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Morphew: introduction…chairman of Senate Judiciary Committee, chairman of Senate Internal Security Subcommittee…you have long been known as a critic of the Supreme Court. Have there been any recent decisions you wish to comment about?

Eastland: There certainly are, Dick. There is a recent case which arose in Illinois that opened a new door in federal usurpation in the reserved rights of the states and of the people. A Chicago policeman who violated the constitution and statutes of Illinois in unlawfully entering a home, making an unlawful search and arresting and retaining the occupants without a warrant was sued in a civil rights action for damages in the federal district court. The victims made no attempt to seek redress for the wrongs committed in the state courts of Illinois. Now the Supreme Court of the United States holds that the complainants, the people, have a valid federal action under the Fourteenth Amendment and the old Reconstruction Civil Rights Act. This decision changes federal-state relations in every city, town, and county in the United States. Local law-enforcing officers can be held accountable for civil damages in federal courts.

Morphew: was the court unanimous in reaching this decision?

Eastland: No, Felix Frankfurter dissented. And he said, "As between individuals, the body of mutual rights and duties which constitute the civil personality of a man remains essentially the creature of the legal institutions of the states." He points out that the decision extends federal civil jurisdiction into the traditional realm of state tort law.

Morphew: where will this decision have its most direct impact?

Eastland: Since defendants are entitled as a matter of right to jury trials, it would be my guess that most cases would arise in northern, Midwestern, and western cities. But whenever the actions are brought, they will constitute a gross invasion of what has always been a cause for action reserved to the state courts.

Morphew: in the last congress you and other senators sponsored a constitutional amendment that would reassert the absolute right of a state to censor or prohibit the

exhibition of motion pictures or books portraying obscenity or lewdness and immorality. What progress has been made with this proposed amendment?

Eastland: This amendment was drawn to counteract a sweeping Supreme Court decision that would permit public exhibition of a film presenting adultery as a desirable, acceptable, and proper pattern of behavior. We are still acting toward the enactment of this amendment, but as so often happens when Congress and the people become disturbed over far-reaching decisions of the Supreme Court, the Court either by accident or design takes another case and renders a new decision that reverses the trend of the earlier decision. They have now done this in the field of censorship, at least to the extent of conceding to a state or city the power and right to view a motion picture before it can be licensed for exhibition in a given area. This is a step in the right direction, but my amendment goes further and gives the local community and not the court the right to judge the content of the film or book as to obscenity and immorality, and let me say here, Dick, that I think it's the design of the Court to take away from the parents the right and power to control their children, what they see and what they read and to nationalize it, to place it into the hands of the federal government where the minority pressure groups have tremendous power.

Morphew: you spoke of the court as reversing a trend, do you believe this means that the Court is sensitive to and will react to public opinion?

Eastland: There's no doubt about it. Since the Court has gone so far a field and become a super-legislature rather than a strictly judicial body, the more the people let the Supreme Court know in no uncertain terms that they disapprove of decisions the more likely it will be that the Supreme Court will reverse its position.

Morphew: how do you account for the fact that so often the Court so often divides 5-4 on the most important and fundamental issues?

Eastland: Justices Black, Douglas, Warren, and Brennan are almost always together in decisions that would overthrow established, constitutional interpretation, in fact, that would overthrow the constitution itself. The series of cases culminating in the recent Braden and Wilkinson decisions involving the conflict between the judicial and legislative branches of the federal government over the extent of investigative powers invested vested in congressional committees best illustrates this.

Morphew: could you give us some history and background of this series of cases?

Eastland: The Court in the famous Watkins case struck at the power of Congress to conduct investigations and set itself up as the final arbiter of what questions a congressional committee might ask a witness. Here the Court declared that a witness need not answer unless the pertinency of the question is made clear to him. Mr. Justice Clarke, the lone dissenter, in my view, put the matter in its proper perspective when he stated, and I quote him, "The record in this case shows no conduct on part of the Un-American Activities Committee that justifies condemnation, but there may have been such

occasions is not for us to consider here, nor should we permit its past transgressions, if any, to lead to the rigid restraint of all Congressional committees to carry on its heavy responsibility. The compulsion of truth that does not incriminate is not only necessary to the Congress, but is permitted within the limits of the constitution." Incidentally, Dick, I recall the words of Professor Corwin, the noted authority on the Supreme Court, who said, "There can be no doubt that on June 17th last, the day the Watkins case was decided, the Court went on a virtual binge and thrust its nose into matters beyond its competence, with the result that it should have a fore set nose well-tweaked."

Morphew: what followed after the Watkins case?
Eastland: Oh, after that decision, it was felt that the Court would continue to confine Congressional investigative power. In 1959, the Court switched its direction and in deciding Barenblatt v. United States, Mr. Justice Harlan, speaking for the 5-member majority, made it clear that five out of the eight justices who had comprised the majority in the Watkins case changed their views about seriously limiting the investigatory power of the Congress. This view appears to be continuing as indicated by the majority holdings in two recent decisions of the Court in Braden v. United States and Wilkinson v. United States, both decided on February 27 of this year. Here again, the minority of Warren, Black, Douglas, and Brennan would seriously curtail the investigatory powers of the United States Congress.

Morphew: what other cases do you have in mind in which the Court has seriously usurped legislative powers?

Eastland: I have in mind the Nelson case in 1956, the Cole decision in 1956, the Jencks and Yates decisions of 1957. Let me discuss them briefly. In Nelson, the Court invalidated a Pennsylvania anti-subversion law on the grounds that Congress, by legislating in the field of sedition, had preempted the area to the exclusion of state action and thus rendered the anti-subversion statutes of 42 states. In Cole case, the Court invalidated an executive order issued pursuant to an act of Congress authorizing federal agency heads to discharge any employee found to be a security risk. The Court held that the government, in addition to establishing the risk of the employee in question, must prove that the position held by the employee was a sensitive one and therefore related to the nation's security. In Jencks, the decision by the Court opened government files including those of the FBI to criminal defendants, including communists and known dope peddlers. In Yates, when the Court substituted itself for a jury to direct judgments of acquittal in the case of five out of fourteen communists convicted in California and granted new trials to the other nine. Dick, I feel very strongly that the Court in these decisions arrogated to themselves legislative functions more properly reserved by the constitution to the Congress of the United States. Dick, I disagree fundamentally with the Warren Court for its usurpation of the powers of Congress in the legislative field. I join with the observation made by the Conference of Supreme Court Justices in 1958 when they said, "It has long been an American boast that we had a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast. Now these state Supreme Court justices are not just from the South, but from all the states. I share their concern with the

present trend of Supreme Court opinions wherein that body has been reading into the law something that is not there. Now reading into the law something that is not there is the same thing as writing the law, and my view as writing the law is not the prerogative of the Supreme Court but rather the Congress of the United States.