Our Guess on What the Supreme Court Will Do In The Immunity Case

The Democratic National Committee should have been in court last week as *amicus curiae* when Leonard Boudin ably argued the Ullmann immunity appeal before the U.S. Supreme Court. . . . The revived prosecution of William L. Ullmann was neatly timed to revive the "twenty years of treason" cry and the Harry D. White charges against the Democratic party in time for use in the presidential campaign. . . . If the immunity law is upheld, Ullmann will have a choice of going to jail for contempt or again telling under oath the same story he told the FBI in 1947 (and at least two grand juries and the House Un-American Activities Committee afterward). . . . Then he denied all her charges, the charges on which Attorney General Brownell and J. Edgar Hoover relied in their posthumous attack on Harry White and through White on Harry Truman. . . . On the heels of the new denials, Ullmann could be tried for perjury just about the time the campaign was getting hot —and dirty. . . .

It is not often that the Supreme Court has a case so supercharged with politics. . . . The Chief Justice will undercut the Republican campaign if Ullmann goes free. . . . Truman's Attorney General, Tom Clark, will be passing indirectly on a smear charge against the President who appointed him. . . . In addition the Court confronts a difficult legal question. . . . If it declares all compulsory testimony unconstitutional under the Fifth amendment, it will invalidate a whole series of measures since the 1890's permitting compulsory testimony in economic regulatory hearings before the ICC and similar agencies. . . . To distinguish these from First Amendment cases, as Mr. Justice Frankfurter emphasized by sharp questioning during oral argument, would be impossible. What, he asked, would you do in the case of sabotage, which is neither economic nor political? . . . The Court could, of course, evade these difficulties by declaring this particular statute unconstitutional on the technical ground that it violates separation of powers by permitting the judge to share in the non-judicial function of determining when immunity can be granted. . . . Our guess is that this is what a majority will do. . . . This would defend the Fifth amendment and free Ullmann, without saying that Congress could under no circumstances ever pass a compulsory testimony law. . . . It took McCarran *and* the Korean war four years to get this immunity law through Congress and many years may pass before there is another. . . .

Just "Prophylactic"

"Where the effect of political heresy is as serious as it is today, the dissenter is subject to penalties and forfeitures which are more drastic than criminal prosecution. . . . Only the most menial and low-paying work is now available to many persons who have been branded as subversive by congressional committees, administrative agencies or the daily press. . . . If the privilege [against self-incrimination] is to have any meaning in the current context, these sanctions must be regarded as reason for invoking the privilege. In an analogous period of religious oppression, the 18th Century, the English equity courts allowed witnesses to be silent where admissions of papacy would result in property loss."

—Defense Brief in the Ullmann Immunity Appeal, pps. 16-19.

"The possible "disabilities' petitioner lists . . . are prophylactic measures designed to remove dangerous or unsuitable persons from areas in which they can do harm, but they are not punitive or criminal sanctions."

—The Government's Reply in its main brief, p. 25.

A Letter Neither New York Times Nor Washington Post Would Publish

A Noted Victim of Paul Crouch Writes The Informer's Obituary

By Clifford J. Durr

As one of the many targets of Paul Crouch, I would like to make a few observations, prompted by the story of his death. If headlines are the test, Crouch's death was less newsworthy than his destructive assaults on the reputations of others. In a matter of a few months, he had passed from the glare of the spotlight into comparative obscurity.

During his lifetime he knew fame and glory and the excitement of intrigue. For nearly a decade he made his living in what has formerly been regarded as one of the most contemptible of all trades, that of informer. Again and again, not only the inconsistencies but the sheer fabrications in his testimony were exposed, but to little purpose. Public officials continued to vouch for his reliability and the nobility of his character. The following from the United States Senator, James O. Eastland, are just a few of many illustrations that could be given:

"You should be honored to know that man."

"The Attorney General has vouched for your veracity."

"Let me say right here that the Chair thinks he knows what he is talking about, that the FBI has gotten some very valuable information from this man and has confidence in what he says."

Crouch's most lurid confessions of past perfidy, deceit and treachery became, it seemed, a guarantee of his current veracity and patriotism. The power of men in high places continued to flow through him, to destroy the reputations of countless American citizens and to deprive many of their liberty. Because he served their purpose, they sheltered and guarded him and paid him in the taxpayer's money and in fame. They sanctified his words with their benediction of their own exalted positions and, lest the truth of his words be challenged, they wrapped him in the mantle of the Government's own immunity. When he had finished speaking, they printed and bound his words and sent them in official reports throughout the land to serve as permanent storage bins of suit proof libel, from which the sick-minded, the unscrupulous and all who have a grudge were invited to help themselves.

How should we judge the Crouches? In less excited and healthier times, they would be of no importance, except in so far as the lives of even the sick and broken in body and mind continue to matter. They would certainly have no power. How can people be made to see and understand that the Crouches, as destructive as they are, are not the source of evil, but its mere conduit?

In his testimony before the Courts, Congressional Committees, and Loyalty Boards, Crouch did just what he was hired to do and, whatever may be said about him, he gave his employers full value of what they wanted of him. He died lonely and despised by those who used him. Those who hired him remain respectable and powerful. They used him and when he was no longer useful they threw him aside. There are plenty of others to take his place. His very death was a final act of service to his hirers, for by it he became purged of his evil doing and they, of their responsibility for using him, for of the dead we should speak only good. Our Attorney General will now be spared the embarrassment of answering questions about the progress of his long delayed "study" of Crouch's conflicting testimony or about what is being done to right the wrongs done his victims.

Isn't it high time that we recognize that the responsibility for bearing false witness does not lie solely in the mouths that utter the false words?

History teaches, over and over again, the grim lesson that the informer system will corrupt and destroy any nation that uses it. It is beginning to corrupt and destroy our own country and it is time that it be ended.

"Internal Security" Was Also The Excuse for the Old Law of Seditious Libel

A Worse Menace to Freedom of the Press Than Huey Long's Tax

(*Continued from Page One*)

olutionary spirit. . . . If any such principle of suppression should ever be recognized in the common law of America, it might reasonably be anticipated that in times of high party excitement it would lead to prosecutions by the party in power, to bolster up wrongs and sustain abuses and oppressions by crushing adverse criticism and discussions."

George III Used The Same Logic

It was in the name of protecting "internal security" that editors were prosecuted by the Crown in Eighteenth Century England and America. The law of seditious libel was intended to facilitate a hunt for subversives and subversive writing like that now being carried on by Senator Eastland as the successor of the late Senator McCarran at the helm of the Senate Internal Security subcommittee. The First Amendment, in forbidding Congress to abridge freedom of the press, was intended to protect against any attempt to revive such restrictive doctrines in this country.

Chief Justice Hughes quoted Madison, "the Father of the Constitution," on this very point in that same decision in *Near v. Minnesota.* "This security of the freedom of the press," Madison wrote in the Virginia resolution against the Alien and Sedition laws, "requires that it should be exempt not only from previous restraint by the executive, as in Great Britain, but from legislative restraint also." It need hardly be argued at this late date in the witch hunt that a Congressional investigation, calling up newspapermen for interrogation on their political views and associations, acts as a very effective restraint. The Supreme Court has held on several recent occasions, notably in the Emspak and earlier in the Rumely case, that the power of Congress to investigate is limited under the First Amendment.

Worse Than Huey Long's Tax

The Court has already held that indirect as well as direct limitations on freedom of the press are unlawful. When Huey Long ruled Louisiana he imposed a two percent gross receipts tax on advertising revenue. This was not on its face excessive but the Supreme Court threw it out on the ground that such a tax could be used by Long to punish and extinguish a critical press. On that occasion Mr. Justice Sutherland wrote a landmark decision in the law of freedom of the press (*Grosjean v. American Press,* 297 U.S. 233). In this, again quoting from Cooley, the Supreme Court said that in the framing of the First Amendment "The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters. . . ."

The terror instilled by the Eastland committee, the wake of blasted careers it leaves behind, are far more effective restrictions than a two percent gross advertising receipts tax would be. We believe some means must be found to bring the newspaper investigation to a halt under the First Amendment, and think it a pity that no big and influential publisher has the nerve to take the offensive and challenge the subcommittee's powers in a some such way as we have chosen. Whether our action is won or lost, some action like it will some day be victorious. In the meantime we invite other newspapers and newspapermen to support our petition to the end that the Senate subcommittee may at least be subject to questioning in open court on its activities and purposes in regards to the press. This is the spirit in which we have filed suit.

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