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If the Supreme Court Were Packed With Dixiecrats

At first glance the Supreme Court's decision in *Daisy Bates v. Little Rock* seems to uphold the right of political privacy. The Court was unanimous in reversing the conviction of NAACP officials who refused to furnish city officials with the names of their members. The Court upheld their plea "that the public disclosure of our members and contributors might lead to their harassment, economic reprisals, and even bodily harm." Mr. Justice Stewart for the Court said it was now "beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process clause of the 14th Amendment from invasion by the States." He quoted from the similar case of *NAACP v. Alabama* two years ago, "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." On its face this appears to reaffirm traditional liberties.

Only When Not Too Dissident

But more closely examined what the Court really said is that it will uphold the right of privacy to protect dissident groups only when they are not too dissident for the taste of the majority. The meaning of the decision becomes clearer if one turns to the concurring opinion by Black and Douglas. They felt that the Arkansas ordinances "violate freedom of speech and assembly guaranteed by the First Amendment which the Court has many times held was made applicable to the States by the Fourteenth." They argued "that First Amendment rights are beyond abridgment either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, or exposure by government."

The majority approach was different. It proceeded not from the clear words of the First Amendment but from the "balancing" doctrine of Mr. Justice Frankfurter. As Mr. Justice Stewart said, "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." When basic freedoms are threatened, Mr. Justice Stewart said, "it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purposes asserted as its justification." The Court did not think these asserted purposes sufficient to outweigh the NAACP's rights.

This is the fourth case in four years which has dealt with the right of the States to intrude on political privacy. They provide an illuminating pattern. In June, 1957, the Court held (Clark dissenting) that the State of New Hampshire could not send Paul Sweezy to jail for refusing to answer questions about his associates in the Progressive Party. In June, 1958, Mr. Justice Harlan held that the NAACP could not be punished for contempt because it refused to obey an Alabama judge's order to disclose its members. Pointedly, he based his decision on his own concurring opinion (with Frankfurter) in *Sweezy* where Harlan made much of the fact that Sweezy had not refused to answer questions about his relations with the Communist Party, but only with the (supposedly less subversive) Progressive Party. Then last June, Harlan and Frankfurter joined in the 5-to-4 decision by Mr. Justice Clark which upheld a year's sentence on Dr. Willard Uphaus for refusing to give New Hampshire a list of the guests at his Peace Fellowship camp. Here the majority held that First Amendment rights were outweighed by the State's need "to determine whether there were subversive persons in New Hampshire."

This implies that the First Amendment does not apply to "subversives" and the test is what five judges consider as falling within that vague witch hunter's category. In the South today the NAACP is the No. 1 Subversive Organization and the Arkansas Supreme Court in that climate found it easy to uphold the Little Rock ordinances. A U.S. Supreme Court with a Dixiecrat majority woud have found it just as easy by using the Frankfurter doctrine to balance away the NAACP's liberties. This doctrine substitutes the political prejudices and fears of a shifting majority for the unambiguous mandate of the First Amendment. Presently it allows political privacy, but only to those views not considered too dangerous.

A Washington Warning No Longer Fashionable

Looking through the Washington's Birthday speeches which poured from the mimeograph machines of Capitol Hill last week-end, we didn't find a single one which pegged off with what was once a favorite passage from the Farewell Address but seems to have gone out of fashion. We refer to Washington's warning against "overgrown military establishments, which, under any form of government, are inauspicious to liberty." This would have made an excellent text from which to deal with Air Force security manuals which regard Protestant ministers and school teachers as prima facie suspect, and treat with derision the public's right to know. Washington's words are also relevant to the current nightmares cooked up by rebellious Generals and Admirals trying to frighten more money out of Congress than the President, their civilian commander in chief, thinks necessary. Our military establishment is so fearsomely overgrown that aspiring politicians when they come to make patriotic addresses on Feb. 22 naturally forget to mention Washington's warning. What used to be a safe cliche has suddenly become too live and hot.

Won't the West Germans Be Even Harder to Control Once They Have Atom Bombs?

The Lesson in the Leak of Secret Arms Talks Between Franco and Strauss

The *New York Times* is not a crusading paper. Leaks to it have the character of unofficial communiques. When Cyrus Sulzberger revealed in the *Times* last Monday that Franco Spain and West Germany were engaged in secret military negotiations which had Allied statesmen disturbed, it was a safe guess that one of these disturbed statesmen as a last resort had leaked the news to the *Times*. Since the dateline was Paris, it was also a natural guess that the leak came from NATO headquarters. These guesses were reinforced next day when the *Times* reported from Bonn that Gen. Norstad, NATO's military chief, had met with West German Defense Minister Strauss "last month and sought to dissuade him from the plan." The big argument for bringing the Germans into NATO was that this would make it easier to keep them under control. Apparently the controls are already proving inadequate. This merits sober consideration before going on with the plan to give nuclear arms to the Germans.

Too Much Like Old Times

By obtaining bases in Spain, West Germany might free itself from the Paris Treaty restriction which forbade it to manufacture atomic, biological and chemical weapons "in its territory." Sulzberger wrote meaningfully, "Spain is neither German territory nor subject to the Allied controls that govern Germany's new arms." Again, it should be underscored that this was printed in a paper which is pro-NATO and pro-Adenauer. Hitler's Germany used Spain as a testing ground for World War II. It is not too early to make sure that it is not used as a testing ground for World War III. This is too much like old times.

While these revelations created an angry stir in London, Washington chugs along on the line that the Germans are our most reliable allies and that some way must be found to give them nuclear weapons. Humphrey in a statement over the week-end came out against the grant of nuclear weapons to allies, though without mentioning the Germans. No other candidate for the Presidency has even touched on the subject and only one other Senator, Monroney, has spoken up against a new nuclear give-away.

In reporting Humphrey's opposition, the *New York Times* disclosed (Feb. 22) that the Administration is moving back to the idea of using the President's "inherent powers" for nuclear arms transfers so that it can avoid a debate in Congress. Like Anderson and Holifield of the Joint Committee on Atomic Energy, Humphrey does not believe the Administration has power to act without asking Congress to change the law which forbids such transfers. What if the Administration under cover of some phony emergency should ask discretionary powers to give out nuclear arms if necessary?

In the House Feb. 17, Meyer of Vermont made an eloquent appeal against a new nuclear give-away. He was supported by Byron Johnson of Colorado, Kowalski of Connecticut and Kastenmeier of Wisconsin. Meyer in turn commended Wolf of Iowa for his remarks on the subject Feb. 4 and Holifield of Connecticut for his speech of Feb. 9. Of all the liberal Democrats in the House, only these six have spoken up.

Foreign Aid for Nuclear Armament?

Last year Meyer of Vermont led a fight to prevent foreign aid funds from being used to finance nuclear arms for our allies. He was assured on the floor of the House July 28 by Passman (*D. La.*), chairman of the Appropriations subcommittee in charge, that none of these funds would be used for this purpose. When Secretary of State Herter was before the House Foreign Affairs Committee the morning of February 17, Meyer asked him whether any foreign aid funds would be used to finance the sharing of nuclear weapons systems. Herter said he would prefer to discuss the matter in executive session. Meyer protested that he would oppose the foreign aid bill "unless the American people know what is going on." Herter said he was "not trying to evade the question at all, I am merely reserving the right, if I may, to answer it in executive session." It is difficult to understand why the question cannot be answered in public, unless indeed—contrary to last year's assurances—we *are* using foreign aid to finance nuclear armament.

Why Was This Report on Radiation Dangers So Long Withheld From Publication?

We suggest that scientists associated with the work of the National Committee on Radiation Protection investigate the handling by its chairman, Dr. Lauriston Taylor, of the Ad Hoc Committee report which has just been published in the Feb. 19 issue of Science. We wonder why this took so long to see the light of day and why its recommendations were withheld from the Holifield committee hearings on fallout last year.

Those who look at the article in Science will see that it is dated May 6. The Holifield hearings began May 5. Had this report been made available to the Holifield committee, it would have shown that the Ad Hoc committee of NCRP agreed with the International Committee on Radiological Protection on the need for drastically lower population safety standards.

Just before the hearings, those agencies in favor of nuclear testing were engaged in a press campaign to disparage the dangers of fallout. Dr. Taylor contributed to this by a press release which gave the impression that the strontium 90 peril was being "downgraded." The report of the Ad Hoc Committee would have undercut this campaign.

Dr. Taylor was before the Holifield committee May 7 in a panel on radiation standards. He said that he had just received a report from an Ad Hoc committee and would be glad to make it available to the Holifield committee "when and if" approved by the full NCRP. He gave no indication that this report recommended stricter safety standards.

The hearings contain a notation (at page 1609) that "the report referred to had not been approved at the time of publication." The final volume of the hearings did not go to press until Dec. 2. Dr. Taylor told the Weekly the Ad Hoc Committee report was circulated to the full NCRP some time last Fall but that it was not submitted for approval and was released "for information purposes only."

Dr. Taylor has the industry point of view on safety standards and the AEC point of view on testing. We believe that if this Ad Hoc Committee had concluded that radiation was not as dangerous as hitherto believed, plenty would have been heard about it months ago. We believe its release was delayed because its conclusions were unwelcome.

White House Does Queasily What Walter Faceless Informer Bill Does Openly

No Firm Rights Given Accused Defense Workers by New Security Order

Several million workers in defense plants will be affected by the President's new order on industrial security. It hardly gives their jobs and reputations the kind of protection traditional standards of fairness require. If a man is denied access to his job on security grounds, he is to be given "a written statement of the reasons" which will be "as comprehensive and detailed as the national security permits." This is the familiar formula of loyalty-security proceedings. Experience has shown this often means that charges are stated in so vague a form as to make effective disproof impossible.

A hearing is granted and the accused may be represented by counsel. "An opportunity to cross-examine persons either orally or through written interrogatories" is allowed but this is circumscribed, first of all as to subject matter. Section 3 (6) says it does not extend to "characterizations" in the charges "of any organization or individual other than the applicant." This is a serious restriction since most "charges" tend to be charges of association with allegedly "disloyal" persons or membership in some suspect organization.

A Handicap for the Defense

If accused of association with Mr. X, one may cross-examine to prove that one did not associate with Mr. X but one cannot cross-examine to prove that Mr. X is a decent citizen, or that the reasons for suspecting Mr. X are ludicrous. Similarly, if accused of having belonged to the long defunct Washington Bookshop, one may cross-examine to disprove membership but not to prove that the Bookshop was an innocuous organization.

The right of cross-examination, i.e. of confronting one's accusers, is also circumscribed by allowing for the exemption of informers. Section 4 (1) permits the head of the department which supplied an accusatory statement to exempt the source from cross-examination on the ground that it came from " a confidential informant who has been engaged in obtaining intelligence information." Many of these confidential informants, when subjected to cross-examination in judicial proceedings, have proven to be psychopaths and perjurers. Error, malice or fantasy on their part would be shielded from scrutiny.

A different rule is set up for casual informants. These may be exempt from cross-examination if they cannot appear "due to death, severe illness or similar cause" in which case, however their identity and what they said would be disclosed to the accused. As an alternative, these casual informants may also be excused "due to some other cause determined by the head of the department to be good and sufficient," in which case their identity and accusation would not be disclosed.

There is a third escape clause which has not generally been noticed. This is in Section 6. The heads of investigative agencies, though directed to cooperate "in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination", need only cooperate "so far as the national security permits." This would allow the heads of FBI, CIA, military and naval intelligence, and other spy agencies to decide for themselves how far they need go in disclosing sources of information.

If witnesses cannot be produced for cross-examination, the head of the employing department is supposed to consider "information furnished by the investigative agency involved as to the reliability of the person [i.e. the accuser] and the accuracy of the statement concerned." The accused is to be given a summary of this "which shall be as comprehensive and detailed as the national security permits" and final determination of the case shall be made "only by the head of the department based upon his personal review of the case." These safeguards may mean as much or as little as the officials concerned care to make them.

As if all these loopholes weren't enough, the final section of the executive order cancels itself out by allowing any department head to act without hearing of any kind when he thinks the national security requires it. The difference between this order and the Walter "faceless informer" security bill, HR 8121, is that the latter simply strips defense workers of any rights in clearance cases. The White House order shame-facedly permits the same star chamber procedures, but leaves the door ajar just a crack for the occasional executive prepared to battle for justice. That little is too much for Walter, and explains why he is pressing his bill instead.

Alert Your Senators

The Walter "faceless informer" industrial security bill, HR 8121, is now in the Senate Internal Security Committee where Dodd of Connecticut is pressing for swift action. In the House not a single liberal spoke up and this bill was passed by unanimous consent Feb. 2. Will Senate liberals prove as weak? Hennings might call attention to the issues by hearings on the new executive order before his Constitutional rights subcommittee if enough interest were manifested, particularly by the labor movement which ought to be concerned.

Sounds As If It's Time to Abolish the Supreme Court as Un-American

"I regret to report that the forces of atheistic Communism have penetrated the lines of our defense on every front and that they are gnawing away at the vitals of our Republic. Time would not permit me to discuss with you all of the fronts on which Communist subversive warfare is being waged in America. Let me, therefore, comment on a typical single breakthrough by the Communist conspiratorial forces, namely, in the field of legal subversion. . . .

"The Smith Act . . . has all but been emasculated by the [Supreme] Court. . . . In the Kent-Briehl case the Supreme Court . . . struck down [the Secretary of State's] authority to withhold passports. . . . In Greene v. McElroy the Supreme Court held invalid virtually the entire Industrial Security program. . . . In the Nelson case the Court blocked all prosecution of subversives under State laws. In the Jencks case the Court ripped to shreds the protective security of FBI reports. . . . You here in the Southland, perhaps more than in any other part of the country, have heard condemnation of the Court and its opinions. Without taking issue on this score, let me call your attention to . . ."

—Chairman Walter, House Un-American, getting American Legion Gov. Washington award, New Orleans, Feb. 22.

WMCA Marks A McCarthy Anniversary by Barring A McCarthy Victim From the Air

How Lyndon Johnson Looks to Liberals (and From Those Lunch Counters)

From the viewpoint of the Northern liberal, Lyndon Johnson is making a play for the Democratic nomination but will hold any concession on Negro voting rights to a bare, possibly "meaningless" minimum. From the viewpoint of the Southern white liberal, however, Johnson whatever his motives is splitting the solid South on the race issue, giving leadership for the first time to its isolated and intimidated moderates. These moderates may not look very advanced from north of the Patomac, but at least the South that says "never" is now no longer the only South.

From the Southern Negro point of view, this is nonetheless something of a sham battle. What I mean may be illustrated by a curious passage in that Associated Press story Feb. 22 from Hinesville, Ga., about Liberty County, the only one in the South where registered Negro votes outnumber whites. The local NAACP man was quoted as saying that the main ambition of Negroes was to obtain proper representation. "He declined to amplify," the AP said. What the NAACP man was afraid to say is that Negroes not only wanted the right to vote but someone to vote for. In most Southern States, the choice is so exclusively between two equally racist candidates that many Negroes see little point in going through the risky business of trying to cast a ballot for either of them.

More important than the fight in Congress over voting rights is the spreading revolt of Negro college youth against segregated lunch counters. This spontaneous rising reflects a new Negro generation no longer willing to bow its head, and determined to restore its self-respect. This as it spreads may make the Congressional battle a white man's sideshow.

One Way to Mark A McCarthy Anniversary

Radio Station WMCA, New York, chose a revealing way to celebrate the tenth anniversary of McCarthy's attack on the State Department at Wheeling, W. Va. The station cancelled a tape recorded debate in which Corliss Lamont and William Rusher of *The National Review* were to take opposite sides of a program, "McCarthy Ten Years After—Patriot or Demagogue?" The participants were well chosen since Mr. Lamont is one of the few who pleaded the First Amendment before the McCarthy committee and won in the courts while Mr. Rusher was himself assistant counsel of the Senate Internal Security Committee and the weekly of which he is publisher speaks for rightists. The station did not object to having a right winger defend McCarthy; R. Peter Straus, the station's president, objected that Mr. Lamont was too "closely identified with Left wing causes." The incident shows how McCarthyism and the fear of it linger on.

P.S. McCarthy's friend and collaborator, Robert E. Lee, has just been reappointed by the President to another seven year term as Federal Communications Commissioner.

A cheering passage in the recent District of Columbia Bar Association debate on passport legislation deserves preservation. "Heat was provided for the debate," the *Washington Star* reported (Feb. 10) "by Attorney Culver B. Chamberlain, former State Department foreign service officer. The Government bureaucracy, said he, unfortunately includes 'fools, bigots and scoundrels' who help determine who gets passports. The Chamberlains, he said, had been in the United States for several generations and, he added, 'When I get ready to get out I don't want some bureaucrat to stand in the way.'"

Start of A Tour to Get Acquainted With Our Latin American Neighbors

"The crowd at the airport was small, no more than several hundred people. [Unfriendly demonstrators were kept behind the airport where Ike could not see them.] For security reasons—the Secret Service was unhappy about the entire Puerto Rico stop—the President skipped any appearance outside the airport and any procession into San Juan. Instead, after a brief 10-minute private talk with [Governor] Munoz, he took off again in his big MATS jet to spend the afternoon and night at Ramey some 90 miles away. There he put in some practice time on the golf course and gave a small reception for top military brass. . . ."

—Wall Street Journal, from San Juan, Feb. 23.

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