

See also 26 Mar 70, 11 Jan 72

Court Upsets Federal Ban On Belgian Marxist's Visit

NY TIMES By MORRIS KAPLAN MAR 19 1971

A three-judge Federal court here, in a 2-to-1 decision, declared yesterday that the United States could not bar an alien visitor who preached "anarchistic" doctrines aimed at the forcible overthrow of the Government.

The court upheld the right of Dr. Ernest E. Mandel, an internationally known Belgian Marxist, to obtain a visa to lecture at colleges, universities and specific conferences. In so doing, the judge ruled unconstitutional sections of the Immigration and Nationality Act of 1952, popularly known as the McCarran Act.

The Government will study the decision to determine whether it will appeal to the Supreme Court, according to a spokesman for the United States Attorney for the Eastern District.

District Court Judge John F. Dooling Jr. wrote the 30-page opinion, in which Judge Wilfred Feinberg of the Court of Appeals for the Second Circuit concurred. The ruling backed a suit filed last year by Dr. Mandel and eight American scholars.

The court granted a preliminary injunction against Attorney General John M. Mitchell

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and Secretary of State William P. Rogers, who had barred Dr. Mandel's entry here.

District Judge John R. Bartels dissented from the decision. He contended that his colleagues, while recognizing "the sovereign power to exclude in the interest of self-preservation," had subordinated this to the First Amendment guarantee of freedom of expression.

Judge Bartels, in a 27-page opinion, said that the majority had done this by applying standards invoked exclusively "to strictures upon speech by American citizens and strictures upon the right of American citizens to hear other American citizens." The eight scholars who filed the suit contended that the rejection of Dr. Mandel's visa application for an American

speaking tour in October and November, 1969, restricted the right of Americans to hear the opinions of other scholars in their fields.

Dr. Mandel is editor-in-chief of the Belgian Left-Socialist weekly *La Gauche* and author of a two-volume text entitled "Marxist Economic Theory," published in 1969. He was admitted to the United States in 1962 and 1968.

He was denied admission in 1969 "because of his subversive affiliations" and his "flagrant abuse of the opportunities afforded him" during his 1968 visit.

'Open Exchange' Backed

The court majority supported the right to "free and open academic exchange." It proclaimed invalid sections of the immigration law as "imposing a prior restraint on constitutionally protected communication."

The Government contended that Dr. Mandel had written and published matter advocating and teaching "the doctrine of world Communism." It maintained that Mr. Mitchell was not required "to have factual support to justify his discretionary decision not to grant temporary admission since the power to exclude is absolute and waiver of exclusion purely a matter of grace."

While it recognized this country's steady concern with "the threat of international Communism and with anarchistic doctrine that connotes revolution," the majority ruled nonetheless that the First Amendment protected the right of debate.

"The doctrines are viewed as teaching and are denounced because they affirmatively teach that it is futile to aspire to alter the plan of government or its programs through the means of representative government and that the entire frame of government, including its basic constitution, must be uprooted by the forcible seizure of the total power to govern," the decision stated.

The First Amendment has been held nonetheless "to exact a dichotomy between the protected freedom to preach the doctrines thus legislatively pro-

nounced to be abhorrent to the nation's free institutions and the punishable illegality of taking significant action to initiate subversion and revolution," the ruling continued.

It stressed, moreover, that the amendment guaranteed "to the people as sovereign" their right to "an open and wide-ranging debate, publication and assembly, to review the government they have created, the adequacy of its functioning and the presence or absence of a need to alter or displace it."

Judge Bartels ruled, however, that "in the hierarchy or priorities the imperative of national security in dealing with aliens must prevail over limited restrictions upon First Amendment rights."

He said that "the loss of thousands of lives and the expenditure of billions of dollars attest to the fact that the Federal Government has reached the judgment that the continue worldwide growth of the Communist movement as practiced in its tyrannical form is inimical to the best interests of this nation."

Dr. Mandel was invited to participate in a conference at Stanford University on Oct. 17 and 18, 1969, as a speaker and panelist to discuss a speech given by Prof. John K. Galbraith of Harvard.

He applied for a visa on Sept. 2, 1969, and learned on Oct. 23 that his application had been denied. The case was argued before Judge Bartels last June after an action initiated by The National Emergency Civil Liberties Committee. The plaintiffs were represented by Leonard Boudin.

The Government's case was presented by Assistant United States Attorney Lloyd Baker.

The plaintiffs were David Marmelstein of the Polytechnic Institute of Brooklyn, Wassily Leontief of Harvard, Norman Binbaum of Amherst, Robert L. Heilbroner of the New School for Social Research, Robert P. Wolff of Columbia, Louis Menashe of the Polytechnic Institute of Brooklyn, Richard A. Falk of Princeton University and Noam Chomsky of the Massachusetts Institute of Technology.