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Burger, Nixon Friends From Witch-Hunt Days

WASHINGTON — If the Senate Judiciary Committee, passing on the qualifications of Warren E. Burger to be chief justice, digs deeply enough it will find an interesting affinity between him and President Nixon which Nixon has been trying to forget. It is the record of witchhunting in the days when Nixon was a rootin' tootin' member of the House Un-American Activities Committee backing up Sen. Joe McCarthy and, in some cases, ahead of him. Warren Burger at that time was his chief operator inside the Justice Department. That was where the 21-year-old friendship between the two really began.

This column on April 9, 1955, reported on an incident in Burger's career which goes to the root of his old witchhunting days. It was the famous case against Dr. John P. Peters of Yale before the Supreme Court which Burger argued because the then-Solicitor General Simon Sobeloff refused to participate in witch-hunting. Sobeloff would not even sign the Justice Department's brief.

The issue was drawn very clearly between Burger, Nixon and McCarthyism on one side and the protection of constitutional rights on the other. Justice Abe Fortas, now forced off the court, signed the brief against Burger, and his two partners, Judge Thurman Arnold and Paul Porter, argued the case in the Supreme Court.

Dr. Peters was an eminent specialist whom the U.S. Public Health Service brought down from Yale for four to 10 days each year to give advice on where money should be spent on medical research. As Chief Justice Warren later described it, "This work was not of a confidential or sensitive character and did not entail access to classified material." Furthermore, Dr. Peters was cleared regarding any disloyalty by two loyalty boards during the Truman administration.

However, when the Eisenhower administration came into power, it reversed the Truman board findings and found Dr. Peters disloyal. It did so on the basis of "faceless informers," many of them not under oath, whom Dr. Peters was not permitted to cross-examine or even know about.

The Eisenhower loyalty board's opinion was handed down April 6, 1953, approximately two months after Eisenhower and Nixon took office and at a time when both had campaigned on a platform of driving all "Communists" out of government. Attorney General Brownell was the public spearhead of that drive with an assist from Vice President Nixon on the outside and Assistant Attorney General Burger on the inside.

And in the fall of 1953 he held a famous press conference just before a special congressional election in California in order to benefit Nixon's close friend Glen Lipscomb, then running for the seat vacated by Mayor Norris Poulson in Los Angeles. But when the Los Angeles Times poll showed George L. Arnold, son of Judge Thurmond Arnold, a Democrat, well in the lead, Brownell called an unusual press conference with J. Edgar Hoover present. Hoover never had participated in a political press conference before. Together they denounced Communism in the Truman administration, particularly the career of the Treasury aide Harry Dexter White, then dead and unable to defend himself. The implication was that any Democrat was tainted with Communism.

Most significant aspect of the press conference was that it was leaked in advance to the Nixon forces in Los Angeles and a press release issued locally even before the Brownell-Hoover press conference was held in Washington. This was followed by a battery of 50 phone girls who called voters linking the Democratic candidate with communism.

The smear campaign worked. Nixon's friend Lipscomb was elected. Judge Arnold's son was defeated.

The constitutional differences between Nixon and the Arnold, Fortas and Porter law firm came to a climax in the Dr. Peters case.

The Arnold-Fortas firm had defended several other important victims of McCarthyism.

But when the Peters case came up for argument before the Supreme Court, Solicitor General Sobeloff, the solicitor general who was entrusted with arguing all cases before the Supreme Court, refused to do so.

Joseph Alsop, columnist, reported Sept. 7, 1955: "At first Sobeloff persuaded Brownell to confess error by refusing to contest the Peters suit. Then Brownell was persuaded by the politicians (Nixon et al) who have acquired an immense vested interst in the security system's abuses. Sobeloff was informed that Brownell would not keep his promise. The solicitor general then flatly refused to sign the government's brief against Peters. He further pleaded with Brownell not to sign the brief either, and there is some evidence that Brownell hesitated long before doing so."