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There's A Fighting Chance Now to End Nuclear Tests

It would be very unwise to assume from the Eisenhower-Krushchev exchange on technical talks that a cessation of testing is "in the bag." The enemies of an agreement in London and Washington are powerfully entrenched. The President's letter—couched in the ugly, "your side," "our side" style in which our military negotiators at Panmunjom avoided mentioning Communist China by name—specifically reserves "our respective positions on the timing and interdependence of various aspects of disarmament." But the icepack in which humanity's hopes have been tightly imprisoned is cracking and now is the time for all good men —in every forum they can reach—to press hard for an end of testing.

Strauss Influence Slipping

The hopeful point at the moment is the composition of the team we will send to Geneva. Unlike our solidly pro-AEC delegation on the United Nations Scientific Committee on Effects of Atomic Radiation, this new three man team reflects Admiral Strauss's waning influence. Dr. Ernest O. Lawrence, Dr. Teller's faithful comrade-in-arms, and a rightist in his political preconceptions, is securely in the Strauss camp. But Robert F. Bacher, the second member of the new team, is not. As a member of the Atomic Energy Commission from 1946 to 1949, he opposed the decision to make the H-bomb. He is as distinguished a physicist as Dr. Lawrence but quite different in his approach. The third member, Dr. James Brown Fisk, a former director of research at the AEC in 1947-48, is less well known but regarded as conservative and objective by those who worked with him. Dr. Bacher and Dr. Fisk are both members of the President's Science Advisory Committee, which has already decided by majority vote (so it is privately reported here) that a test cessation with inspection would be to this country's interest. Where Dr. Fisk stood on this is not known, but there is reason to suspect that this three man team was picked —typical Eisenhower fashion—to keep everybody happy and that Dr. Fisk is the "neutral" whose vote may be decisive.

The danger is that technical talks on the problem of detection may distract attention from the real issues. Mr. Eisenhower's letter to Premier Krushchev said tartly that he hoped the Soviet team would also be chosen "on the basis of special competence, so as to assure that we get scientific not political conclusions." This is snide, silly and misleading. The truth is that the issues are political, not scientific, as the UN Scientific Committee on Effects of Atomic Radiation—now preparing its final report for July 1—has discovered. In approaching the problem of radiation's dangers, as in that of inspection's efficacy, the real question is a choice of risks and this choice is determined by moral and political preconceptions. According to an exclusive story out of the United Nations by Milt Freudenheim of the *Chicago Daily News*, the UN Committee has discovered that nuclear test radiation *is* harmful to world health and future generations but cannot agree on its final conclusions because these involve political considerations which some members feel is beyond its province. The truth is that no one knows just how and to what degree radiation is harmful. Those who believe in the arms race and deterrence think the risk justifiable; those who see war as the inevitable result of an arms race think we run the risk for no good reason.

Wonderful . . . But Unfortunate

Miss O'Connor: Admiral, President Eisenhower has proposed within the next three weeks Western and Soviet experts begin talks on inspection of a nuclear test ban. How do you feel about this proposal?

Admiral Strauss: I think it is very wonderful. . . . I am not opposed to the cessation of testing. . . . On the other hand, the cessation of testing, alone, is not a very constructive step to eliminating the danger of atomic war. . . .

Miss O'Connor: I would like to know what would be the consequences for our defense posture should we suspend testing this year. . . .

Admiral Strauss: I think under these circumstances we would freeze our development of defensive weapons at about their present point, which is in the very, very early stages.

Miss O'Connor: You think this would have tragic consequences?

Admiral Strauss: I hate to use the word "tragic." I think from a military point of view, from a defense point of view, it would be unfortunate. . . .

—Ruth Hagy's College News Conference, ABC-TV, May 24.

Press for Hearings on The Porter Bill

This is a question the average man is as equipped to answer as the scientist. Have we a right to poison the lives of some now living and many more to be born in the future, all for the sake of carrying on an endless arms race that makes all humanity vulnerable to accident and miscalculation? Now is the time to bring the whole country into the debate and the best vehicle is to press the Joint Congressional Committee on Atomic Energy to hold public hearings at once on Congressman Charles O. Porter's (D., Ore.) bill to end nuclear testing. The AEC, after bottling up the bill for months, has just sent an unfavorable report on it to the Joint Congressional Committee on Atomic Energy. The number is HR 8269. Press your Senators and Congressmen to bring it out for public hearings.

Four Years Ago Jenner and Butler Were Trying to Safeguard Judicial Independence

How Liberals and Reactionaries Have Switched Sides on the Supreme Court

The dark unmentionable in the current Senate debate over the Supreme Court is that in four years the reactionaries and the liberals have completely reversed positions. The constitutional amendment introduced on behalf of the liberals by Javits on May 1 to protect the Court from a hostile Congress may be found word-for-word in a broader constitutional amendment sponsored by Butler and supported by Jenner four years ago. Now Butler and Jenner have fathered bills to restrict the power of the Court and the liberals are backing an amendment to make such legislation unconstitutional. But four years ago, on May 11, 1954, when this same amendment (embodied in a Butler bill, SJ Res. 44) was passed by the Senate 58 to 19, the reactionaries, including Jenner and McCarthy were for it, while the liberals—including Hennings, Humphrey and Morse—voted solidly against it.

This is no mere historical quirk—a believe-it-or-not for the legal annalist. On the contrary it illustrates a fundamental fact about Supreme Court controversy. Such switches are familiar. Ever since the Republic was founded, the party or faction against which the Court ruled has tended to fight judicial supremacy, i.e. the Court's power to declare acts of Congress unconstitutional. The Court's beneficiaries have been its defenders. But one year's defenders often turn out to be next year's critics. Few love any umpire long. In the 1930's it was the New Dealers (including people like myself) who attacked the Court because it had been vetoing new social and economic reforms as unconstitutional. Jenner's position now was our position then.

They Feared A New Court Packing Plan

This past history explains that Butler bill of four years ago. When the Republicans in 1953, for the first time in 20 years, took over the Presidency and control of Congress, they remembered that experience of the 30's and wanted to make it impossible for a future New Deal to "pack" the Court (as FDR almost did) or to restrict its jurisdiction. So early in 1953 Butler (R., Md.) introduced a bill for a constitutional amendment to protect the Court from a future FDR. This bill provided (1) that the Court should always have nine members, (2) that all Justices (this was to get rid of New Dealers like Black and Frankfurter) must retire at 75, (3) that no Justice (this was meant to stymie Douglas) might resign to run for President or Vice President and (4) amended Section 2, Article III, of the Constitution to take away from Congress its power to regulate the appellate jurisdiction of the Supreme Court.

If that proposed amendment had not been buried in the House, if it had passed and been ratified, this year's Jenner bill would have been wholly, and the current Butler substitute for it partially, unconstitutional. The Jenner bill was framed to "reverse" recent liberal Supreme Court decisions by withdrawing from it jurisdiction to hear appeals in five classes of cases: contempt of Congress as in *Watkins,* State sedition prosecutions like Steve Nelson's, Federal employe loyalty-security cases like *Cole,* State school witch hunts as in *Slochower,* and admission to the bar cases like those of Konigsberg and Schware. The Jenner bill aroused the almost unanimous oppostion of the bar as too raw an invasion of judicial prerogatives so Butler put in a substitute, the pending S 2646, to do the same things more subtly. The liberals of the Senate, in their fight to block such legislation, are now sponsoring a constitutional amendment (SJ Res 169 by Javits, Clark, Hennings, Langer, Neuberger, Proxmire, Humphrey and Morse) to take from Congress its power to regulate the appellate jurisdiction of the Court. Thus both sides in four years have reversed positions.

The Court They Defended Was Vinson's

Four years ago when the Senate Judiciary Committee under Jenner favorably reported this amendment to the Senate, the Court stood high in the affections of the right. The day the Butler bill passed the Senate, Warren had been Chief Justice less than three months; no one dreamed how liberal the court would become under his leadership. The school segregation decision had not yet been handed down (it came six days after the Butler bill passed). The Supreme Court, Butler and Jenner knew was the Vinson Court, on which a Truman majority had operated as the faithful arm of the cold war and its attendant witch hunt, validating the Smith Act and refusing to interfere with Congressional investigations as run by Walter and McCarthy. The Butler bill was allowed to die in the House and never revived in the Senate when it became obvious that the Court was liberal again.

We'll have more to say about the Court fight as it unfolds. This, our opening chapter, is not meant to breed cynicism but is told in the interests of honesty, and perhaps also to humble. It may even have a moral. The longer perspective may teach both sides that they have a common interest in maintaining the Court as an independent and respected expounder of fundamental principles. The august mechanism which protests a capitalist one year may protect a communist the next.

The Somersault by Senate Judiciary and Butler from 1954 to 1958

"The Founding Fathers were especially concerned about the independence of the judiciary. . . . Under this resolution, the opinions of the Supreme Court could not be influenced by packing, or decimation, of its membership. Nor could its appellate jurisdiction in constitutional cases be removed. . . . The Supreme Court has rightly assumed a position of pre-eminence in our constitutional system. . . ."

—Butler (R. Md.) favorably reporting from the Senate Judiciary Committee (Rpt. No. 1091, 83d Cong. 2d Sess.), SJ Res. 44, to safeguard the independence of the Supreme Court, March 24, 1954.

"This [section 2 Article III of the Constitution, giving Congress power to regulate the appellate jurisdiction of the Supreme Court] is one of the check and balance provisions of the Constitution . . . a protection against attempted usurpation by the Court of legislative prerogatives, or improper invasion of the rights reserved to the States . . . which the Congress is in duty bound to protect."

—Butler (R. Md.) favorably reporting from the Senate Judiciary Committee (Rpt. No. 1586, 85th Cong. 2d Sess.) S. 2646, "Limitation of Supreme Court Jurisdiction and Strengthening of Anti-Subversive Laws, May 15, 1958.

Urgent Memo to the Advisory Council of the National Committee

Isn't It About Time the Democrats Got Rid of Dean Acheson?

We like Dean Acheson personally and acknowledge his gifts but believe he has become an incubus on the Democratic party. It cannot hope to strike out constructively in the field of foreign policy, and to offer voters an alternative to the Republicans, until it finds some tactful way to remove the former Secretary of State from the chairmanship of its Advisory Committee on Foreign Policy. He is a road-block to progress—affable, urbane, cultivated but really as wooden Indian in his rigidity as his old opposite number, Molotov.

Those who think this verdict harsh should write the Democratic National Committee (1028 Connecticut Avenue, Washington, D. C.) and obtain for themselves the first in a series of pamphlets the Advisory Council has just published (10c) on "Foreign and Military Policy for Peace and Security." It was written by Mr. Acheson and then revised by him after a rather stormy meeting behind closed doors of the Advisory Council. The revisions haven't helped much.

That Familiar Condescension

In the first place this pamphlet is written down, in the condescending "Auntie Knows Best" manner to which Mr. Acheson became habituated at the Sttae Department. There is an insufferable smugness about it that is redolent of the Department. In the second place, though billed as a recommendation for policy, and though criticizing the Republicans for failing to think and to educate on foreign affairs, this pamphlet is extraordinarily empty. It offers nothing but a return to the cold war and prolonged world tension.

Other men on the Advisory Council of the Democratic party, Senator Humphrey, former Senator Lehman, Senator Mansfield, and Estes Kefauver have shown in recent months a real capacity to do fresh thinking and offer fresh leadership. There are any number of capable people on the foreign policy advisory committee who must find Mr. Acheson's approach unpalatable. Why must Mr. Acheson, just because he was Secretary of State, be allowed to hold down the lid on new ideas? The impact of the Kennan lectures last winter showed what some independent thinking could do for the party; Mr. Acheson's reply to those lectures reflected an undercurrent of personal jealousy on his part that a former "underling" should attract so much attention. He regards foreign policy as his private preserve.

One looks in vain in this pamphlet, as one looks in vain to Mr. Acheson, for answers on the urgent problems of policy. He is blank on testing, on disarmament, on disengagement, on the frozen situations in Germany and Formosa. The Geneva summit meeting was "ill-timed." The only thing approaching a recommendation is for a sharp step up in arms spending.

In addition the pamphlet lacks the courage to be honest on two crucial topics. One is neutralism. The discussion on page 9 of what the "free world" means shuts its eyes to the real problem of dealing with peoples and nations who do not want to come under Communist domination but do not want to become American satellites, either. One would never guess from the oversimplified discussion by Mr. Acheson that there are forces in Britain and France resentful of our dictation and non-Communists like Nehru who see the only hope of world peace in preventing the polarization of the planet between Washington and Moscow.

What They're Afraid to See

The second point, even more serious, is the analysis of why Russia has made such giant strides in industrial development. Mr. Acheson gives three reasons: (1) restriction of consumption, (2) modern equipment and (3) first class technical brains. This overlooks the essential point. Without State ownership of industry and economic planning, this progress would have been impossible. The Republicans cannot, the Democrats dare not, recognize this. It clashes too openly with national shibboleths about "free enterprise."

Yet in arguing for higher arms expenditures on page 15, Mr. Acheson makes a curious and cryptic remark in passing, though he puts it in demagogic form. He says "The world of big business has no faith in the power of democratic institutions to inspire and direct the growth of national productivity, as they have done again and again in our history." Forced draft industrial expansion in accordance with an economic plan was the feature of the War Industry Board in World War I under Baruch, and of the expansion initiated by Truman in the wake of the Korean war. American society, too, can plan for expansion and must learn to do so.

The problem is whether we can do it for peaceful purposes and not just in war or arms races, where it is accompanied by a highly profitable inflation. "It is the duty of all Democrats," says the Acheson pamphlet, "to think long and hard." This is what they had better think hardest and longest about if the U. S. is not to be outdistanced ultimately by the USSR. Either mutual suicide through war, or we must learn economic planning, too, for our own benefit and the world's.

Civil Liberties Blind Spots in George Meany's Vision

From a civil liberties point of view, there were two contrasting points in George Meany's testimony on pending labor reform legislation May 22 which did not get the attention they deserved. The first was his opposition to a law which would guarantee regular secret elections in all trade unions. The other was his odd way of coming out for repeal of the non-Communist oath provisions of the Taft-Hartley Act.

Mr. Meany said the non-Communist oath no longer served any useful purpose "if it ever did." He said those unions in which there was still Communist influence were the ones which were "most meticulous about filing non-Communist affidavits" and that this was recognized by Congress in 1954 when it gave the Subversive Activities Control Board power to blacklist "Communist infiltrated" unions. Mr. Meany said current SACB proceedings against suspected unions made the oath unnecessary.

So here we have the head of the AFL-CIO opposed to a simple law to guarantee free union elections but endorsing by implication a much more complex measure which allows the government to interfere in internal union affairs and to determine which unions shall be blacklisted as "Communist infiltrated," not dominated, notice, but merely "infiltrated." The potential danger to the labor movement should be obvious. In a new McCarthy period the SACB could be used with wide and deadly effect.

Supreme Court 6-3 Reverses Lower Courts in Michigan Cause Celebre

Restoring the Saner Spirit of 15 Years Ago in Denaturalization

The Supreme Court's 6-3 decision in the Nowak and Maisenberg cases sets up strict rules of proof in denaturalization. It holds in effect that proof of membership in the Communist Party at the time of naturalization is not enough. There must be proof that the alien had personally advocated overthrow of the government by force and violence or had personal knowledge that this was one of the aims of the party. And the proof, must be "clear, unequivocal and convincing"—words quoted by Mr. Justice Harlan from the similar Schneiderman decision 15 years ago.

In denaturalization, as in Smith Act and other sedition prosecutions, a majority of this court is not prepared to condemn people out of hand merely because membership in the Communist party is proven. There must be proof that the accused *personally* was culpable. This was the spirit of the decision by Mr. Justice Murphy in 1943 reversing the denaturalization of the Communist William Schneiderman. To have much the same ruling in these new cases is an earnest of this Court's determination to stem the witch hunt.

Borrowing from Czars and Commissars

Denaturalization is a first step to deportation. It is banishment as a political punishment. It represents the ugly encrustation on a free society of habits associated in the past only with tyrannical regimes. It is a violation of the Bill of Rights, since it inhibits foreign born citizens from freely using their freedoms of political activity. But this violation is masked by basing the denaturalization on alleged fraud in obtaining citizenship. It is difficult here to draw a First Amendment line. The next best thing is strict procedural protection, astringent insistence on unequivocal evidence.

The facts of these cases illustrate the justice of resolving doubts in favor of the accused. Stanislaw Nowak came here at the age of 10, became a citizen in 1938, was five times elected to the State Senate of Michigan, where he served with distinction from 1938 to 1947. The denaturalization proceedings begun in 1952 were based on evidence which had failed to stand up after a grand jury proceeding ten years earlier. Aside from the allegation of Communist party membership in the 30's, there is nothing against his record, which is more than can be said for the same of the queer characters among the witnesses against him.

Against the Record of A Lifetime

Mrs. Maisenberg came here in 1912 at the age of 11. She was naturalized in 1938. "Petitioner has no criminal record." Her case like former State Senator Nowak's emphasizes the humanity of words Mr. Justice Harlan quoted from Mr. Justice Murphy. The latter said the requirement of unequivocal evidence was an especial obligation on the government "when the attack is made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness."

That this requirement of strict proof makes successful denaturalization in most pending radical cases unlikely is itself evidence of how tenuous have been the excuses for the deportations and denaturalization "delirium" in our time (to borrow from the title of that brave book Louis F. Post wrote about the similar wave in the early twenties).

Clark, Burton and Whittaker dissented.

Other Victims Who May Be Helped

Among the persons likely to be helped by the Supreme Court's decision in the Nowak and Maisenberg cases are 32 politicals on whose behalf Frank Donner filed a brief amicus in the Nowak case. These 32 are all persons against whom the government has begun denaturalization proceedings.

The 32 are Isidore Begun, Daniel Boano, Louis J. Braverman, Arthur Bartl, Joseph Chandler, Charles A. Collins, Richard Lawrence Davis, Anna Devunich, Freeda Diamond, David Diamond, Sarah Finkel, Leo Fisher, Max Hattung, Victor J. Jerome, James Lustig, Salvatore Lauranti, James J. Matles, Celia Feller Miller, Anthony Minerich, Steve Nelson, Paul Novick, Gunnar Paulson, Clara Paulson, Sol Almazov Pearl, Constantine Radzie, Alex Roth Rakosi, Al Richmond, Isaac E. Ronch, Allan Ross, James E. Toback and Louis Weinstock.

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