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Items It's Not Polite to Mention at San Francisco

(And Not Safe to Forget)

1. Ten years ago Mr. Dulles went to San Francisco not as a friend but as an enemy of a United Nations. The Roosevelt Administration felt that peace would not be secure if the Germans were again able to play East and West against each other; it sought peace through Big Power unity in a new world organization. Mr. Dulles was Dewey's foreign policy adviser, and in the 1944 campaign Dewey attacked these plans as "cynical power politics," an "immoral military alliance." Cordell Hull included Dulles in the U. S. delegation to San Francisco as Dewey's representative to buy off Republican opposition.

2. Mr. Dulles never was an advocate of collective security. He opposed sanctions against Japanese aggression in 1932. When Hitler tore up the disarmament provisions of the Versailles pact in 1935, Mr. Dulles wrote as his apologist. In 1938 (as publication of the latest U. S. foreign policy documents, *1938, Vol. III, the Far East,* recently revealed) he went to China in an effort to win Chiang Kai-shek to a negotiated peace with Japan. In 1939 in his famous debate with Willkie, Mr. Dulles defended Axis expansionism. After the European war began, he opposed aid to Britain. But in 1943 when the tide of war turned against Hitler, Mr. Dulles advocated a "Christian peace" and then through Dewey an Anglo-American alliance to police the post-war world. This proposal, which echoed what was then the Goebbels line, was the first signal of the cold war to come.

Washington-Berlin Axis

3. If Germany today, as ten years ago, is again the center of attention at San Francisco, that is in no small degree Mr. Dulles's triumph. Ten years of cold war have enabled the German phoenix to rise again with unparalleled speed from the ashes of its greatest defeat. What FDR foresaw has come to pass. The nation which seemed in 1945 decisively crushed for generations to come turns up in 1955 holding the balance of power. Moscow woos it at the expense of her own German puppets, and Dr. Adenauer is received in Washington as America's favorite ally. For the UN there has been substituted NATO and NATO itself only sugar-coats for Western Europe a new Washington-Berlin axis. Western Germany is today again a great industrial, and will be tomorrow a great military power. And as its power grows, its tune will change.

4. The Reich always finds itself a "good European" front during the period when it is still recovering from defeat. Dr. Adenauer is the counterpart of that other "good European," Dr. Stresemann, Germany's foreign minister from 1923 to 1929, winner of the Nobel peace prize, co-architect with Briand of Locarno. Not until his unpublished private papers were finally made available to scholars in 1953 did it become known that while publicly pursuing the task of international conciliation, Dr. Stresemann too played the fox and privately connived in illegal rearmament. (See the study of those papers in Hans W. Gaztke's book, *Stresemann and the Rearmament of Germany,* Johns Hopkins Press, 1954.)

5. "The danger of German militarism has disappeared. It no longer exists." The words might have been Stresemann's. They were Adenauer's last week at that elephantine press jamboree he held in Washington. "The danger of German militarism . . . no longer exists." His own people, his own party colleagues, do not believe him. Not only the Social Democrats but his own Christian Democrats blocked his effort to rush rearmament legislation through the Bundesrat. It was Dr. Strater, the Christian Democratic Minister from North Rhine-Westphalia, who attacked the proposed law for recruiting military "volunteers" as "blitz" legislation. It is the CDU which demands that the high-handed old Chancellor let Parliament have a look at what kind of basic long term military law he contemplates before asking it to approve this "emergency" measure. Working and middle class elements are apprehensive in Germany today as they were in the 20's.

Lesson of the Schluter Affair

6. Now as then it is clear that a remilitarized Germany must be a reactionary Germany. The recent Schluter affair is indicative. To get a two-thirds majority in the Bundesrat for the legislation he needs to recreate a German army, Dr. Adenauer had to assure himself the votes of Lower Saxony by a deal with the rightist Free Democrats. They demanded the post of Minister of Education for Herr Schluter, a reactionary adventurer, a half Jew who made his peace with the Nazis, a leading publisher of neo-Nazi authors since the war. The Rector and Senate of the University of Gottingen have resigned in protest and mobilized widespread support. It is this other and better Germany which again feels itself menaced. This is the reality behind the bland visage of Dr. Adenauer.

7. When the Foreign Ministers sit down to dinner this week in San Francisco, and when the Big Four meet "at the summit" next month in Geneva, they meet in a new context. Germany today is the equal of Britain and more important than France. The "Big Four" has become a fiction. The big powers are now the U.S.A., the U.S.S.R., Communist China, Great Britain and Germany. Germany's leverage, her power as an arbiter, depends on maintaining tension and preventing agreement between the U.S. and the U.S.S.R. If Moscow and Washington ever agreed, Moscow would no longer have to woo Bonn and Washington would not be disposed to pick up that fat check which is coming for German rearmament. Mr. Dulles and Dr. Adenauer are not disposed to give up the cold war while it still pays off.

Judge Hastie Says Acquittal Should Have Been Directed for Pittsburgh Five

First Circuit Court Dissent in A Smith Act Conviction

In Philadelphia last Monday the Court of Appeals upheld the Smith Act convictions of the Pittsburgh Five—Stephen Mesarosh (Nelson), William Albertson, Benjamin L. Careathers, James H. Dolsen and Irving Weissman. This was the fifth occasion on which a Circuit Court has upheld the conviction of Communists under the Smith Act. The Philadelphia decision, however, was the first in which there was a dissent on the Appeals Court, and the first dissent anywhere to discuss the sufficiency of the evidence. When Black and Douglas dissented in the Dennis case, the only issue before the Supreme Court was the constitutionality of the Smith Act. The Pittsburgh cases were heard by the Third Circuit's full bench of seven, and the decision was 5-2. The dissent was written by William H. Hastie, a Truman appointee and the first Negro ever to sit on the Federal bench. Judge Albert Branson Maris joined in the dissent.

The Hastie dissent is important because it shows how convictions under the Smith Act may be reversed if the Supreme Court keeps its promise in the Dennis case to review the evidence in future prosecutions. So far in the only two cases to reach the Supreme Court (*Flynn* and *Frankfeld*), a hearing has been denied.

Since the evidence in all the Communist Smith Act conspiracy cases has been substantially the same—inference from the circulation of Marxist classics and the 1945 party revolt against "Browderism"—Judge Hastie's analysis applies equally to all of them.

Even the Prosecutor Wasn't Sure

The dissent begins with a striking example of prejudice at the trial. Judge Hastie notes that "the prosecutor candidly stated in open court that 'at this particular time, we do not contend that there is any question of the personal guilt of any of the defendants involved here, except with the possible exception of Mr. Nelson. . . .'" Judge Hastie comments on this, "It is difficult to believe that persons trying to be fair, as the jurors here undoubtedly were, would have been willing to send anyone but a Communist to jail after hearing such an admission by the government that the personal guilt of the accused was not established."

Judge Hastie says there should have been a directed verdict of acquittal. He reaches this conclusion on two principal grounds. One was the failure to show that the defendants during the period of the alleged conspiracy committed any overt acts other than attendance at ordinary Communist party meetings. Judge Hastie's reasoning on this may be found in the box below. The other was the failure to prove that the defendants actually were conspiring to advocate overthrow of the government "as speedily as circumstances permit," as required by the Supreme Court's ruling in the *Dennis* case.

Judge Hastie says that in the absence of such proof the government was merely punishing "talk." He points out that the government itself, in submitting in evidence speeches and statements made at the 1945 convention of the Communist party admitted that these "do not on their face sanction the violent overthrow of the government much less call for its achievement as soon as possible."

The dissent quotes at length from a speech at that convention by William Z. Foster which the government put in evidence. In that speech Foster attacked those "Leftists" in the party who said "we are going to, or should . . . drop the slogan of national unity . . . bring forward the question of socialism as an immediate issue, and generally adopt a class-against-class policy. . . . Leftist policies of this character," Foster declared, "would be no less disastrous to us than Browder's right revisionism."

The Old Aesopian Argument

Judge Hastie says the government contended "all this had a sinister meaning, not obvious on its face." The ex-Communist, Lautner, was called as a witness to testify to this effect but "Lautner," the dissent declares, "did not point to a single thing indicating that the 1945 program contemplated . . . teaching that the time had come for the overthrow of the government as soon as possible."

The dissent asserts, "The line which courts try to draw distinguishes punishable incitation to insurrectionary action from permissible teaching that at some time in the future violence is inevitable and the 'proletariat' must be ready for it. Lautner's testimony does not even make clear whether there is anything in the 1945 program which in his view implies one rather than the other."

The majority, quoting Judge Harlan's Circuit Court opinion in the *Flynn* case, is content to slide over the question of intent and like him to deduce the right to punish radical talk from the world "setting" of the time "when the Korean conflict was raging and our relations with the Communist world had moved from cold to hot war." But the Hastie dissent echoes classic Jeffersonian doctrine.

"It is not a sufficient basis for prosecription," Judge Hastie writes, "that the Communists are committed to ultimate violent revolutionary action. If their present tactic is a waiting game, characterized by the teaching of revolutionary theory while incitation to action is left for the indefinite future, the First amendment prevents the government from proscribing their teaching.

"Our lawful recourse during such a period," Judge Hastie continued, "lies in the field of education and demonstration which will increase devotion to our democratic institutions and thus frustrate Communist preachments. There is some risk in this course. But the adoption of the First Amendment has committed us to it."

When Sir Walter Raleigh Asked for Proof That He Was Subversive

"The failure of the prosecution to show how any of this conduct [attendance at party meetings] was in furtherance of the conspiracy charged is very revealing. . . . The jury must not be left to speculate in the absence of proof whether an act, innocent on its face, is in furtherance of a conspiracy. . . . The disposition to relax requirements of strict proof in trials of suspected subversives appears whenever the existing order is subjected to stress and strain.

"It is reported that in 1603, when Sir Walter Raleigh was tried by the king's judges for treason, his demand for stricter proof was silenced by the court with the withering rejoinder: 'I marvel, Sir Walter, that you being of such staunch experience and wit, should stand on this point; for so many horse-stealers may escape if they may not be condemned without witnesses.' Rex v. Raleigh 2 State Trials (Howell ed.) 1. In due course the accused was convicted and executed.

"It may well be that a number of Communists, among them schemers for our undoing and destruction, will go unpunished if in their cases we insist upon clear and convincing proof in open court of every element of the alleged crime. There is no gainsaying that 'horse-stealers [and worse] may escape.' But that is not too great a price to pay for assurance that our way of administering the criminal law minimizes for everyone the risk of undeserved conviction of crime."

—Circuit Judge William H. Hastie dissenting in the Pittsburgh Smith Act cases, U. S. v. Mesarosh et al.

Matthew Cvetic's Hospital Record Found By Steve Nelson Defense

Famous FBI Informer Turns Out to Be Poor Tortured Alcoholic

The hospital record of Matthew Cvetic, the informer, hero of the movie, "I Was A Communist for the FBI," was made public last week in Pittsburgh. It was generally ignored by the press, despite the glimpse it affords into the kind of men the government continues to use. The deposition was taken by the defense in the government's suit to denaturalize Steve Nelson. The record shows Cvetic was hospitalized three times for alcoholism and attendant psychic disorders from February 17 to May 21 of this year.

A few days earlier in Chicago the Court of Appeals reversed the deportation order against Matthew Brzovich which was based on Cvetic's testimony that he had once seen the alien at a Communist meeting. The Court did not find Cvetic's testimony credible. In Pennsylvania, Cvetic has appeared as a witness in some 300 cases.

Among Cvetic's more recent appearances nationally was as a witness against the Bradens in Louisville and as a Republican campaign speaker last Fall in Montana and Washington. Excerpts from the deposition follow. Hymen Schlesinger, Nelson's counsel; First Assistant U. S. Attorney D. Malcolm Anderson, Jr., and Frank R. Bolte, counsel for Cvetic and the hospital, were among those present:

Mr. Schlesinger: Will you please state your name?

Miss Mackenzie: Natalie Mackenzie.

Mr. Schlesinger: Where do you live?

Miss Mackenzie: 318 Collins Avenue, Pittsburgh, Pa.

Mr. Schlesinger: What is your occupation?

Miss Mackenzie: Record room clerk in the St. Francis Hospital.

Mr. Schlesinger: In your capacity as clerk in the record room, do you have custody of the records of one Matthew Cvetic?

Miss Mackenzie: I have.

Mr. Schlesinger: Did you bring those records with you today?

Miss Mackenzie: I did.

Mr. Schlesinger: Will you permit counsel for the government and for the defendant to examine such records?

Mr. Bolte: For the record, on behalf of the hospital and the witness, we object to the delivery of these records to the defendant or to anybody at this time on the ground that these records are confidential and that the consent of the patient has not been obtained.

Mr. Anderson: Let the record show that I have not made any request to look at these documents.

Mr. Schlesinger: According to the record of Matthew Cvetic in the St. Francis Hospital, he was admitted on February 17, 1955 and discharged on March 5, 1955 with a diagnosis of Depressive Reaction (Anxiety), alcohol addiction, treatment electro shock treatments. He returned March 19, 1955 and was discharged March 26, 1955. Diagnosis: Alcohol addiction. Result: Improved. Prognosis: Good. Returned: May 21, 1955. Discharged: May 28, 1955. Alcohol addiction—Improved—Prognosis Good.

Mr. Schlesinger: Under date of February 17, 1955 on a sheet marked "History Sheet" appears the following notes: "Present Illness: Informant, son Richard. Patient used liquor heavily for a period of five years but quit altogether 2½ years ago and has been with the A.A. Patient has been doctoring for a nervous condition. He started drinking this past Sunday and Monday, February 13 and 14. He started to drink again this morning. Patient got in touch with his son and asked him to come to his hotel. He has been very despondent and unsettled since this time; he paced back and forth in the hotel room. He ate and slept very little since Wednesday. Since he was so despondent, his son called the hotel doctor who gave him some medicine and recommended hospitalization. Patient was always rather a depressive person; his son never could understand him. He never discussed his problems with him and he is at a loss to know what his trouble is at present other than being lonely. He lives in a hotel room alone and has been writing a book. . . ."

Mr. Schlesinger: Miss Mackenzie, the notations I have read into the record are contained in this hospital record which I show you. Is the record which I have now given back to you a true and correct record of Matthew Cvetic in the St. Francis Hospital?

Miss Mackenzie: It is.

But for the death of Chief Judge Harold M. Stephens, the new Lattimore indictment would almost certainly have been upheld 5-4, since Stephens was the only dissenter when the Court of Appeals threw out the earlier indictment 8-to-1. This means Brownell may win the case on reargument if he picks a rightist judge to succeed Stephens and then asks for a rehearing.

Plot Widens: The Senate Internal Security Committee after combing the 900 volumes of diary kept by Henry Morgenthau, Jr., as Secretary of the Treasury (what a job that must have been; Henry M. is no Sam Pepys) has succeeded in linking another high New Dealer to the Harry White affair. This one called White "a mighty suitable man" for the job and "a very high class fellow." The encomiums were by a well known Leftist from Tennessee, Cordell Hull.

A new version of the "Counter-Attack" business is the "public library on subversives" to be established here by the Foundation for American Research, Inc. This has been launched by two former assistants to J. Edgar Hoover, and two former FBI agents. They will solicit funds from the public to set up a "free library" which will have available witch hunt material and listings (black and red) of all kinds. Stanley J. Tracy, a former assistant to Hoover, said the library would contain no secret information and (like most FBI loyalty reports) make no attempt to determine accuracy.

A survey by *U. S. News & World Report* (June 17) of the Federal judges who will preside over de-segregation (when and if) in the South shows all, of course, white and only one born above the Mason-Dixon line.

Still Small Voice: In a study of peace called "Speak Truth to Power" just published the American Friends Service Committee says, "No reputable historian has ventured the idea that either the first or the second World War was spawned by Communism. Nor are the Russians responsible for the concept of blitzkrieg, obliteration bombing or first use of atomic weapons. These have all been loosed upon the world by the very nations which now profess outrage at the cynical Soviet concept of the role of violence."

Gen. Hasso von Manteuffel, one of the Nazi German's most famous generals during World War II, was a guest of the U. S. government from April 20 to May 12 of this year, visiting the Capitol, West Point and military installations as "Mr. von Manteuffel" without a line or picture getting into the press. No doubt the government is still a little nervous about freedom's new allies.

The Senate Internal Security hearing at which John Mullen, national political action director of the CIO Steelworkers, was smeared as a Red was noteworthy for two reasons. Senator Daniel of Texas, who presided, permitted counsel for Mullen to pass him questions to ask the accusing witness, Mary Mazzei, an FBI informant. A serious discrepancy appeared in her testimony. Mrs. Mazzei testified that she had been at a closed party meeting with Mullen. But at an executive session before the committee last year, she had answered "no" when asked by Senator Welker whether she had ever attended a closed party meeting.

The New Justice Harlan's First Free Speech Opinion

Several years ago a group in Westchester and Yonkers, New York, formed a Committee for Peace. They held a meeting in the YWCA at Yonkers in November, 1951. It was addressed by Stephen G. Gary, a well-known Quaker. The YWCA, in allowing the meeting on its premises, resisted protest from rightist sources. The meeting was held without disturbance, but the Yonkers Board of Education denied the Committee for Peace a permit for another meeting on school property. No reason was given but when the Committee went to court the Board of Education cited the protests as showing that the meeting would have been "controversial."

This is the background of the decision in *Ellis* v. *Dixon* which the Supreme Court decided on the final day of this year's term of Court. The decision is of interest for two reasons. In Yonkers, as in many other communities, the schools are customarily available for forums and public meetings; the Court was asked to decide whether discrimination against such "controversial" subjects as peace abridged freedom of speech and assembly. The decision was the first to be written by the new Justice, John Marshall Harlan, in a case involving the Bill of Rights.

The law is that boards of education may deny use of the schools for public meetings. But where public meetings are customarily allowed in the schools, may the Boards discriminate against certain groups? This question has never been passed upon by the Supreme Court.

Like Federalist Judges

The New York City Board of Education filed a brief *amicus curiae* supporting the Yonkers Board. The New York City Board argued that the "rights guaranteed by the First and Fourteenth amendments are subordinate to the greater rights of the general public and to the right of the government to maintain and protect itself." This is the law as it was expounded by Federalist judges in the Alien and Sedition Act period. It implies that people have a right to speak freely as long as no one disagrees strongly with what they propose to say ("controversial") and as long as the government does not regard their views as dangerous to its safety ("subversive").

The U. S. Supreme Court has never passed on the question of discrimination in the use of school buildings for public meetings. But the Supreme Court of California has. California law says that school auditoriums may be used for public discussion but not by groups or persons advocating overthrow of the government by force. In San Diego a permit was asked to hold a meeting on "The Bill of Rights in Postwar America." The permit was granted by the school board on condition that the applicants take an oath they were not affiliated with any group advocating overthrow. They refused to take the oath and the California Supreme Court in 1946 (28 Cal. 2d 536) upheld them on the ground that the oath requirement constituted prior censorship.

Behind the Technicalities

The U. S. Supreme Court split 5-4 on the Yonkers case. Chief Justice Warren, with Justices Black, Douglas and Clark noted that denial of the permit might be regarded as discrimination contrary to the equal protection clause of the Fourteenth amendment. Justice Harlan dismissed the appeal on technical grounds too involved to be explained here, and too tenuous to bore the reader with. His rather labored words and specious argument must be relegated to a footnote.* They imply that schools might lawfully be closed to peace meetings altogether. This is to reach, by a more roundabout rationalization, the same result as the New York State Supreme Court which held substantially that it could not interfere because the meeting would have been "controversial."

Unlike His Grandfather

Only the naive will take at face value the technical reasons Justice Harlan invokes. The doctrines for which judges reach in making their decisions, like the colors a painter mixes on his palette, are a reflection of their own inner selves. These doctrines are not the counters of an exact science, but the materials of adjudication, which is an art. As Justice Holmes once said, "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise." (*Lochner* v. *N.Y.*). The Yonkers case indicates that the new Judge Harlan, unlike his grandfather and namesake, is disposed rather to restrict than to champion civil liberties. This was also evident the week before when in the Emspak, Quinn and Bart contempt cases he was the only judge who went out of his way to record his view that he did not think Congressional inquisition violated the First amendment, a point on which the Court did not pass.

* "Petitioner concedes that a State may withhold its school facilities altogether from use by nonscholastic groups. It is implicit in this concession that petitioner also recognizes that a State may make reasonable classifications in determining the extent to which its schools shall be available for nonscholastic uses . . . yet petitioner has failed to allege in his pleading . . . that other organizations of a similar character to the Committee for Peace have been allowed use of Yonkers schools." This adroitly begs the real question. Would it be a reasonable classification under the Constitution to classify as ineligible for permits those meetings which proposed to deal with controversial subjects like peace? Stated this way, the answer is obviously no.

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