The Courts "Relax," Too: The Lamont, Bridges and Sheiner Victories, See Page 2

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Note to the Rest of the Universe

Within two years you may see a flaming ball rocket up from the earth's surface and swing into position in an orbit around it. Do not regard the spectacle with complacency. These satellites will grow larger and more numerous; men will go up with them. Voyages to the moon will follow. After that the distant realm of planet and star will lie open to Man.

Beware in time. This is a breed which has changed little in thousands of years. The cave-dweller who wielded a stone club and the man who will soon wield an interstellar missile are terribly alike. Earth's creatures feed upon each other, but this is the only one which kills on a large scale, for pleasure, adventure and even—so perverse is the species—for supposed reasons of morality.

Should you drop a secret mission of inquiry in alarm, you will find that the sacred books on which the young of the various tribes have been brought up for thousands of years glorify bloodshed. Whether one looks in Homer, or the Sagas, or the Bible, or the Koran, the hero is a warrior. Someone is always killing someone else for what is called the greater glory of God.

This is not a creature to be trusted with the free run of the universe. At the moment the human race seems to be temporarily sobered by the possession of weapons which could destroy all life on earth except perhaps the mosses and the fungi. But the planetary rocket may revive recrimination. The currently rival tribes, the Russians and the Americans, fear the other may use the new device against it. They may soon be transferring to outer space the hates that in every generation have brought suffering to the earth. It might be wise to stop them now, on the very threshold of the open and as yet unpolluted skies.

The Congress in Which the Great Thaw Began

The first session of the 84th Congress just ended will go down in history as the session in which the Great Thaw began. It opened with the false alarms that pushed through a resolution giving the President power to wage preventive nuclear war against China, and ended with new and higher level negotiations between Washington and Peking. The relaxation abroad was accompanied by a relaxation at home.

For the first time in many years, Congress was again exposing big business men, its usual peacetime target, instead of Reds. Its star investigations were those of Talbott and Dixon-Yates while the House Un-American Activities Committee and the Senate Internal Security Committee had difficulty getting into the headlines. McCarthy's old committee under McClellan shifted from Peress to Talbott, brought down a member of the Cabinet, really looked into "Government Operations."

The shift was one measure of the advantage in a Congress controlled by Democrats in however poor a stage of leadership. No new repressive legislation passed; Brownell did not get wiretapping, a new perjury law or the bill to set up security screening throughout industry. There were two sets of major Senate hearings, for a change, on the *abuses* of the security program.

Progress was made almost in spite of the labor movement. The only issue on which it put up a real fight was the minimum wage where it won $1 instead of the 75 cents asked by the President. It did not otherwise bestir itself even to repeal section 14b of Taft-Hartley on which State right-to-work laws depend. Aid to education did not rouse the labor movement. And unlike the Big Money, labor exerted no pressure for peace.

Except for the earlier Morse-Lehman resolution on Quemoy and Matsu, it was conservative rather than liberal leadership which distinguished itself. The hero of the session, the man who deserves world gratitude, is Senator George—he steered, coaxed, cajoled and pushed an unwilling Secretary of State to the conference table. The President's own Senate leader, Knowland, had to be bypassed in the process. It was Ike and a Democratic Congress which began to unfreeze the cold war, which put McCarthy on the shelf and reduced the China Lobby to a minor nuisance. Whether Ike can be reelected without restoring a Republican majority in Congress is the question.

Dulles Still Wants Unconditional Surrender on Formosa

At press conference last week the Secretary of State made it clear that give-and-take is not in his estimates. Left out of the officially released transcript were a series of questions and answers in which Dulles made it very clear that while he was glad to have the Chinese renounce force, he did not envisage *any* possibility of their achieving their aims on Formosa *or the offshore islands* by negotiation. It is this unwillingness to compromise which keeps the Indians alarmed; State Department is not willing even to allow a neutral third party to interview Chinese students in this country and thus assure Peking none are being held against their will. There is no sign of a quid pro quo for the release of the fliers, and later of the civilians.

Also left out of the official transcript was a remark which deserves to be in the anthologies of unconscious humor. Dulles was asked whether he felt encouraged by the apparent readiness of the Communist bloc to forego force. His answer—as closely as the no direct quote rule permits—was that he thought that in the case of Communist regimes where the rulers are not guided by moral considerations and where expediency is very much the rule that the policies depend upon, in effect, what they can get away with. How different from our own government of haloed saints and parsons!

Lamont Beats McCarthy, Bridges Wins Again, Sheiner's Disbarment Reversed

Three Noteworthy Victories for Civil Liberties In One Week . . .

Three crucial civil liberties cases were won last week. A Federal judge in New York dismissed the indictment of Corliss Lamont, Abraham Unger and Albert Shadowitz for contempt of the McCarthy committee; they had refused to answer questions on First amendment grounds. Another Federal judge, in San Francisco, threw out the government's suit to revoke the citizenship of Harry Bridges; this was the government's fifth attempt in 12 years to "get" the waterfront labor leader. And the Florida Supreme Court, in the case of Leo Sheiner, ruled 4-to-1 that a lawyer could not be disbarred merely because he took the Fifth amendment before a Congressional committee; this was the first test case of its kind.

* * *

Any Technicality in A Storm

The Lamont-Unger-Shadowitz decision — all three cases were decided together—illustrates the importance of providing a judge with any and every technicality with which he may evade the issue, yet decide for one's client. All three men had pleaded the First amendment when queried about their political views by McCarthy, sitting as chairman of the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations. Lamont's lawyer, Philip Wittenberg, discovered that there was no public law or Senate resolution establishing the "Permanent Subcommittee" through which McCarthy had been acting. The Judge thereupon threw out the indictment, declaring that the statutes and resolutions cited in it contain no reference to a permanent subcommittee "let alone any delegation of power to it."

By declaring that the permanent subcommittee had never been lawfully constituted, Judge Weinfeld cast doubt on all outstanding indictments for contempt of the McCarthy committee, including that of Harvey O'Connor, who also pleaded the First amendment.* But the Judge also thereby evaded two other questions. One is whether the Senate Committee on Government Operations, the old Audit and Expenditures Committee, had any right to inquire into political ideas at all. Public Law 601, the so-called Reorganization Act of 1946, only authorized the Committee on Government Operations to investigate all matters having to do with "economy and efficiency" and "intergovernmental relationships." The other question, the fundamental question, the one on which Lamont, Unger and Shadowitz made their challenge, was whether *any* committee of Congress could lawfully engage in idealogical inquisition. Such inquisition, as recent years have shown, definitely "abridge" freedom of speech, press and assembly, as guaranteed by the First Amendment.

Tip to those smeared by McCarthy: If McCarthy's conduct as chairman of that subcommittee was unlawful, then it was not covered by Congressional immunity. McCarthy could be sued for libel, defamation or causing breach of contract. Here's one way for his victims to get back at him.

* * *

When Is Perjury Not Perjurious?

The answer seems to be when it is mustered by the government. The Bridges case was heard without a jury and the most interesting portions of Judge Louis E. Goodman's decision are its findings of fact, and the appendices in which the Judge analyzed the key incidents on which the government relied to prove that Bridges had been a Communist. These make a successful appeal by the government unlikely.

One witness, Saunders, testified that he had collected party dues from Bridges. He testified that shortly after returning from the party's national convention in 1936, he went to Bridges' office in the Balboa building, "and said to Bridges that the [party] unit was very sore about him and that he should pay some dues. In response Bridges slapped three silver dollars on his desk."

* The text was inserted in the Congressional Record for Aug. 2.

Power of Inquiry Limited

"While the Congress is possessed of broad powers to conduct investigations necessary for the performance of its constitutional functions . . . there are outer limits to the power. . . . From Kilbourn v. Thompson down to Quinn v. U. S., the Supreme Court has steadfastly held that the congressional power to investigate is not boundless. The restrictions upon this power have been sharply delineated by Mr. Chief Justice Warren: 'But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate' (Quinn v. U. S.). . . . Accordingly, 'a witness rightfully may refuse to answer where the bounds of power are exceeded . . .' (U. S. v. Sinclair, McGrain v. Daugherty)."

—Judge Edward Weinfeld in U. S. v. Lamont

The Judge commented, "It is peculiar, to say the least, that Saunders would have collected dues in such a manner from a man, whom, the government argues, Saunders believed had just been elected to the National Committee of the Communist party."

The most important government witness, Schomaker, testified that in 1938 Bridges addressed a meeting of some 35 to 50 Communists and non-Communists at which he asserted that he was a Communist and urged the non-members present to join.

"In the fall of 1938 when this meeting is said to have occurred," the Judge commented, "Bridges' deportation was already being sought by the United States on the ground that he was a member of the Communist Party, and a warrant against him was outstanding. Under these circumstances, it is against all reason to believe that even a person so brash and outspoken as Bridges has demonstrated himself to be would have made the statements attributed to him before such a group of people."

The Judge on the key government witnesses: "There are grave improbabilities in Schomaker's story. . . . Saunders' testimony is inherently flimsy. . . . Hook's testimony is unsubstantial. . . . The testimony of witnesses Jones, Mann and Melin, former Communists, who gave evidence on behalf of respondent was also replete with inconsistencies, hates and malice. . . ."

Plain and fancy lying has been a feature of the Bridges cases since the beginning. At the previous trial, No. 4, Paul Crouch, Lawrence Seton Ross and Manning Johnson all swore that Bridges was at a Communist meeting in New York. The defense submitted documented records proving that Bridges was in California at the time.

We suggest that Bridges now take the offensive and have his lawyers prepare and publish a careful study of the kind of testimony used by the government in the five attempts to get him. Added up and collated it would provide so striking a collection of perjuries as to shame the government from trying again.

* * *

Legal Goliath Takes the Count

The Sheiner decision is noteworthy, among other things, for being the first direct legal contest between the stuffy American Bar Association and the hounded National Lawyers' Guild. Both argued before the Florida Supreme Court as "friends of the court" but on opposite sides: the ABA that lawyers who take the Fifth should be disbarred, the Guild in defense of Leo Sheiner, the Miami lawyer who pleaded the

Langer Helps Harry Sacher Challenge the Authority of the Eastland Committee

. . . And Some New Battles Looming Up On The Witch Hunt Horizon

Fifth amendment when the Senate Internal Security Committee asked him whether he was a Communist. That a Southern court, under these circumstances, with national attention focussed on it, should rule in favor of Sheiner and the Guild seems almost miraculous.

Another noteworthy aspect of the Florida decision is its astringent attitude toward Congressional investigation. The majority opinion (written by Justice Glenn Terrell and concurred in by Chief Justice E. Harris Drew and Justice H. L. Sebring) criticized the lower court for disbarring Sheiner when its action was "supported by nothing more than the evidence taken by a Congressional committee." In reversing the lower court, the State Supreme Court said that if such matters were grounds for disbarment, "then one's privilege to practice law may be made to depend on a very tenuous thread." The majority added, in criticism of the way the Senate Internal Security committee acted, "To deprive one of the privilege of practicing law should never be done by 'faceless informers'."

A fourth member of the Florida bench, Dade Circuit Judge Robert L. Floyd, wrote a concurring opinion in which he took issue directly with the American Bar Association's contention that a lawyer's rights are different from those of an individual. "Whatever rights lawyers enjoy as individuals they also enjoy as attorneys," he wrote. Of the ABA's argument that lawyers could be disbarred for using their constitutional rights under the Fifth amendment, Judge Floyd declared, "It would be just as right to contend that a sheriff could demand entrance to a lawyer's house without a search warrant."

Unfortunately this does not end the Sheiner case. The disbarment order was reversed but the case was remanded to the Dade county courts. If they can establish by proof Sheiner's unfitness to practice, he may still be disbarred. And proof that he is a Communist may constitute proof of unfitness.

* * *

Still Rubber-Stamping Contempt Citations

The U. S. Senate is less courageous than the Florida Supreme Court. In a new case last week involving the rights of lawyers, it again acted as a rubber stamp when confronted by a contempt citation. After more than ten days of delay and behind the scenes misgivings, the Eastland committee citation of Harry Sacher was agreed on a routine vote without dissent though Langer read the Senate brief by Sacher (see Con. Rec. July 28, p. 10,198) and defended his refusal to answer the questions on which the contempt charges were based.

Sacher said that when the subpoena was served upon him, he was told the Eastland committee wished to interrogate him in its investigation of the Matusow recantation. Sacher pointed out that he answered all questions about Matusow. The questions Sacher refused to answer was (1) whether he is a member of the Communist party, (2) whether he ever had been and (3) whether he was or ever had been a member of a lawyers section of the party.

J. C. Sourwine, the committee's counsel, justified these questions by explaining that "among the measures under consideration by this committee is proposed legislation . . . to prohibit members of the Communist party from practicing in the Federal courts."

Sacher pleaded neither the Fifth nor the First but said that as a matter of conscience he declined to submit to political interrogation. In the brief read the Senate, Sacher pointed out that nothing in the resolution establishing the Internal Security Committee gives it power to investigate "the fitness of Communists to practice in the Federal courts." Langer supported Sacher's position and told the Senate, "I have no patience at all with the judge in Texas who disbarred a lawyer because the lawyer chose to defend a Communist, or refused to tell the judge whether he was a Communist himself"—a reference to the Matusow proceedings in Texas.

Eastland in reply claimed the broadest possible jurisdiction for his committee over anything connected with communism or "subversion," said Sacher "was the most contemptuous witness I have ever seen" and told the Senate, "I do not think we should take the word of a notorious Communist."

The shadow of some fundamental issues falls across the Sacher case. He is counsel for clients awaiting retrial in the Federal courts as a result of Matusow's confession. If lawyers can be hauled before congressional committees and in-

(*Continued on Page Four*)

Second Immunity Test

New York—Although the Supreme Court has promised to rule in the Fall on the validity of the new immunity law and the three Appeals Court judges who passed on it expressed varying degrees of doubt as to its constitutionality, the government has launched a second test here against Edward J. Fitzgerald, another of those named by Elizabeth Bentley.

Fitzgerald released a letter to Attorney General Brownell asking why immunity was being pressed upon him, and why he wasn't being prosecuted if the Bentley espionage charges were true. (Since they deal with the war period they are covered by no statute of limitations.) Fitzgerald also asked Brownell, "Why have you kept from the Grand Jury the detailed evidence compiled by William Henry Taylor demonstrating the falsity of the Bentley story?"

When Taylor began to tell a Washington grand jury in October, 1954, what he had learned (see full resume of the Taylor affidavit carried in the Weekly, April 25) the hearing was adjourned and the grand jury disbanded.

First Senate Civil Liberties Inquiry Since La Follette Committee Begins October 3

For the first time since the pre-war hearings of the La Follette committee, a Senate investigation into infractions of basic rights will begin on October 3 with public hearings before the newly established subcommittee on constitutional liberties. This subcommittee of the Senate Judiciary Committee was authorized almost ten years ago by the Reorganization Act of 1940.

The subcommittee's chairman is Hennings of Missouri and the other two members are Langer (N. Dak.) and O'Mahoney (Wyo.). Lon Hocker, Jr., former president of the St. Louis Bar Association, will be in charge as Chief Hearings Counsel of the committee.

The first week will be devoted to freedom of religion and separation of church and state. On October 17 two weeks of hearings will be given over to freedom of speech and press and beginning November 14, four weeks on the right of assembly.

The plan is systematically to cover all the rights specified in the Constitution. The public is invited to bring to the subcommittee's attention any current violations of these rights "bearing in mind," however, Senator Hennings advised, "that neither the time nor the public interest can permit it to use the hearings to vindicate individual positions or to right personal wrongs not giving rise to constitutional questions of general application."

Establishment of this subcommittee was first promised by Senator Langer last year in a speech to the Emergency Civil Liberties Committee in New York.

House Un-American Activities Committee Opens Investigation of Rosenberg Committees

Brownell Picks Strike-Bound Copper Industry to Test Anti-Union Law

(*Continued from Page Three*)

terrogated about their political views and about their relations with witnesses while cases are pending, orderly trial in a calm atmosphere can be made impossible. This is indeed the purpose of the Eastland committee—and the Department of Justice—in harassing everyone remotely connected with the recantation of Matusow. What happens in such a context to separation of powers, the right to counsel and fair trial?

* * *

First "Infiltration" Test

Last August Congress passed a new anti-Communist control law depriving "Communist infiltrated" unions of collective bargaining privileges under the Wagner Act. Last week Attorney General Brownell invoked this law for the first time and initiated action against the Mine, Mill & Smelter Workers Union (Ind.). All factions of labor last year fought these provisions as a potential strike-breaking weapon and noted that the Department of Justice opened up on Mine, Mill in the midst of a nationwide copper strike (see box in column 2). Through "such actions as this" Assistant Attorney General William F. Tompkins explained, "we intend to assist loyal Americans of Communist infiltrated unions . . . to oust the Communist leadership."

The basic assumption of the act is that members of labor and other organizations cannot be trusted to use their own judgment and voting power to pick the leadership they want, but that the government must step in as a legal nursemaid and protect them from leaders they chose but it considers "communistic." The allegations in the formal petition against Mine, Mill shows how easily this could be used to defame and break up organizations advocating policies the government dislikes. It is no surprise to find among the allegations that Mine, Mill opposed this new law!

* * *

New Rosenberg-Sobell Persecution

Last July 18 the National Committee to Secure Justice for Morton Sobell filed a request with the new Hennings subcommittee (see box bottom of page three) to investigate the conduct of the U. S. Attorney General's Office in the Rosenberg-Sobell case. That same day subpoenas were served by the House Un-American Activities Committee on members of various Rosenberg and Sobell committees.

Since then two books throwing much new light on the Rosenberg case have appeared, "The Atom Spy Hoax" by William A. Reuben (Action Books, N. Y.) and "The Judgment of Julius and Ethel Rosenberg" by John Wexley (Cameron & Kahn, N. Y.). Though both try to prove too much and mingle fact, half-fact and surmise, they also present new material which strengthens the claim of Sobell to a new trial.

It is a pity this country is not mature enough for a Royal Commission style inquiry to re-examine the whole Rosenberg affair. The vindictive effort of the House committee to frighten, smear and punish those who took part in the Rosenberg defense is no substitute. Chairman Walter, who once in a better moment said something in favor of clemency, will find that these hearings will only create sympathy for the witnesses and a new interest in Sobell's cause.

* * *

Challenging the Security Mania

In 1950 Congress authorized the Executive summarily to discharge on security grounds any employe of certain specified departments and such other agencies "as the President may, from time to time, deem necessary in the best interests of national security." The Court of Appeals here last week split on the meaning of this law in *Cole v. Young* and the Supreme Court may therefore hear an appeal.

Cole was a food and drug inspector discharged without a hearing on the ground of association "with individuals reliably reported to be Communists." Judge Prettyman for the majority upheld the discharge. But Judge Edgerton, dissenting, objected that it could not "reasonably be deemed necessary in the best interests of national security that employes in all agencies, including not only the Food and Drug Administration but the Fish and Wildlife Service be subject to summary unappealable dismissal."

* * *

The Weekly regrets the death of Earl G. Harrison, of Philadelphia, and honors his memory for the sympathy he showed in his report to President Truman on the plight of Jewish D.P.'s after the war, and for the consistency with which he spoke up for civil liberty.

And It Did

"A continued shutdown this week of a major part of the nation's nonferrous industry over a wage dispute may win the leftwing Mine, Mill & Smelter Workers (Ind.) substantial raises from some of its biggest employers but it might also make MMSW the first target of a legal crackdown on unions suspected of Communist control."

—Business Week, July 30

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