DENNIS TERMS COURT DECISIONS:

Turning Point in Fight To Enforce Bill of Rights

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(Abridged copy of a report given to National Executive Committee of the Communist Party, June 21, 1957.)

This is, at best, a preliminary estimate of the importance of the June 17 decisions of the Supreme Court and a partial consideration of what should be done to utilize these far-reaching decisions to advance the constitutional liberties of Communists and non-Communists alike.

The overall significance of the court's opinion in the Yates, Watkins, Sweezey and Service cases, and also in the Jencks and Halperin decisions might be summed up in a capsule fashion as follows:

The latest judicial rulings of the high tribunal mark a certain turning point in the battle to enforce the Bill of Rights, and, can help usher in a new and more favorable phase in the struggle for democratic advance generally.

The court, reflecting the changing political climate within the country and internationally, has dealt a heavy blow at the whole system of pro-fascist and repressive legislation and prosecutions that characterized the height of the cold war and McCarthyite period.

In Watkins and Jencks, the court has placed a number of checks on congressoinal witchhunts and on the illegal and unconstitutional operations and practices of the FBI and the Department of Justice. In Sweezey, it has upheld the traditions of academic freedom and of political association. In Service it has placed certain restrictions on the misnamed "loyalty program." In Yates it has curbed and, at least for the present, crippled the Smith Act dragnet and has restored some of the protections of the First Amendment.

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AT this point I would like to examine several major aspects of the decision in the California Smith Act case which is the most important decision regarding civil liberties since the Schneiderman case and which has similar implications.

It is true that the Harlan opinion did not reverse the Vinson decision in the sense of declaring the Smith Act unconstitutional as was urged by Justices Black and Douglas. Yet the Yates decision is quite different from the Dennis decision. It represents a definite change in the court's position and de facto reverses a substantial, in fact a central part of the Vinson decision.

The significance of the Harlan opinion lies not only, nor so much, in the highly important and unprecedented action in the judgment of acquittal of five of the defendants and in voiding the organizing sections of the statute of the act in these cases, thereby assuring, as a minimum, new trials for nine of the California defendants and for all the defendants in most of the other Smith Act cases. Nor is its importance to be found in the fact that the court held that Judge Mathes erred in his charge to the jury.

The new and most important feature of the Harlan opinion is how the court applied the act in this instance. Because of a number of internal and external factorsfi the court now holds that the prosecution in the California case failed to prove that the Communist Party as an organization advoacted action to bring

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about the violent overthrow of the government, and hence that there was no proof that the party was a clear and present danger.

Further, the court now holds that in Smith Act conspiracy cases, new standards of evidence are required to secure conviction of the individual defendants. Reliance on the books, on the Marxist-Leninist classics as well as on the stoolpigeon testimony regarding alleged incidents in the remote past, or the alleged statements of party officers or teachers not made in the presence of the defendants—these are no longer considered sufficient to convict.

Under the Yates decision it is now necessary to prove that the defendants themselves either personally engaged in "advocacy of forcible action" or were present when someone else did so and did not register their disagreement. (We should bear in mind that in the original trial of the 11 the books were the main evidence presented by the government. Likewise Judge Learned Hand in the Circuit Court stated in his opinion that the government didn't need witnesses, that the mere advocacy and teaching in connection with the classics was sufficient to secure a conviction.)

To place the matter differently, after reviewing the evidence presented in the four-month trial in California, which means primarily reviewing the quotations and the distorted interpretations placed on the classics, (and influenced by the main trends in national and world developments) the court presently holds that the advocacy and teaching of the party in respect to the principles of Marxism-Leninism (and even as they judge it, in the context of the classics)—that such advocacy and teaching is not a call to action but is "doctrinal disputation." And the court states that such advocacy is constitutionally protected.

Despite all the legal mumbo-jumbo and obtuseness of wording in the Harlan opinion—which tends to hide, to conceal to what extent the court has now departed from the Vinson decision—the reality of the decision means that which was deemed criminal advocacy in Vinson in 1951 is now held to be "doctrinal dispute" and that even the advocacy of force and violence as a theoretical possibility is constitutionally protected.

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ON THE basis of the Yates decision, and as a very minimum, new trials are assured in the California, Cleveland, Michigan, Philadelphia, Denver, St. Louis, Seattle and Hawaii cases. Acquittals are indicated in some of the cases if there is reargument before respective circuit courts. And in the Pittsburgh, Boston and Puerto Rican cases, even before new trial dates can be set, new or superseding indictments may be needed.

Just if, how or when the government may resume any of the Smith Act prosecutions is as yet uncertain. In Boston, the U. S. attorney stated that the government is undecided what to do. In Los Angeles, the U. S. attorney was quoted in the press as expressing grave doubts whether the nine would be brought for retrial.

The government may halt further prosecutions, at least for the immediate period ahead, placing the onus on the Supreme Court, thereby attempting to pressure the court to reverse or modify the Harlan opinion in some subsequent case. Or it may turn out that the Attorney General's office may select one or several cases as a test for early retrial and attempt to tailor its case in such a way as to formally comply with the court's new standards of evidence.

In any event, it will rely on the Dixiecrat and McCartyite anti-court sentiment and campaign, and on the Dulles-Radford forays and provocations in the international arena, as pressure to try and force subsequently a reversal in the Harlan opinion as well as to secure the enactment of new legislation.

There are thus far no certainties in the situation and no guarantees that even the Supreme Court will consistently in the future sustain its own, its latest position.

What happens and how the court itself will act in the future Smith Act cases will depend, as ever, on the course of the mass

struggle, the democratic movement here as well as on the course of international developments.

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IT IS no secret that the sweeping decisions of June 17 were influenced and impelled by a host of factors, particularly by the series of favorable changes in the political climate that transpired and unfolded in relation to those changes connected with the Senate censure of McCarthy, with the outcome of the 1954 elections and with the subsequent convocation of the Geneva conference.

In the more recent period the growing movement for disarmament and banning H-bomb tests, for easing of East-West trade relations, the widespread questioning in the country whether individual liberties shall be sacrificed on the altar of "national security," etc, etc.—all these—coupled with

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George Morris and Joseph Clark are on vacation. Their columns will be resumed upon their return.

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the favorable trends in international affairs—played an important role in terms of affecting the political atmosphere in which the court acted.

In this connection, it is a fact that the staunchness and the anti-McCarthyite activity of our party and of other progressive forces over the past years, including the various united front movements that developed around most of the trials, the involvement of various conservative lawyers, certain Socialist leaders, and of numerous educators and religious leaders in the struggle for halting the Smith and McCarran Act prosecutions —as well as the positive impact of our 16th National Convention—this too played a useful and a beneficial role in helping to influence some of the currents and trends that, objectively, played a big part in affecting the outcome of these great civil liberties issues.

Judging from the initial editorial reactions of some of the most influential big business newspapers such as the New York Times, the Wasington Post, the San Francisco Chronicle, etc., as well as from the approbation expressed by various leaders of the Bar Association, by Mrs. F. D. R., etc.—the dominant response to the court's decision on civil liberties as on civil rights is and will be favorable.

Yet no one should underestimate the power and drive and the dangers of the Know-Nothing, the Dixiecrat and other ultra-reactionary opposition to the court's action and to its present orientation on constitutional liberties.

The roadblocks thrown in the way of the court's desegregation order over the past two and a half years is a case in point. The provocative calls of the Daily News and of the white supremacists to impeach most of the Justices of the Supreme Court, coupled with the efforts of Walter, Jenners, Eastland et al to enact new legislation to subvert the latest decisions of the court —undescores the dangers.

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NOW a few words concerning a number of measures which the progressive forces, including us Communists, should take to help the counter-attacks of reaction and to advance the whole struggle for democratic liberties and civil rights:

1) It is essential to popularize the democratic significance and portent of the court's decision for all Americans, Communists and non-Communists alike. And it is necessary to emphasize the new grounds which now exist to fight from, plus the heavy responsibilities of labor and the popular forces in this situation.

2) In addition to the suggested legal moves in all cases under appeal and in regard to the pending trials, broad united front movements locally to halt further prosecutions under the Smith Act are essential.

3) In the light of the court's decision and the more favorable objective conditions, it is timely and necessary to develop a new campaign to secure amnesty for Comrades Winston and Green as well as for Irving Potash. This undertaking should be imbued with a realization that there is a fighting chance to secure favorable action in the not too distant future.

4) Consideration should be given by all opponents of the Smith Act to help influence the introduction in Congress of a resolution for the repeal of the organizing, conspiracy and membership sections of the Smith Act.

5) Organized expressions of support for the court's decisions in the field of civil liberties AND civil rights should be encouraged.

6) In connection with the preliminary discussions now proceeding in respect to the 1958 elections, major attention should be given to raising in a new way the vital issues of upholding the Constitution and the democratic rulings of the court in general, and to opposing and invalidating the Smith Act, McCarran Act, McCarran-Walter Act, etc., in particular.

7) Obviously special attention needs to be given to reaching and mobilizing new sectors of the labor movement to speak out and assert itself. By and large most of the labor movement, especially its top leaders, have been lagging far behind other segments of the population in the struggle for civil liberties. This could become an important part of the drive to mobilize the trade union movement to defeat right-to-work laws, to help combat the labor spy system, as well as to advance the struggle for trade union democracy.

8) It is imperative to persuade the entire party and the Left of the new opportunities arising —judicial and political—for re-establishing the legality of the Communist Party and of other minority and radical groups. This should be approached boldly and with new initiatives, as well as realistically — bearing in mind that this process of development will take place unevenly especially in respect to the continuing problems of individual Communists and of other militants in private and public employment.

In this connection, it is important to stress the sterling contributions of our party and of other progressive organizations in helping to facilitate the new trends which are creating a more favorable situation in the country. Together with this, it is necessary to demonstrate and utilize the new possibilities opening for building the party, for enhancing its political influence, for effecting new and broader united front relations in the labor and democratic movements, and for explaining on a broader scale our Marxist advocacy of a constitutional and peaceful road of mass struggle for Socialism.

Civil Rights

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monkey on its back."

Administration sources said they will make astrong fight in any conference committee to strength the bill.

If they are unsucessful in deleting the jury trial provision entirely, they said, they hoped at least to have it limited to cases growing out of violations of voting rights.

The American Civil Liberties Union said, meanwhile, that support of the Senate's version "would not be in keeping with our obligation to millions of fellow-Americans to accord them at long last as citizens equal status under the law."

It said the proposal "needs further study before it should be enacted into law."

Sen. Hubert H. Humphrey (D-Minn) who opposed the jury trial amendment declared, however, that "the civil girhts bill is not dead.

"It can only be killed," he said, "if Republicans now show they are more interested in stirring up a partisan issue than in getting some constructive action."

He said the Senate bill "does represent a significant step forward, and, properly administered, can serve usefully to protect civil rights."