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FORTY-FIVE

DREW PEARSON

Burger Luncheon Unethical Action

WASHINGTON — President Nixon went to unprecedented lengths to explain why and how he picked Warren Burger to be his first major judicial appointment, that of chief justice.

There was good reason for this. Because never in the past half century has such an obscure jurist been appointed to this high post. In the past, presidents have picked ex-presidents of the United States, candidates for president or Cabinet officers to be chief justice.

Among them were:

William Howard Taft, former president of the United States.

Charles Evans Hughes, governor of New York, secretary of state, associate justice of the Supreme Court and candidate for president.

Harlan Fiske Stone, attorney general and associate justice.

Fred Vinson, secretary of the treasury, chief of war mobilization, member of Congress and judge on the Court of Appeals.

Earl Warren, Three times governor of California, attorney general of California and candidate for vice president with Gov. Tom Dewey in 1948.

In contrast, Judge Burger held only an obscure position as assistant attorney general and as associate judge on the U.S. Court of Appeals.

Inside reason for the President's choice, as previously reported, was Burger's close affiliation with Nixon in the Joe McCarthy witch-hunting days and his role in the No. 1 loyalty case under Eisenhower—that of Dr. John Peters of Yale.

Here is a quote from my column of April 9, 1955, regarding an off-the-record luncheon which Burger staged in connection with the Peters case:

"Purpose of the luncheon was to do what the American Bar Association frowns on — influencing the courts through the press.

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"Asst. Atty. Gen. Burger is scheduled to stand before the Supreme Court of the United States on April 18 to argue a famous security case. And, to sway public opinion in advance, he invited 12 newsmen to an off-the-record lunch. Upon arrival they were amazed to hear a bald attempt to use them to incite the public for the purpose of influencing the Supreme Court.

"The Supreme Court case that Burger will argue is the famous one of Prof. John P. Peters, top medical officer of Yale University who was fired from his part-time, nonsensitive government job in the U.S. Public Health Service after an unnamed, undercover government witness claimed that Peters had Communist affiliations.

"The case comes up for argument in the Supreme Court in about a week and already the Justice Department has one strike against it because Solicitor General Simon Sobeloff, who is supposed to handle all Supreme Court matters, refused to sign the Justice Department's brief.



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"So, to arouse public opinion in advance, Asst. Atty. Gen. Burger proceeded to tell newsmen how a wrong decision by the Supreme Court could wreck the government's entire security program, how the Justice Department could function efficiently only if its corps of informers remained undercover and how disclosure of their identities would wreck the security machine.

"Sooner than identify its secret witness, Burger hinted, the Eisenhower administration would abolish its security hearings altogether.

"But he did attack anyone who criticized the Justice Department's security program as being Communist-inspired.

"The 12 newsmen listened in silence. Then one of them asked whether he considered Vannevar Bush, a top American scientist and vigorous critic of the security program, as being Communist-inspired.

"Another newsman asked whether Harry Cain, an Eisenhower appointee on the Justice Department's own subversive control board, was Communist-inspired. Cain too has been a vigorous critic of the Eisenhower security program.

"I'd just like to know," replied the assistant attorney general, "who is feeding them their information?"

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"Crude as he was, Burger ran no risk of a contempt-of-court citation. He used the technique of the background press conference where the public official who wants to get his views across remains anonymous.

"Note — Newsmen present did not fall for Burger's anonymous diatribe. Only one man present, Robert K. Walsh of the Washington Star, used the substance of what he said. Walsh waited several days, then wrote a carefully balanced story. It contained no hysteria."

Burger's criticism of anyone who criticized the security program as "Communist-inspired" later could have been applied to most of the Supreme Court over which he will now preside. For a majority found against him.

Justice William O. Douglas, whom Nixonites are not trying to pressure off the court, was especially vigorous. In a separate "Communist-inspired" opinion, he wrote:

"Dr. Peters was condemned by faceless informers, some of whom were not known even to the (loyalty) board that condemned him. Some were not even under oath. . . they may bear old grudges. Under cross-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work — things more precious than property itself. We have here a system where government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. It is used not only to get rid of employees in the government, but also employees who work for private firms having contracts with the government. It has touched countless hundreds of men and women and ruined many. It is an un-American practice which we should condemn. It deprives men of 'liberty' within the meaning of the fifth amendment, for one of Man's most precious liberties is his right to work."

Thus spoke out the justice who will now sit on the left hand of the chief justice who called men of his views "Communist-inspired."