow.

Lawrence

For the director of the Federal Bureau of Investigation, J. Edgar Hoover—the man primarily responsible for the conduct of the investigative process of the Federal government—cries out against what is happening as a result of the court's ruling that F. B. I. confidential files can be exposed in the court room to Communists. This is helping them in their efforts to outmaneuver and outwit the United States government and to serve the cause of the enemy.

"Since the Jencks decision," writes the head of the F. B. I. to the minority leader of the House of Representatives, Joseph W. Martin, "we have faced one obstacle after another. We have experienced instance after instance where sources of information have been closed to our agents because of the fear that the confidence we could once guarantee could no longer be assured.

"We have also experienced a reluctance on the part of numerous citizens to co-operate as freely as they once did."

F. B. I. Hampered

"The fact that prior to June 3, 1957, (date of the Jencks decision) informed people knew that our files were inviolate has been a powerful factor in our ability to secure information."

The Supreme Court could have ruled that a judge had discretion as to whether any material taken from the files should be placed in the record, and the decision could have pointed to ways to preserve the F. B. I.'s confidences within existing law. But while the Supreme Court has been conscientiously protecting Communists and Communist sympathizers by upholding their right to conceal their activities from inquiring government agencies and Congressional committees, no such protection was given. Nor is this the only havoc wrought by the Supreme Court in recent decisions. Thus, police officials throughout the country are concerned because of the decision in the Mallory case which says that a suspect has to be "formally arraigned" before he can be questioned. A confessed rapist had to be released because of this decision. Rep. Kenneth Keating of New York, ranking Republican on the House Judiciary Committee, said a few days ago that, as a consequence of such rulings, [illegible] solve Federal crimes are being "shackled." Washington's police chief, Robert V. Murray, said the Mallory decision would "cause a substantial rise in crime and a drastic reduction in the solution of major criminal cases in the nation's capital."

Congress Upset

Congress in general is disturbed by what the Supreme Court has done but, because of the entanglements of the "civil rights" situation and the delays to other major bills, the way to remedial legislation to offset recent decisions of the Supreme Court has been temporarily blocked.

Significant, however, is the fact that the Internal Security subcommittee of the Senate Judiciary Committee has reported out a bill to curb the "appellate jurisdiction" of the Supreme Court of the United States. This is the first time since 1937 that any legislative step affecting the operations of the High Court has gone this far, though in recent months a variety of restrictive bills have been introduced.

The proposed law—which is in accord with the powers granted to Congress over the courts by the Constitution—would specifically provide that the Supreme Court shall have no jurisdiction to review any case which involves the validity of the jurisdiction of Congressional committees or actions of witnesses before such committees. It would also limit the court's right to deal with cases involving subversion against either the states or the Federal government.

Communists Made Happy

This is but part of a growing movement to make the Supreme Court aware of the fact of the Communist menace, which so often a majority of the justices tend to pooh-pooh or relegate to oblivion as if it was just an outcropping of foolish zeal on the part of a few harmless and misguided people. But lately, as Soviet spies have been arrested and counterspies have told their story, it would seem that not only is the "cold war" still going on but it apparently is being fought more intensively than ever on the battlefront inside America under the newly acquired protection of the Supreme Court's decisions.

A witness before the Senate Internal Security subcommittee who knows what's happening inside the Communist party has just testified that the Supreme Court's decisions have elated the Communists and stimulated them in their efforts to press their subversion and their espionage inside the United States.

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New Leader

Date AUG 15 1957

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58 AUG 27 1957

Supreme Court

JOHN TEMPLE GRAVES

High Court Helps NAACP, Hurts FBI Hunt For Reds

"What boots it at one gate to make defense,
And at another to let in the foe?"

★ ★ ★

What boots it to defend the South against the dim menace of "land and naval forces" in Part Three of the Civil Rights bill and at another gate-Part Four-to let in a Gestapo army of federal agents, inspectors, policemen, and subpoena servers!

★ ★ ★

Praising the bill as it stands, without noting how he damns it for us, Walter Lippmann rejoices that "it vests in the exective legal powers to intervene in Southern elections, to go into the federal courts for civil injunctions which, without jury trial, mean that imprisonment or fines can be imposed on those who violate the injunction. Why this should be called a weak bill is more than I can understand. For the procedure under civil contempt, which does not require a jury trial, is a very great power."

GRAVES

★ ★ ★

Columnist Bassom Timmons thinks the bill may be worse for the South, more discord and division, than the Supreme Court's school decision: "It sets up a bureaucracy in the Department of Justice with power to put aside state election laws, procedures and administrative relief, and in the name of the Attorney General to bring coercive legislation against states and state officials." The Civil Rights Commission "may send a horde of lawyers into the states . . . be a sort of roving grand jury . . . . . Insofar as Congress is concerned, its rights are limited to voting rights. It may roam the universe . . . . "

★ ★ ★

No wonder the NAACP's Roy Wilkins is urging passage. As he well says, it "provides the federal government with the instruments with which to enforce the right to vote . . . and promises wider implementation." Wide is no word for the federal onsweep into the South which the bill as it stands will make possible and which the NAACP will insist on with all its balance of power.

★ ★ ★

Have we defeated a phantom army only to be beaten by one of flesh and blood?

★ ★ ★

The greater criticism of the President about the bill is that he seems not the least alerted now against its original or remaining pitfalls even though he has had benefit of the analyses and second thoughts which turned the Senate and nation against so much of the original. Apparently he has no criticism either of the skulduggery attempted in the original.

★ ★ ★

"Schisophrenia" may have to do technically with mental disorder but it is popularly used for plain two-mindedness. As witness the schizophrenia of a Supreme Court ready and eager to strain the Constitution and reverse the precedents in favor of the NAACP but strict constructionist all the way against helping the FBI and the Congress catch communist subversives.

The Court calls its winks.

And Ike-vetoing for skulduggery by outsiders a gas bill he favored but ignoring skulduggery by his very own in the civil rights bill he favors.

★ ★ ★

Birmingham's Harrison Richardson has written the President a letter pointing out that "prejudice" is defined as "judgment or opinion without sufficient knowledge." "How could we be prejudiced against colored people when all our lives have been spent with them, ple who rarely ever see a colored person, much less talk or do business with one. Segregation like that is hardly qualified to tell Southerners about integration or to say Southerners pass judgment without sufficient knowledge."

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

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BALTIMORE

STATE TIMES
JACKSON, MISS.
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Arrogant Supreme Court

Among the audacious and illegal decisions rendered by the United States Supreme Court at its recent session was one depriving the states of the right to prescribe qualifications for persons who seek to engage in the practice of law. As well said by Senator Jenner, of Indiana, this is essentially and particularly a local matter, which each state must be permitted to decide for itself. Yet the Supreme Court of the United States, in the recent Schware and Konigsberg cases, affecting applicants for the bar in New Mexico and California, respectively, denied the right of a state to require an applicant for admission to the bar, in the course of being examined as to his character and fitness to practice law, to answer questions designed to elicit information about past connections and associations with Communists and Communist organizations, and denied the right of a State Supreme Court to find that the long-time association of an applicant with the Communist Party, as a member of such party, was a proper factor to be considered in determining the character and fitness of the applicant.

In the words of the resolution offered by Chief Justice Norman F. Arterburn of the Supreme Court of Indiana, at the recent meeting of the Chief Justices of the State Supreme Courts:

"The United States Supreme Court has transgressed sound legal principles, and in particular, usurped fact-finding functions. . .

"Moreover, the United States Supreme Court has encroached upon the jurisdiction of the state courts. . . .

"Although the United States Supreme Court has the authority to fix its own standards of character and fitness to practice in the Federal courts, we do not recognize nor concede that it may do so for the courts of the several states of this Union."

It may be there are other areas in which the appellate jurisdiction of the Supreme Court should be restricted or with respect to which such jurisdiction should be withdrawn.

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Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
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Mr. Holloman
Miss Gandy

BAUMGARDNER

FREDERICK SULLENS,
EDITOR
JACKSON DAILY NEWS
JACKSON, MISS.
8/24/57
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Byrd Scores High Court To 2000 at His Picnic

By Robert E. Baker
Staff Reporter

BERRYVILLE, Aug. 31 Senator Harry F. Byrd (D-Va.) today criticized the present crop of apples, Supreme Court justices and congressional legislation.

Speaking to 2000 politicians and apple growers gathered in his orchards here, Byrd said the present Supreme Court "wants to destroy the Democratic principles of our country."

He cited the 1954 school desegregation case, Girard case, "the decision opening FBI files" and others, stating:

"It is a very sad thing that, as Thomas Jefferson warned, the Supreme Court is the greatest menace to free government that we have."

He made the speech at his annual picnic. The first, 31 years ago, was a get-together for apple growers, but now the event is an annual excursion for Virginia's top Democratic politicians as well.

Looking hale and hearty and hardly the 70 years he is, Byrd appraised the session of Congress just ended:

"The only good thing that was done was to cut expenditures. If anything else good was done, I can't recall it."

He was particularly critical of the civil rights legislation enacted.

"What has the South done to deserve this treatment?" he demanded. "It is distressing for any Administration to try to pass any legislation so unjust, to force us to accept something we cannot accept

See BYRD, Page A12, Col. 3

and still maintain our form of living."

He called the jury trial provision of the final bill "a great victory for the South."

Byrd, speaking from one of his apple trucks, surrounded by cans labeled "Byrd Applesauce," took another verbal shot at one of his favorite targets—Federal District Judge Walter E. Hoffman, of Norfolk, who has declared unconstitutional the State's Pupil Placement Act designed to preserve school segregation.

He quoted Hoffman as saying the segregation issue never will be settled until the present leadership is changed. Said Byrd: "If that's the case, I hope it never will be settled."

When Byrd finished talking, he was given a standing ovation as apple experts began telling the crowd about the latest developments in the industry and the politicians left.

Governor Thomas B. Stanley was on hand as was the Byrd machine ticket of J. Lindsay Almond Jr., for governor, A. E. S. Stephens for lieutenant governor and Albertis S. Harrison for attorney general, whom Byrd introduced as the next state officers.

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W LY SUNDAY NIGHT BROADCAST R
ERICAN BROADCASTING COMPANY S ONS

by George E. Sokolsky, September 1, 1957

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

Civil Rights and the Supreme Court

The Supreme Court has had before it 29 cases dealing with questions of civil rights but involving in most instances criminals, spies, communists and other evil and malicious persons. In cases in which full opinions were prepared, nine were unanimous and in four the only dissenter was Justice Tom Clark. Occasionally Justice Frankfurter wrote a concurring opinion, particularly when he apparently felt that his brothers on the bench were running away with their logic.

The reason that the Supreme Court took this position is that because of changes in the Court during the Eisenhower Administration, the Court shifted from a majority that accepted a doctrine of strict construction of the Constitution to a majority that believes in such loose construction of the Constitution as to amount to independent legislative action.

The Commission on Law and Social Action of the American Jewish Congress has issued a brochure on the subject, highly praising this Court but on grounds which are clearly incorrect. After stating the change in personnel after the appointment to the bench of Messrs. Warren, Harlan, Brennan and Whittaker, this American Jewish Congress pamphlet says:

"The other crucial factor explaining the reversal of the Court's position is the sharp lessening of international tension during the past few years. When the Cold War was most severe, the fear of Communism within the United States reached extreme proportions. The Supreme Court reflected the popular mood and was reluctant to upset any government attempts to control internal subversion.

"With the easing of relations between the United States and the Soviet Union, there has been a substantial lessening of fear about domestic Communists as a serious threat to America. The Supreme Court both reacted to and helped shape this new climate of security by issuing a series of decisions that have moved the balance in favor of constitutional liberties."

This report was issued in August 1957 when the relations between the United States and Soviet Russia were at their lowest. Syria had just taken steps which virtually made that country a satellite of Soviet Russia. Egypt is conducting a violent anti-American campaign throughout the Arab world, particularly attacking Pakistan, because of its closeness to the United States, and Jordan for having come under American influence. Three Latin American Presidents had been assassinated by Communists, the theory being, in those countries, that if the top man is knocked off, chaos must result and that can lead to a Communist victory. Cuba is actually in a state of revolution, the Communists seeking to replace the Batista government with a United Front regime that can only result in Communist control. The same effort is being made, but less successfully, in the Dominican Republic. British Guiana has elected a Communist government.

The Disarmament Conference in London is a failure.

At the same time, a violent propaganda is being waged in the United States for the recognition of Red China by the United States ~~and the United Nations~~.

As a part of this propaganda, the American passport is being reduced to a meaningless, purposeless scrap of paper that is no longer respected in many parts of the world.

Cold War dead! How can any intelligent person who has any familiarity with current conditions in the world ignore the fact that we are in the center of the Cold War, probably in its worst period, what might be called the Egyptian period, and that there are all the dangers of a fighting war in the Syrian situation?

# # #

There are wide differences of opinion concerning the Supreme Court decisions, some holding that they represent a reaffirmation of the Bill of Rights; others holding, as I do, that they can only lead to anarchy and that they imperil the United States. But it is impossible, under the American Constitutional system, to justify these decisions on the grounds that the American Jewish Congress does. Because what this pamphlet before me seeks to establish, it seems to me, is that the Supreme Court is a political rather than a juridical organ of government and that President Eisenhower packed the Court for this purpose and I quote from the pamphlet:

"As a result of these shifts of personnel, the core of conservative votes that dominated the Court during the Vinson era has been replaced by a liberal group consisting of Justices Warren, Black, Douglas and Brennan. This bloc needs the vote of only one other Justice, in order to command a majority of the Court."

The accusation here is not only against President Eisenhower, of abusing his power of appointment, but against the Senate Judiciary Committee, headed by Senator Eastland, of confirming improper justices, and against Justices Warren, Brennan and Whittaker of accepting a seat on the Supreme Court bench for improper purposes. It is impossible to believe such nonsense, no matter how much one disagrees with the opinions of the learned justices.

# # #

Congress has corrected one of the errors of the Court. This is in the matter of the Jencks Case, the decision of the Court having opened the files of the FBI to kidnappers, murderers, Communists, spies and other criminals. It is true that the Supreme Court had no such intention, that its decision applied only to criminal cases and only required that such documents be made available to defense counsel as would assist the defense. However, already judges in the lower courts have been giving the Jencks Decision the widest interpretation, calling for the production even of raw FBI files. It is therefore absurd to assume that an undefined access to these files is safe; it only gives shyster lawyers a Roman holiday.

The O'Mahoney Bill, in the Senate, was amended under the aegis of Senators Clark of Pennsylvania, Javits of New York and Morse of Oregon who succeeded in so watering down the bill as to make it useless. The Keating Bill, in the House, was better, but the same trickery was employed, principally under the leadership of Representative Emanuel Celler of Brooklyn, Chairman of the House Judiciary Committee. However Celler's efforts failed and the House of Representatives passed a good bill.

# # #

As necessary as it has been for the Jencks Decision to be corrected by

Congress, even more important, it seems to me, is it necessary to correct the error in the Mallory Decision. This is a case involving a rapist who confessed to this dastardly crime while being held by the police of the District of Columbia. The Court let this rapist go free, not because he was not guilty, but because the police held him too long between arrest and arraignment and asked him questions after he was arrested.

Speaking practically, the Mallory Decision makes police work impossible. The police will have no techniques available to them to hold suspicious persons. It is growing increasingly difficult to fight crime, particularly in our big cities where the nature of crime has changed from robberies, burglaries, arson and larcenies, to juvenile and sex crimes, including rape and murder related to rape and fetishism. In cases of this nature, the police usually are called in too late into the situation, when clues are cold and the case has to be built block by block out of suspicions and general information. Under the Mallory Decision, it is likely that the police will have fewer weapons at their disposal. They will be hampered by criminal lawyers who will employ both the Jencks and the Mallory Decisions against them.

Only "hot house" lawyers could have handed down such a decision as the Mallory.

# # #

Sound American doctrine accepts the view that the defendant is entitled to know the nature of the felonies or misdemeanors with which he is charged; to be faced by his accusers; and to have a trial in an open court before a jury of his peers and represented by counsel. But this does not mean that the police power of government should be abolished and that government should have no means to protect the life and property of its people. Such a course is anarchy. Only Pharisaic mentalities, living in a vacuum, could believe in such an anarchy.

# # #

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

# # #

The Wisconsin election to fill the Senate seat of the late Joe McCarthy was won by the Democrats in an astonishing upset. Walter Kohler, who had been Governor of Wisconsin for three terms, who had the support of President Eisenhower and who has been regarded as an Eisenhower man, was roundly defeated.

It was a defeat for Eisenhower and his Modern Republicanism. It means that enough Republicans in Wisconsin voted Democratic or did not vote at all to make the difference. The ghost of Joe McCarthy walked in that election.

# # #

THANK YOU. THIS IS GEORGE SOKOLSKY. GOOD NIGHT.

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A TRIAL TO REMEMBER: SAMUEL CHASE

Digging around in histories and reference books for material for our "Americans to Remember" Sunday editorials, we've run across the story of an almost forgotten trial which we think Americans today should by all means remember.

Samuel Chase

It was the trial on impeachment charges of a U. S. Supreme Court Associate Justice, no less. The story seems well worth retelling in these days, when more and more of us are wondering what if anything can be done to persuade the Earl Warren Supreme Court to quit giving aid and comfort to the Communist enemy in time of cold war.

Incidentally, worry about the Supreme Court is nothing new. As long ago as 1823, Thomas Jefferson wrote to a friend of his that "there is no danger I apprehend so much as the consolidation of our Government [into one all-powerful organization based in Washington] by the noiseless, and therefore unalarming, instrumentality of the Supreme Court."

Still earlier (1821), Jefferson had written another friend that "it has long . . . been my opinion . . . that the germ of dissolution of federal government is in the constitution of the federal judiciary; an irresponsible body, (for impeachment is scarcely a scare-crow), working like gravity by night and day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one."

* * *

The Supreme Court justice referred to above found that impeachment was something more than the mere scare-crow which Jefferson believed it to be.

This jurist was Samuel Chase (1741-1811).

Chase was elevated to the Supreme Court from the Maryland General Court in 1796. His new eminence seems to have gone to his head, and he shortly became a bulldozer and a browbeater of attorneys and court attendants. On two occasions, eminent lawyers walked out of court because of Chase.

Bully on The Bench

Once he left the Supreme Court without a quorum while he went on a political speechmaking tour.

In a couple of cases tried by the court in 1800, Chase twisted the law unmercifully in order to bring in decisions for the parties he favored.

Supreme Court

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In February of 1803, Justice Chase delivered a long-remembered speech to a grand jury in Baltimore. In this diatribe, he screeched that the United States was going to hell in a handbasket because Congress was passing laws affecting the federal judiciary, setting up universal suffrage, and acting in various other ways which he didn't approve. The Executive branch came in for a similar cussing-out. We should, Chase concluded, become a monarchy.

* * * *

That speech tore it. President Thomas Jefferson read it, and immediately suggested to Rep. Joseph Nicholson of Maryland that Chase should be impeached.

Jefferson kept in the background, as befitted the President. The impeachment was moved in the House by the famous and fiery John Randolph of Roanoke, Va., and the House on Nov. 30, 1804, indicted Chase on eight counts.

Chase Got Away With It—But—

His trial by the Senate ran from Jan. 2 to March 1, 1805. Chase might well have been convicted by the necessary two-thirds vote of the Senate, had somebody besides John Randolph been attorney for the prosecution.

Unluckily for Chase's foes, Randolph was a good deal better at making a fierce, dagger-sharp speech than he was at handling a trial in a court. His conduct during Chase's trial in the Senate seems to have been just about as offensive as Chase's own rudeness on the bench had been.

Chase eventually was acquitted, though the Senate came within four votes of convicting him on one of the eight counts. He resumed his seat on the Supreme Court, where, says the Encyclopedia Americana, "he continued to exercise his judicial functions with the highest reputation till 1811, in which year his health failed."

So Chase got away with his misconduct. But the fact remains that Congress finally called him on it, and his impeachment made him a sadder, wiser and more cautious man.

It seems unnecessary to point out the moral of all this to presentday Americans.

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Supreme Court

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JENNER ...ULD CURB HIGH COURT'S POWER

WASHINGTON, July 26 (AP)—Senator William E. Jenner, Republican of Indiana, urged Congress today to deny the Supreme Court the right to hear appeals of cases involving state or Federal charges of subversion or contempt of Congress.

"I will introduce legislation immediately to remove the Supreme Court's appellate jurisdiction in the matters listed above," he said in a speech that denounced the court.

Senator Jenner said such a move would be constitutional. He quoted Article III of the Constitution: "'The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.'"

The Senator said that as he read the words, they told Congress that it had "full, unchallengeable power to pass laws immediately which would deprive the Supreme Court of appellate jurisdiction, both as to law and fact," in the areas he cited.

Senator Jenner said he was proposing the legislation because he believed that the court was "undermining efforts of the people's representatives at both the national and state levels to meet and master the Communist plot."

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

Supreme Court

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N. Y. TIMES
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High Court's Decisions On Subversion Debated

By HOWARD L. DUTKIN

Recent Supreme Court decisions in cases involving subversion were praised as "a dike against tyranny" and roundly criticized as "giving unwarranted protection to Communists" by opposing speakers addressing an overflow meeting of the District Bar Association last night.

The session, held in the Mayflower Hotel, revolved around the topic "In What Direction is the Supreme Court Headed?"

Characterizing the high court's decisions as "dead right" was Charles P. Curtis, Boston lawyer and author. Presenting a sharply divergent opinion was Louis B. Wyman, New Hampshire attorney general. Thurman Arnold, a former judge of the U. S. Court of Appeals for the District was moderator.

Four Major Cases

Highlighted in the discussion were the following cases:

1. Jencks, in which the Supreme Court ruled that pertinent reports of FBI witnesses who testify against a defendant must be opened to his inspection.

2. Yates, in which the court held that the Smith Act does not prohibit advocating or teaching violent overthrow of the Government as an abstract principle divorced from any effort to instigate action.

3. Sweezy, in which the court held that a contempt conviction of a man who refused to answer questions of a New Hampshire legislative committee as to a university lecture he gave violated his Constitutional rights to due process of law.

4. Watkins, in which the court held that the subject of a Congressional inquiry and the pertinancy of any questions must be made clear to a witness.

Referring to the Jencks decision, Mr. Curtis declared: "All it did was to tell the Justice Department to put up or shut up."

Clark Remark Cited

The speaker asserted that the case would not have raised "such a stir if Justice Clark had not made what seems to me an egregiously uncalled-for remark when he said that 'unless Congress changes the rule, intelligence agencies might as well be up shop.'"

Speaking of the Yates case, Mr. Curtis emphasized that the point as he saw it was the "deep difference between belief and action." He said that, in that case, the court had to decide whether "we and Congress are too scared and too angry to look at things and think clearly."

Of Sweezy, the speaker declared the New Hampshire authorities "neglected one thing—the respect we all owe to the thought we hate." He told his listeners that he, too, would have declined to answer questions about university lectures or his friends' affiliations unless "I too thought they were subversive."

Mr. Wyman hammered at the point that a wide gulf separates political belief from membership in or advocacy of "the Communist Party conspiracy to do violence to all things we hold dear."

Sees Encouragement

He declared "these decisions quite literally offer real encouragement to increased Communist activity . . ."

The freedom of speech and belief amendment should be no defense where the question of communism is involved, Mr. Wyman asserted.

"Every American citizen. . . . has the obligation. . . . that on issues of loyalty to State and Nation his life must be an open book. . . ." the speaker declared, adding that the Fifth Amendment against self-incrimination and not the First Amendment is the that could be invoked.

Attacking the Yates decision, Mr. Wyman declared that as a consequence, "you can give lectures in school and teach that eventual overthrow of our free system of competitive enterprise is coming and nothing can be done about it."

He noted that such teaching can be especially harmful if the audience is young and impressionable.

Sees Progress Voided

The court decisions, he said, sharply limited the investigative process at a time when communism poses a serious menace.

"Much of the progress that has previously been made in checking Communist activity has been wiped out by these decisions, which in turn have assigned a nebulous formula to the Smith Act's proscriptions and pronounced ephemeral concepts of pertinency which will permit a witness to cite Sweezy or Watkins as a reason for refusal to answer with the net result that nobody will really know what he means, yet he cannot be prosecuted for contempt because the decisions are that vague."

Mr. Arnold summed up the evening's discussion saying the question at issue was: "Is there a type of orthodoxy so dangerous that it should be outlawed even though it cannot be shown to lead to action?"

David G. Bress, president of the association, announced that the topic for next month's meeting would be "The Atomic Age and Its Impact on the Lawyer."

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TOP CLIPPING
DATED 9-18-57
FROM NY Mirror
MARKED FILE AND INITIALED

CAPITOL STUFF

By JOHN O'DONNELL

Washington, Sept. 17.—Report from the banks of the Potomac:

Politically speaking, it's mighty lonesome down here. The White House is vacationing on the site of a onetime poorhouse set up in Newport by the founding fathers of Providence (Rhode Island) Plantation. Most Senators and Congressmen have high-tailed it out of town. Some have taken families, others took families, plus good-looking secretaries, to probe the major problems confronting broken down and second-rate foreign countries. Most of them, however, have gone home to figure out what they can do to get reelected come November, 1958.

Prime Minister Macmillan
Wisecrack aimed at him

The Supreme Court justices, as you've probably noted, are far, far away from their benches. This two-year-old segregation decree of theirs is getting a bit too hot to handle.

One of the legal brothers came up with the traditional dinner table "now don't quote me" overture to the remark:

"If you think our decision has created basic racial turmoil in Little Rock and elsewhere, why don't you look up what's happened up in Canada? Or down in Mexico?"

Well, this reporter did just that. We never knew that Canada had political headaches over racial segregation in its public schools.

Then, in the current issue of the British weekly news letter Candour, we read these illuminating paragraphs which made this American wince.

...Under the heading "Red Indians Set Example" came the r...
..."The Ojibw... Indians of the Garden River reserve in Ca... have won a ... victory for the cause of their own blood. Ott... had decreed t... the children of the Indians should be 'integra... in the public s... system. The Ojibway tribe strenuously objec... and after an ...t-month battle the Canadian government climbed down. ...dian children are to be brought up as Ind... children and not as synthetic whites."

Here Before the Supreme Court

The problem of the public school integration of the noble men (who, after all, happened to own Canada and the United St... long before the forebears of any member of the U. S. Supreme C... or the Canadian ministry ever saw these shores, and generati... before the white invaders imported slaves from Africa) cre... confusion.

Like our Supreme Court back in '54, the judicial ukase from Canadian capital in Ottawa ordering the admixture in the pu... schools in Ontario of the children of some 15,000 Ojibway Ind... was bitterly resented—and by the Ojibways.

There are an equal number of this Ojibway tribe in the Un... States. We usually call them Chippewas. All are descendants of ... basic Algonquin group which proudly held the hunting grounds ... the Great Lakes and stretched their authority westward from Lak... Erie and Huron to Minnesota and Canada's Manitoba.

So here we have a strange situation—from which we mi... learn a lesson. The tribal chieftains have gone to Ottawa and plum... declared that they refuse to have their segregated Indian scho... opened to white children and furthermore don't want their child... to be sent to white schools. Importantly, the native Americans m... their decision stick.

A Crack Aimed at Prime Minister

All of which brought the sardonic crack from London, direc... at Prime Minister Macmillan—but most timely for American c... sideration in our days of racial headaches—which reads:

"It is indeed strange that nowadays one should have to go ... far afield as the Garden River reserve in Canada or the Masai ... serve in East Africa to be sure of finding pride of race and the ... termination to maintain their own distinctive traditions. Would ... not be a good idea if Harold Macmillan and his internationalist ... leagues in the cabinet could be prevailed upon to go and live fo... period with the Ojibway Indians in the hope of discovering th... secret?"

It will be a hilarious twist for the historians a thousand ye... hence, if any of us survive a large, economy-size hydrogen bo... to chew over the idea that the natives of the North American co... tinent were the one submerged group in the most powerful militar... area which vigorously persisted in its insistence on racial purit... and finally managed to survive. Strike the tepees, you braves, a... scalp the squaw man!

The Frenchman Jean Dutourd, in his swell novel, "The Ta... of the Marne," reveals that he loves his Gallic race, his country, ... traditions, its superb past, but finally realizes with sad anger th... its life blood has been diluted and drained—the same fear whi... impels the last of the Algonquins to protest admixture with t... paleface.

As American reviewer Revilo Oliver wrote:

"This angry and despairing book is born of one clear insigh... That world unity and peace are 'the visions dreamed by dyi... nations which have nothing to lose by them'. M. Dutourd knows, ... all men who are not cowards know, that in the last analysis, natio... live and die by blood and steel alone. And knowing this, he has ... courage to love his country. Amid the shrill gabble of homunc... who try to substitute words for facts, he affirms the ancient faith ... men who are spiritually as well as physiologically male: dulce ... decorum est pro patria mori."

And then this searing drop of acid truth:

"This is a book that will dismay the epicene little intellectu... who twitter in our State Department, and blanch the cheeks of ... sleek eunuchs who fawn upon female voters with sweet nothi... about the impossibility of war. If France can yet produce men, wh... not the United States?"

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Capitol Stuff

By John O'Donnell

(NY Daily News, Sept. 18)

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Mr. Trotter
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Tele. Room
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Miss Gandy

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Washington, Sept. 17----The Supreme Court justices, as you've probably noted, are far away from their benches. This two-year-old segregation decr of theirs is getting a bit too hot to handle.

However, one of the legal brothers remarked, "If you think our decision has created basic racial turmoil, why don't you look up what's happened up in Canada?" Well, I did. In the current issue of the British weekly news letter Candour, we read these illuminating paragraphs which made this American wince. Under the headline "Red Indians Set Example" came the repo "The Ojibway Indians of the Garden River reserve in Canada have won a great victory for the cause of their own blood. Ottawa had decreed that the children of the Indians should be 'integrated' in the public schools system The Ojibway tribe strenuously objected, and after an eight-month battle the Canadian government has climed down. Indian children are to be brought up as Indian children and not as synthetic whites."

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All of which brought the sardonic crack from London, directed at Prime Minister Macmillan--but most timely for American consideration in our days of racial headaches: "It is indeed strange that nowadays one should have to go as far afield as the Garden River reserve in Canada...to be sure of finding pride of race and the determination to maintain their own distincti traditions. Would it not be a good idea if Macmillan and his internationali colleagues in the cabinet could be prevailed upon to go and live for a perio with the Ojibway Indians in the hope of discovering their secret?"

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High Court Is Human

By Peter Edson

THE word of the U. S. Supreme Court is law and it never defends its decisions. None of the justices has ever made a speech to answer any of the many critics of its recent civil liberties decisions, tho they have brought on a torrent of abuse and even a congressional investigation.

Associate Justice Harold R. Burton, however, yesterday made an informal talk before a small group of ex-Clevelanders here in Washington, in which he presented the court as an extremely human institution, as well as the permanent keystone of American government. Justice Burton was mayor of Cleveland and senator from Ohio before he was named to the court 12 years ago.

Incidentally, Justice Burton thinks that only good will come out of the House Judiciary sub-committee investigation of the court next year.

Most of the proposals now being made to limit the Supreme Court or reform it were really made when the U. S. Constitution was being drafted 170 years ago, says Justice Burton.

One proposal is that the President be restricted to experienced judges in his Supreme Court nominations. This is aimed at people like Justice Burton himself, who was a city law director tho he never sat on the bench, and at Chief Justice Earl Warren, California's ex-governor but never a judge.

Since there are no restrictions in the Constitution on whom the President may nominate to the Supreme Court, any new restrictions would be unconstitutional, in Justice Burton's opinion. He points out, however, that the Senate already has complete authority to impose or omit uniform standards for justices when it rejects or confirms each nomination.

Other proposals are being made to remove Supreme Court justices from the bench for unpopular decisions. This was also proposed in 1787. The idea was that Congress might remove justices by joint resolution. This would have been murder, says Justice Burton. The proposal was voted down, eight states to one.

Instead, provision was made for House of Representatives impeachment of justices, the President and all other Federal civil officials, if convicted by a two-thirds vote in the Senate. No Supreme Court justice has ever been impeached.

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Supreme Court.

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0-16 (Rev. 9-7-56)

Today in National Affairs

Ways Congress Can Check Supreme Court Are Listed

By DAVID LAWRENCE

WASHINGTON, Sept. 18.—Many people are asking how, if public sentiment desired it, a decision of the Supreme Court of the United States can be reversed.

There are many ways. In the past a Constitutional Amendment has at times been found necessary, but where the Supreme Court goes beyond its function and legislates or when it sets itself up as a trial court and refuses to hear evidence on both sides—as happened in the "desegregation" case of 1954—then Congress can take a hand and pass a law specifying rules for the Court to follow thereafter.

Lawrence

In the "desegregation" decision of 1954, the Supreme Court decided the case primarily not on questions of law or interpretation of the Constitution, but on the basis of what it deemed psychological or sociological considerations. Although the writings of some sociologists—one of them a prominent Communist sympathizer—were cited by the Supreme Court, no opportunity was given for cross-examination or refutation of those sociologists nor for the introduction of contrary evidence from other witnesses. The trial court itself had received no evidence on the subject because the psychological issues were not raised there.

When the supreme tribunal renders a decision without hearing all the evidence or when it disregards the lack of evidence in a trial court below, there is bound to be resentment. Congress can remedy the situation by enacting a law specifying that the Supreme Court take into consideration the evidence on both sides of a dispute. In recent months the Supreme Court has been especially solicitous about Communists and has reversed decisions where the credibility of some witnesses had been challenged, not in the same case but in other cases. That's going pretty far even to help the case of Communists charged with sedition. Certainly, the people of the South are entitled at least to a parity with Communists.

Quotes Constitution

The right of Congress to formulate rules for the Supreme Court to follow is derived from Article III of the Constitution, which says:

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

This could be applied so that Congress would not let the Supreme Court have any jurisdiction whatsoever in the future in certain cases and the final decisions would be rendered by state courts in each locality. This has happened before in American history, especially in controversies arising in the Reconstruction era.

Some letters received by the writer recently have argued that Congress cannot write rules for the Supreme Court in those cases "in which a state shall be a party." But it seems to have been overlooked that there never has been a clear-cut decision by the Supreme Court itself as to when a state is really a party to a lawsuit. Thus, when citizens sue a school board, the Federal courts hold that the suit is against the individuals who happen to be members of such a board, because, it is argued, if the board has exceeded its powers, its actions should not be considered "state action." It isn't the state but the individuals "acting under color of law" who are sued.

Eleventh Amendment

At any rate, the Eleventh Amendment to the Constitution, adopted in 1798, specifically reserves to state courts the jurisdiction of suits between citizens and a state. It prohibits the exercise of such jurisdiction by all Federal courts as well as by the Supreme Court of the United States.

If the American people, however, wish to give back to the states all rights and powers—taken from them by a Supreme Court decision—to deal with public schools and educational matters, a Constitutional Amendment would be the most effective method. Such an amendment could declare that "notwithstanding Article IV and the Fifth and Fourteenth Amendments or any other provisions of this Constitution the power to control admissions to public schools and to regulate and administer the processes of public education is one of the powers reserved to the states as provided in Article X."

Inevitably, as questions arise concerning ways and means of preventing "enforced" association of citizens against their will, the foregoing methods will come more and more into public discussion.

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New Leader

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Supreme Court - Rights

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Today in National Affairs

Inconsistencies Are Seen In Recent Liberal Stands

By DAVID LAWRENCE

WASHINGTON, Sept. 19.—"Book burning," interference with free speech, censorship of radio and television so that American history and old folksongs are inaccurately presented to the people—all this goes on in freedom-loving America nowadays without much protest from the so-called "liberals" or their "civil liberties" organizations.

Lawrence

Strange inconsistencies emerge. Thus, Sens. Humphrey of Minnesota and Douglas of Illinois, Democrats, have joined in suggesting that President Eisenhower should "personally take those colored children by the hand and lead them into school" at Little Rock, Ark. But did any of the so-called "liberals" ever suggest or would they venture to recommend that the President of the United States take workingmen by the hand and lead them into plants and factories where their right to work—a basic constitutional right—is denied them?

Labor Problem

Nor has the Governor of any state come forth with such a solution for the problem created when labor unionism does what Congress is forbidden to do—abridge the freedom of the press under the color of law. "Collective bargaining" rights and picketing powers are, of course, derived from Federal law. Yet none of the so-called "liberals" has risen to protest the closing down of newspaper plants in many cities through the establishing of picket lines which labor unions that are not themselves parties to the dispute refuse to cross. This is a concerted action that deprives many thousands of workers of their opportunity and right to work and just as effectually denies freedom of the press as if Congress had ordered it.

Where were the exponents of the doctrines of American constitutionalism when, during the recent strikes at various Westinghouse plants, violence broke out and many workers had their cars overturned at the factory gates and were otherwise bodily prevented from having access to their jobs?

Different Views

The California Federation of Labor is so stirred up over the Little Rock situation that it has just urged impeachment of President Eisenhower for not taking forceful action of some kind to get the colored children into the high school in Little Rock. But that same organization would hardly favor any forceful measures to enable honest, law-abiding white or colored workingman to enter a plant when there's a strike.

For many years now, the unions have denounced any use of the National Guard to protect citizens in labor disputes. Yet today there are calls for the government here to "federalize" the National Guard and use it to "enforce" desegregation.

The hysteria has gone so far that demands have been made for the use of Federal Bureau of Investigation agents as United States marshals to escort the colored children into schools in Arkansas. Director J. Edgar Hoover deplores any such suggestion, and "The Wall Street Journal" implies in an editorial that the pressure for such a move came from the extremists inside the Department of Justice.

Passing Up Huck Finn

Time was when the late Sen. McCarthy was condemned by the so-called "liberals" for having suggested that books written by Communists and Communist sympathizers be taken off the shelves of official United States libraries maintained abroad by American taxpayers. But today a book by Mark Twain, "The Adventures of Huckleberry Finn"—read by the youth of America and of the world for many generations—is dropped by the Board of Education from the textbook lists of the New York City schools because one of its central figures is a Negro and the work allegedly contains "some passages derogatory to Negroes." That never seemed to cause controversy before.

Likewise, some American folksongs are being changed to eliminate such words as "massa" (master), "darkies" and "mammy," as if the rewriting of American history is now a function of radio and television censors. How can the Soviet rulers be criticized for rewriting their history to suit the political whims of the times when American censors now are trying to do the same thing with America's songs born of its past history? Will anybody have the same faith in the scripts of today's broadcasts and telecasts of historical events when it becomes recognized that truth is suppressed as literary works are censored?

Curtailing Free Speech

Worst of all is the sudden infringement of free speech and freedom of assembly, which heretofore have been widely championed as guaranties written in the First Amendment to the Constitution. A Federal court order issued in Nashville, Tenn., last week—duplicating ones previously issued at Hoxie, Ark., and Clinton, Tenn.—forbids not only a "boycott" of the public schools but any picketing in the vicinity under penalty of jail without jury trial. This intimidates parents who fear they cannot get together even to discuss with others the sending of their children to private schools.

Yet, if these citizens were to assemble to espouse the philosophy of communism or even advocate doctrines that favor the overthrow of the government by force, they would be immunized from prosecution according to recent decisions of the Supreme Court. That's "the law of the land" today. And such are the hypocrisies of the times.

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HEAD OF BAR ASKS DEFENSE OF COURT

Urges Lawyers to 'Speak Up' Against 'Insulting and Irresponsible' Critics

Special to The New York Times.

WASHINGTON, Sept. 21—The president of the American Bar Association called on American lawyers tonight to "speak up" in defense of the United States Supreme Court.

Charles S. Rhyne deplored what he called "irresponsible criticism" of the court, some of it "downright personal and insulting vilification."

Six of the nine Supreme Court justices heard Mr. Rhyne speak. He addressed the annual dinner of the Federal Bar Association, a group of present and former Government attorneys.

"There is danger indeed," Mr. Rhyne said, "when the court is assailed by sensible and well-intentioned citizens who have let their disagreement with individual decisions lead them into irresponsible criticism of the court as an instrument of government or even into personal criticism of its members."

Mr. Rhyne applauded "reasoned criticism of judicial decisions." But he said that such criticism in recent cases had a "all too often been drowned out by a panicky chorus of denunciation."

"These were undoubtedly controversial decisions," he said. "But what case in the Supreme Court is not highly controversial and highly important? There are no easy cases in the Supreme Court of the United States."

Mr. Rhyne noted that the court could not answer its critics.

"These men have given up the right to criticize in order that the rest of us might be secure in that right," he said. "The court cannot speak in its own defense.

"It is, therefore, up to us the members of the bar, to speak up in its defense and in defense of its members. The bar cannot remain silent while the court and its members are under attack.

"We cannot be content merely to note the comforting fact that an institution which has survived the petulance and displeasure of a Jefferson, a Jackson and two Roosevelts—almost certainly has the strength and vitality to survive present attacks. * * *"

"If the Supreme Court is the shield of the liberties of the people—as indeed it is—the bar must be the shield of the dignity and honor of the court."

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Mr. Belmont
Mr. Mohr
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Mr. Tamm
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Mr. Nease
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Mr. Holloman
Miss Gandy

NY Times
Sept. 22, 1957

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CAPITOL STUFF

By JOHN O'DONNELL

Washington, Sept. 23.—Quietly, always in a most restrained tone of voice, Chief Justice Earl Warren and his eight black-robed associates on the U. S. Supreme Court might well be asked the simple question:

"Gentlemen, do you think you were intelligent or wise in your '54 segregation decision regarding public schools? You reversed a decision by an earlier Supreme Court. Do you think now you are wiser than it was? Are you watching what's happening in Little Rock?

"It is the duty of the sovereign, individual state to educate its children. That's the law; none of the business of Washington, D. C. Have you worthies aided the state education in Arkansas of its children by creating a reign of terror—white children screaming through phones for their mothers to come and take them home and Negro children slipped into school rooms through the side door? If that's the way to tell the child mind, white of black that this is high school algebra and here is the way to study your first year Latin, then times have changed."

Chief Justice Warren
Watching Little Rock?

The reporter puts the blame on the members of the Supreme Court. They just forgot their youth.

From Chief Justice Warren down to the junior member, the Eisenhower Democratic appointee, Justice William J. Brennan Jr., the Justices have forgotten one vital issue in their deliberations on the admixture of the races in public schools.

It is this: not one of them had ever been permitted by their parents to go to a mixed school. Not one has ever permitted his children to go to a public school with Negroes, and none today permits his children to attend private schools which in recent months here in Washington have been pressured to bow to the political demand for desegregation. This delicate issue has already touched sensitively on the diplomatic question of acceptance into swanky. captial schools of the offspring of the diplomatic family from Ghana, most definitely West African.

The Justice and the Ambassador

This problem hits the most expensive prep and girls' finishing schools, Protestant and Catholic. And these are costly. The important point is that the offspring of the Supreme Court Justices, Senators, and other tax-supported politicians who beat their breasts in public in favor of the '54 public school desegregation decree, won't send their own children to a public school here in Washington unless they are privately assured that it is definitely all white.

Take the next to the latest Washington resident of the Supreme Court, Associate Justice William O. Brennan and, arriving a bit later, Ambassador of Japan and Mme. Asakai. Did they send their daughters to the newly desegregated schools in the capital of the United States? The children of both Mrs. Brennan and Mme. Asakai are now at the Stone Ridge Country Day School of the Sacred Heart where there is no mandatory desegregation by order of the Supreme Court.

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Required Reading for Nine Jurists

Somebody should sit down and write himself a book entitle "The Education of Earl Warren and his Associate Justices of th Supreme Court." There must be tragedy in this volume: The traged of probably well-meaning men who made an utter mess of a soci and racial situation they didn't understand and then, smugly a politically, handed down a decree which imposed terror and arous fury in children of both races in Little Rock.

We hope the distinguished nine jurists read carefully the new reports sent back from Little Rock. Then if they want to say that their great wisdom they were correct in reversing a pevious decisi by the same Supeme Court, and that the results of their new de have shown they were correct and that now all is better for th republic, this reporter asks only one privilege. That is to be pe mitted to sit in the first row and express his contempt of the n worthies who piously defend their decision.

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Supreme Court

A Study Page

On this page, Richard L. Strout points out the new directions taken by the Supreme Court and analyzes the strife these have caused.

The Dynamic New Role of the Supreme Court

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The Issue

Washington

THE SUPREME COURT OF THE UNITED STATES is once again up to its black-robed neck in controversy. This situation is no new thing, and the attacks today are hardly less violent than in Franklin Roosevelt days when the "nine old men" were throwing out New Deal social legislation on Monday afternoons. But in those days the attack came from the left; today it is from the right.

The present commotion is possibly inevitable under the circumstances. The decisions may be good or bad, but many are in the most passionately emotional fields in American domestic life—segregation, subversion, and civil rights.

The decisions are so far-reaching in some cases that it may well be concluded in after years that the outstanding direction and leadership in domestic policy in Washington at this period came not from the popular President nor the divided Congress but from the detached tribunal —from that cool, lofty, marble hearing room with its wine-red curtains. It has a deceptive calm about it but as Chief Justice Oliver Wendell Holmes once significantly commented—it is the quiet of the center of the whirlwind.

What the nation was seeing, according to one interpretation, was a turn in the tide which constantly ebbs and flows in the never-settled contest between the rights of the individual and the safety of the state.

For a troubled generation—first the world war, then the cold war, then the undeclared Korean War—judicial emphasis was put on the need for national security rather than upon those personal freedoms provided by the First Amendment and the rest of the Bill of Rights. The Supreme Court is the ancient stabilizing instrument between these two democratic goals.

It was inevitable, according to this argument, that after a protracted interval in which national exigencies caused the court to favor the state as against the individual the tide should change. At any rate, in the court's term just ended the most spectacular cases dealt often with conspiracy, subversion, and communism and the tendency of the Warren court was to reemphasize personal freedoms.

Civil Rights Active

This was not the only field in which decisions of the court cut across inevitable emotions. Cases dealing with desegregation and the race issue kept the battle in that bitter area alive, though none of them were of the paramount importance of the original school desegregation bill.

The school decision struck the South with stunning impact. It came May 17, 1954. Every phase of it was unusual. It was handed down by a new chief justice in his first term who had been expected to be a *middle-of-the-road compromiser.*

The decision was unanimous without even so much as a separate concurrence to water down its effect. It reversed what had been constitutional law since 1896, when the Fuller court invented the separate-but-equal formula for school segregation. Finally, it was based on a remarkably direct approach with the intricate pattern of constitutional analogies and precedents pushed aside as "inconclusive" and the ancient position reversed, as the Chief Justice seemed to argue, because it was out-of-date. Or as he put it, because whatever the authors of the 14th Amendment "intended" in any event "we cannot turn the clock back to 1868."

"We concluded that in the field of public education the doctrine of 'separate but equal' has no place."

Eight associate justices agreed. End of era.

Bitter Attacks

Although recent attacks upon the court have been based on a wide variety of decisions it is doubtful whether they would have received the attention they have but for the continuing controversy over this original decision and the continuing efforts to apply it within the affected states. These attacks have been bitter.

James F. Byrnes, former Associate Justice of the Supreme Court (1941-42) and Governor of South Carolina (1951-55), voiced this criticism. Writing in the U.S. News & World Report, published by David Lawrence, Mr. Byrnes, on May 18, 1956, declared "the Supreme Court must be curbed." He pointed out that the court had "reversed what had been the law of the land for 75 years" in its school desegregation ruling, and went on to charge that "the court did not interpret the Constitution—the court amended it." Mr. Byrnes then proceeded to his more questionable contention that the court was guilty of "usurpation" of state power.

"Ordinarily, the court has been controlled by legal precedents. In the segregation opinion, it could cite no legal precedent for its decision because all the precedents sustain the doctrine of 'separate but equal facilities.'" He concluded:

"Power intoxicates men. It is never voluntarily surrendered. It must be taken from them. The Supreme Court must be curbed."

Congress Urged

Mr. Byrnes urged that this be done by action of Congress to limit the appellate jurisdiction of the tribunal.

In milder form Mr. Byrnes' dissenting opinion has found some journalistic support from respected conservative journalists like columnist David Lawrence and Arthur Krock of the New York Times. On the whole, however, outside of the South, the unanimous court decision has been found to be well within the authority granted under the Constitution and elaborated by the precedents of John Marshall and subsequent jurists.

The United States Constitution leaves much play between the three-part government—executive, legislative, and judicial. This looseness is generally praised. It allows the Constitution to grow and meet the challenge of new conditions while its basic purposes remain inflexible.

There is a popular fallacy that the Supreme Court has an infallible slide rule of constitutional and judicial precedents against which it applies any given case producing an inevitable result. This is a naive concept in view of the complexity of modern conditions.

The Constitution guarantees to individuals all sorts of rights, but often these overlap the borderline of an economic or social right in another direction. Government, itself, is a compromise between the freedom of the individual and the need of the state. It is the high duty of the great court to interpret these conflicts in the light of the time.

Almost all of the personal "freedoms" must be redefined from time to time in debatable and borderline cases, from freedom of speech to freedom of religion. Most commentators regard the view of Prof. Fred Rodell of Yale, that the Supreme Court is primarily a political rather than judicial instrument as extreme and yet the fact that it plays a role in statesmanship in its selection of courses cannot be questioned.

This, then, is the background for the present controversy over the court. Without the fire lit by the original unanimous desegregation decision in 1954 the heat over 1957 decisions in subversive and Communist cases would have been less intense. All these emotional issues together have precipitated the court into the biggest controversy since New Deal days.

Trend-Making Cases

CASES DEALING WITH COMMUNISM, subversion, and sedition dominated the Supreme Court's 1957 term and fed the controversy which now surrounds it.

"As before in its history," writes New York University law professor Edmond Cahn, "the court is passing through a hostile phase when criticism becomes strident enough to seem substantial and extreme enough to suggest alarm."

On June 30, Representative Joseph W. Martin, Jr., (R) of Massachusetts, House minority leader, declared over television that recent decisions had "crippled the investigating committees" of Congress. Other critics raised their voices in storms of unfavorable comment.

Those who liked the new direction of the court said little. There are signs now, however, that the gale force of criticism is somewhat subsiding. Congress quickly passed legislation to protect FBI files from promiscuous publication. Furthermore, closer study produced a tranquillizing effect.

What seemed to be happening was that after a generation of rulings that tended to favor the state as against the citizen in the turbulent world situation, the majority of the high court was now growing anxious lest individual freedoms were in danger and was bent on shifting the balance.

Five cases typify the new direction.

1. Jencks Case

The use of secret FBI information accumulated against a defendant has been a difficult problem for judges. The court held June 3—with the sole dissent of Mr. Associate Justice Clark—that the government must either dismiss its charges against Clinton E. Jencks, a New Mexico mine union official, or make available to him or his lawyer FBI reports about which government witnesses had given oral testimony.

The burden is the government's, the court ruled (not to be shifted to the trial judge), to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of state secrets and other confidential information in the government's possession.

This case broke down barriers that have long shielded FBI reports in court prosecutions. Congress rushed through legislation to prevent the alleged danger of wholesale exposure of FBI files but its action still left the Jencks case as a judicial milestone.

In his sharp, lonely dissent, Mr. Justice Clark said the opinion gave criminals "a Roman holiday for rummaging through . . . vital national secrets." Harvard Law School dean, Erwin N. Griswold, however, declared it "simply blueprints procedures used in every criminal court."

2. Watkins Case

This historic case defines and limits the investigative power of Congress and throws safeguards to the man investigated. It was written by Mr. Chief Justice Warren. The only dissenter was Mr. Justice Clark. The court reversed the lower court conviction of John T. Watkins, an Illinois labor leader, for contempt when he refused to divulge to the House Un-American Activities Committee information regarding past associates suspected of communism.

Mr. Watkins had generally cooperated with the House committee but charged that some of its probings were vague and irrelevant to legislative requirements. The Warren opinion held that while the power of Congress to investigate is broad "it is not unlimited," and that there "is no congressional power to expose for the sake of exposure."

In the specific case the court ruled that the committee had fallen under the "vice of vagueness." The opinion upheld the authority of Congress to inquire into and to publicize "corruption, maladministration, or inefficiency," but it ruled that an inquiry must state clearly to the witness its purpose and the pertinency of the questions.

This decision upheld the minority views in the lower court of Henry W. Edgerton, Chief Judge of the United States Court of Appeals for the District of Columbia Judicial Circuit. It roused some congressional ire by limiting so-called "fishing expeditions." The style of the Warren opinion is unusually broad and sweeping in its criticism of the abuse of the investigatory power, and it has brought some criticism on that account.

3. West Coast Communists

The Smith Act—a federal statute to punish conspiracy to teach or advocate overthrow of the government by force or violence—is one of the most controversial laws enacted in modern times. It is the only sedition law passed by Congress since the Alien and Sedition Acts of John Adams' administration.

A divided Supreme Court, 6-3, in 1951 upheld its constitutionality in the original Dennis case, but now in a second look the court drastically redefined it and whittled it down. Messrs. Justices Black and Douglas went even further and wanted to throw the Smith Act out altogether. The new Harlan opinion emphasizes the difference between teaching the overthrow of the government as an abstract idea and of advocating action to that end. Mr. Justice Clark filed the only dissent. The court ordered acquittal of five Communist defendants on the ground of "palpably insufficient" evidence, and sent nine others to a new trial in California.

4. Sweezy Case

This dealt with an appeal from a state conviction for contempt in New Hampshire where college professor Paul M. Sweezy refused to answer questions regarding alleged subversive activities. The inquiry was by a "one-man legislative committee" under the state attorney general.

The United States Supreme Court ruled that "there was nothing to connect the questioning" with the "fundamental interest of the state." In a concurring opinion Messrs. Justices Harlan and Frankfurter added that "the right of a citizen to political privacy" must be balanced against the right of the state to self-protection. Mr. Justice Clark dissented and was joined by Mr. Justice Burton.

5. Communist Disqualification

A series of decisions limited the legal penalties and, by inference, the social odium for past association with the Communist Party. The court seemed to be arguing that former Communist membership is not sufficiently related to moral character to justify permanent ostracism of the individual or his disqualification from certain offices. Thus the court ruled out efforts of New Mexico and California to refuse admission to the bar either because of past Communist Party membership or because of First Amendment refusal to answer questions.

These decisions and others like them produced wide controversy. One point should be noted. In order to vindicate a generalized constitutional freedom it was necessary for the court in many cases to free a particular individual who held unpopular or even wrong-headed views. This brought charges that the court was being "soft" to alleged subversives or actually "sympathizing" with them.

This seems hardly fair. The court, by its function, is not interested in the man as such, but in the precedent. From the beginning it has reversed convictions deemed unconstitutional, however heinous the individual defendant. It does not love offenders but it hates bad procedure.

Other Crucial Decisions

THE SUPREME COURT last term, by vote of 4 to 2, ordered E. I. du Pont de Nemours & Co. to divest itself of a 23 per cent stock interest in General Motors. Current controversy over the court has nearly all centered on decisions relating to communism, security, and civil rights and it is sometimes forgotten that it has been simultaneously busy with wide fields of other intricate matters, as the du Pont case indicates.

The court dealt with labor arbitration and picketing; attempted to lay down guiding rules in control of obscenity, reversed itself on the power of the military to try civilian dependents abroad for capital crimes, and applied antitrust regulation to professional football—though continuing to exclude professional baseball.

Here are some of these cases.

1. Du Pont

The term "revolutionary" has been applied to this opinion. It was written by Mr. Associate Justice Brennan with sharp dissent noted by Messrs. Associate Justices Burton and Frankfurter. It threw out the rule which the Federal Trade Commission has used for over 40 years in administering the Clayton Act. The rule was that the act applied to "horizontal" stock acquisitions (where company A buys stock in competing company B) but not to "vertical" acquisitions (where company A buys stock in noncompetitor company C).

The court ruled June 3 that du Pont's 1917-1919 acquisition of GM stock gave it illegal competitive advantage in the sale to GM of du Pont fabrics and paints. The decision has long-range social and economic implications—as for example in industry, how big is "big"?

Without saying so directly, the rather generalized Brennan opinion may put a limit on vertical expansion of American industrial empires. He argued that Congress did intend to cover vertical acquisitions under the act although the FTC took a contrary position.

The opinion has been sharply criticized, among others, by the dissenting judges. The point implicit here is whether the court is usurping the job of legislation. If Congress wants vertical giganticism banned, why shouldn't it say so specifically itself?

2. Trade Unions

In a variety of cases the most important, perhaps, was whether the Taft Act gives the federal courts the job of supervising and enforcing compliance with arbitration clauses in collective bargaining agreements. If the act does so, it is a tall order. As a lower court put it, "it authorizes federal courts to fashion a body of federal law for the enforcement of those collective bargaining agreements . . . (with) specific performance of promises to arbitrate grievances. . . ."

The high court ruled that this is what the Taft Act required, Mr. Associate Justice Frankfurter sharply dissenting. He warned of a burden on the federal courts "to fashion a whole body of substantive law appropriate for the complicated and touchy problems raised by collective bargaining. . . ."

In another trade union case Mr. Justice Frankfurter wrote the majority opinion. Constitutional free speech provisions, he ruled for the court, do not prevent a state from enjoining peaceful picketing that violates a section of a state "right-to-work" law: this one banning unions from trying to coerce an employer to interfere with his employees' right to join or stay out of a union. Dissenting were Messrs. Justices Warren, Douglas, and Black.

3. Control of Obscenity

Drawing a distinction between free speech and the evils of obscenity has long bothered the court. This year it unanimously ruled that Michigan cannot make it a criminal offense to provide the adult public with a book that is regarded by some as not fit to be read by children.

But a majority of the court also upheld a number of other less generalized obscenity statutes. It established this standard "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole, appeals to prurient interest."

4. Military Trials of Civilians

In June, 1956, the court upheld the convictions of two women charged with killing their husbands and ruled that military court trials of civilians in capital offenses overseas are constitutional. In one of the fastest switches in history the court in June this year overruled itself and held such trials unconstitutional. The dissenters of a year ago became the majority when Mr. Associate Justice Harlan changed positions and Mr. Justice Frankfurter, who reserved judgment last year, joined them. The decision is limited to (A) capital offenses, (B) servicemen's civilian dependents, and (C) times of peace. Naturally, such quick reversals as this bring criticism of the high court's stability.

5. Professional Football

Here again the court runs into some charges of inconsistency for it has just ruled professional football is subject to antitrust laws while professional baseball remains free from regulation. In 1922 the then Supreme Court held baseball outside antitrust laws as a sport, not a business, in the meaning of Congress. Mr. Associate Justice Clark, writing for the court, this year frankly recognized the difficulty of the position:

"If this ruling is unrealistic, inconsistent, or illogical, it is sufficient to answer, aside from the distinctions between the businesses, that were we considering the question of baseball for the first time upon a clean slate we would have no doubts" (i.e., that baseball should be covered by the Sherman Act). But, he added, it now is up to Congress.

Composition of Court

MR. EISENHOWER HAS NAMED FOUR of the nine members of the present court. Seniority of some of the remaining members (Justice Frankfurter, 74, Justice Black, 71, Justice Burton, 69) makes it likely that the President may appoint others. Retired justices get a pension of $35,000 a year.

Some believe that President Eisenhower will have a greater ultimate impact on domestic history through his appointees to the high court than through his political and administrative policies.

The Supreme Court is not a dull machine whose members feed cases into a kind of Univac of historic precedents, push a button, and produce a calculable result. Much depends on the personalities of the members themselves in this very human juridical-political body.

Nobody can deny that the climate of the court has recently changed. This climate depends in part on the atmosphere outside the court (the court follows "th' illiction returns" maintained Mr. Dooley) and in part on the liberal-conservative components among the nine.

New appointments change the balance within the tribunal. Franklin D. Roosevelt's battle with the court brought "the switch in time that saved the nine," engineered by Chief Justice Charles Evans Hughes which defeated the Roosevelt court-packing plan but it finally ended with the appointment by the President of a new court majority.

Mr. Eisenhower's appointees—particularly the Chief Justice—have already shifted the balance in the tribunal. It is interesting to note that Chief Justice Warren has increasingly found himself on the side of the two so-called "liberals," Justices Black and Douglas. (An outstanding feature of the term just concluded was the number of times that Messrs. Warren, Black, and Douglas dissented together. There were 11 such combinations, in six of these they were joined by Associate Justice Brennan. The most frequent combinations of dissenting justices were those of Justices Black and Douglas, 21 times; and Justices Frankfurter and Harlan, also paired 21 times.)

Major Shift Seen

Some qualified observers believe the Warren court's decisions mark a major shift in approach to constitutional issues. The new court is handing down the most liberal decisions in a decade. Attention centers on the Chief Justice among the four latest appointees.

While the merits of the school desegregation case will be debated for decades, the feat of a neophyte Chief Justice in inducing his strikingly individualistic and articulate associate justices to go along with *him* unanimously on the tremendous opinion *is* almost unrivaled in history.

It should be understood that there is —among others—an ancient fission within the court: it is between authority and liberty, between the rights of the state and the rights of the individual.

In such conflicts one group of judges normally supports the first, another tends to emphasize the second. Chief Justice Fred Vinson generally came down on the side of officialdom. Chief Justice Warren (along with Justices Douglas and Black) appears to start with a predisposition toward the individual.

The court has always held the balance between these two sets of rights with one era emphasizing one, another the second. After a security-conscious generation in which state authority was put foremost the pendulum has now swung back a bit.

John Lord O'Brian commented some time ago in the Harvard Law Review: "A review of these decisions (of the past generation) establishes the disconcerting and perhaps startling fact that in no case has the court liberalized or extended the freedoms guaranteed by the (First Amendment to the) Constitution. The general trend has been in the direction of sustaining, in the interest of national security, new restrictions upon those liberties."

Trend Reversed

Now the trend has changed. Courts, congressional committees, and governmental agencies are rapped for transgressing the four freedoms against individual rights. An outcry has followed. But it should be remembered that there have been outcries against the court before.

Time and new appointees keep the court ultimately in line with public opinion, while the court itself powerfully influences the opinion to which it finally bows. Vitriolic attacks on the court might produce dangers worse, it is argued, than those seen in the court's opinions; no change in our institutions produced by judicial interpretation could be so radical as the degradation of the court itself.

The four Eisenhower appointees are:

Earl Warren, former Governor of California, one-time GOP presidential possibility, and a man with impressive record as administrator though without prior judicial experience.

John M. Harlan, Rhodes Scholar with a long and successful career as New York lawyer, friend of former New York Governor Dewey, Air Force Colonel 1943-45; briefly a federal appellate judge in New York.

William J. Brennan, New Jersey Democrat and only Roman Catholic on the court, with long experience as lawyer and justice in state courts.

Charles E. Whittaker, Missouri Republican who gave up a lucrative law practice in 1954 to become district judge for western Missouri; for 25 years an outstanding Midwestern trial lawyer, and onetime state Bar Association president.

The other five members of the court are (1) former Alabama Senator Hugo A. Black, who, with (2) William O. Douglas, (former head of the Securities and Exchange Commission) tend to put their predilection for the rights of the individual ahead of the rights of the state; (3) Felix Frankfurter, former Harvard law teacher and government servant on the court since 1939, who occupies a sort of center position in philosophy; and (4) Tom C. Clark, former Truman attorney general; and (5) Harold H. Burton, former law teacher, Mayor of Cleveland and Republican senator from Ohio, who form the "conservative nucleus" of the court.

It is in the hands of these strikingly disparate and individualistic figures that present constitutional decisions rest. It is a paradox that President Eisenhower, a conservative, has named men who have helped tip the court balance to the "liberal" side, while the four previous appointees of supposedly "left-wing" Mr. Truman—Justices Vinson, Burton, Clark, and Minton—were definitely "conservative."

Historic incidents abound to show that a chief executive does not always know what legal views he is getting when he names a man to the court.

Mr. Chief Justice Warren came to the court four years ago. Many thought he would be a conservative or at least a middle-roader. This has not occurred, at least by one yardstick. This is the yardstick of dissents.

In these the Chief Justice has been increasingly associated with Justices Black and Douglas, the "liberal nucleus" on the court. In his first year the Chief Justice was on the opposite side from Mr. Justice Black a score of times, the next year about a dozen times, later only a few times, and in the term just concluded, out of some 13 dissents he was associated with Justice Black in all but one.

Associated Press

MEMBERS OF THE SUPREME COURT posed for a formal portrait, left to right seated: Associate Justices William Orville Douglas and Hugo Lafayette Black, Chief Justice Earl Warren, and Associate Justices Felix Frankfurter and Harold Hitz Burton. Standing: Associate Justices William J. Brennan, Jr., Tom C. Clark, John M. Harlan, and Charles C. Whittaker.

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

These Days . . . . . By George E. Sokolsky

Extraneous Court References

IN THE controversy that is arising over the Supreme Court, Rep. Wright Patman of Texas has raised a pertinent question, namely, that instead of basing decisions upon briefs submitted by litigants, the court briefs itself, using, at times, material not submitted to it by either party, but selected by the justice himself or by his law clerk who may introduce matter which, according to Patman, is "unrecognized and nonauthoritative."

Sokolsky

Patman said concerning this:

". . . Formerly we had every reason to expect that decisions by our Supreme Court would be controlled by the standards outlined by the Constitution, the law, the facts of the case and by the sound reasoning of the justices. In the past, even though we felt the court had decided a case wrongly we nevertheless felt that we could understand that the court had a basis in the record of the hearing in the case for its decision . . ."

The difficulty now arises from the fact that textbooks, law reviews, propagandistic material from pressure groups and all sorts of outside factors enter into the formation of a decision. Patman says of this that if the court in preparing its decisions uses material without notifying counsel on both sides, neither side has the opportunity "to meet the arguments of these theorists and lobbyists."

TO QUOTE Patman:

". . . The law review articles, treatises, and so forth, prepared and disseminated by the lobbyists command no respect, have no standing as legal authorities, and therefore warrant no consideration by opposing counsel. If this rule were otherwise counsel would be rendered helpless because their arguments would become diluted heavily with extraneous miscellaneous matter designed to overcome the various theories advanced by the lobbyists posing as legal authorities."

However, whatever the Supreme Court says becomes authoritative. Therefore an article published in a law review could become the basis for the law of the land once a Supreme Court justice adopted it for a majority opinion, even though the article in question be written by a second-year law student who has not yet cut his eyeteeth.

DO THE justices always know who wrote the articles in the law reviews? Are those articles always signed? Do the justices study the backgrounds of the men who wrote those articles to determine whether what they say is based upon sound scholarship or is propaganda for a cause? Representative Patman makes the point that in two important cases, the citations, one from the Harvard Law Review and the other from the Yale Law Journal, bore no signatures, the authors of the material being anonymous.

There is an unnecessary element of surprise which could cause a miscarriage of justice.

Lawyers spending months preparing briefs, at enormous expense to their clients, are suddenly faced by an article in a law journal which neither side may have read or noticed or considered worthwhile. In fact, for all we know, the justice, in a summer mood, may himself have written the anonymous article which he now cites as authoritative. It is not a safe practice.

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

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