

American Medical Association

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COMMITTEE ON TOXICOLOGY

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Secretary

September 9, 1954

Lead Paint

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182

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Mr. Trichter
Assistant Commissioner
Environmental Sanitation
City of New York Department
of Health
100 North Street
New York 13, New York

Mr. Trichter:

This is in reply to your letter of August 24th inviting
Committee to express an opinion on the proposed Sanitary Code
relating for paints and coatings.

The proposed statement appears a bit ambiguous since the
paints may also contain lead. We suggest the following:

WARNING: This paint contains an amount of lead
which may be POISONOUS and should not be used to
paint children's toys or furniture or interior
surfaces in dwelling units which might be chewed
by children."

We are still unconvinced that 1% lead is a safe limit.
The basis for our sentiments is contained in the memo presented at
the American Standards Association Meeting several weeks ago. A
copy of which was furnished Mr. Raybin.

I regret the delay in the submission of these comments
that they will arrive in time to be of use to you and
your associates.

Sincerely yours,

Bernard E. Conley
Bernard E. Conley
Secretary

*See 306
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*copies to members
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therefore, which permitted any person whose reserves were few to employ such devices. The only obligation imposed was that they abandon the practice as soon as they were able to do so.

That Britain's approach should be to this as "the heart of the matter" was particularly significant. Britain herself has long been an underdog under this provision. At any rate, he has proposed that all such restrictive restrictions should in future be subject to review by the world organization, and that the imposition of such restrictions for more than one year should be subject to prior approval by the plenary body of the organization, whatever it may be called.

Topics of The Times

On a height near the Potomac River commanding a sweeping view of the nation's capital five marines and a sailor who sailed the stars and stripes on Mount Suribachi, Iwo Jima, one bloodstained day in February, 1945, are joined once more. This time they stand in heroic bronze, more than five times life size, to memorialize the gallant history of the Marine Corps. Tomorrow—the 179th anniversary of the corps—the memorial will be dedicated as a symbolic tribute to all the marines who have given their lives in the service of the United States since 1775.

The six figures Old Glory "training to drive the New flagpole into the volcanic rock of the mountain, were immortalized by the famous picture taken by Associated Press photographer Joe Rosenthal. The men were from Company K, Twenty-eighth Regiment, Fifth Marine Division. On Feb. 23, 1945, two days after the bloody invasion of Iwo Jima began, the Twenty-eighth Regiment had reached the base of Mount Suribachi, the highest point on the bleak Pacific island. By nightfall of the next day they had surrounded it. Company E started the perilous climb the following morning. At about 10:35 P. M. the six-man detachment raised the flag, and the inspiring sight of Old Glory flying proudly on high was visible to marines all over the island, many of whom still were engaged in hand-to-hand fighting with the enemy.

Actually, an earlier flag-raising had signaled the same arrival of the marines atop the strategic mountain. The first flag was a small one, brought ashore by an officer in his map case. As it was being raised into position attached to a piece of Japanese pipe, enemy troops emerged from their caves and launched an assault. After they had been beaten off and the mountain captured, the larger flag, hurriedly borrowed from a Navy landing craft, was brought up the mountain. Organized resistance on the island lasted until March 16 and marine casualties were heavy. Among those who lost their lives in later phases of the battle were three of the six men who had taken part in the second flag-raising. The other three survived the battle and the war. They later posed for their likenesses in the Marine Memorial. The Rosenthal picture was published widely.

and many of them could read with profit. The author, Prof. Carl Brent Swisher of Johns Hopkins, sees a mounting need for the re-evaluation of the functions of the court by "democracy," which, he says, "will in the long run determine" them unless the court, about to be furnished with a second and most fitting chosen Eisenhower appointee, Judge Harlan, to join the seven chosen by President Roosevelt and Truman, anticipates the process.

The layman, who well realizes that the Supreme Court (in Swisher's words) "now stands exposed as a power group competing with other groups wielding political power in our society," constitutes the bulk of this "democracy," and so the topic deals with an issue of vital importance to his daily life. The layman has weekly illustrations of positive power assertions by the court. And if he forgets about its exercise of negative power, an occasional inspection of judicial and administrative decisions which it makes positive by refusing to review them should refresh his memory.

Truth or Quibble

"It (the court)," writes Swisher, "is no longer generally accepted as the vehicle of revealed truth, as the largely passive instrument of the law, which from time to time it has claimed to be. . . . (And) individual justices are themselves competitors for power and for the individual prestige of determining the course of legal rationalization." Yet as late as 1936 Justice Roberts, pursuing the efforts begun by Chief Justice Marshall to prove "judicial self-abnegation" in a court history replete with evidence to the contrary (now, according to Professor Swisher, at a new high), wrote as follows:

It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. . . . When an act of Congress is appropriately challenged in the court as not conforming to constitutional mandate, the judicial branch . . . has only one duty—to lay the article of the Constitution which is invoked beside the statute and to decide whether the latter squares with the former. . . . The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy.

But those words were written in an opinion holding invalid the first Agricultural Adjustment Act, and, for the dissenters, Justice Stone (later Chief Justice) accused the majority of doing just what Roberts said it did not and could not. So Roberts' remarks were taken by many as a quibble—a viewpoint which subsequent actions of the Supreme Court have greatly strengthened. The impression is now widespread that not only, as Chief Justice Hughes remarked, is the Constitution what the judges say it is, but also too many judges make the Constitution say what they want it to.

The 'Liberals' Civil War

After reviewing the recent history of the court, and contrasting that unfavorably with Stone's principle that "courts are not the only agency of government that must be assumed to have capacity to govern," Swisher makes these observations: "When the Supreme Court became overwhelmingly the product of Roose-

by John Carter Vincent, whom Secretary of State Dulles allowed to remain.

In August, 1949, the State Department hurriedly issued a volume entitled, "United States Relations with China," with the hope that it would still, or at least make better informed, the current and rather severe criticisms of American policy. As should have been anticipated, the hope was vain.

This China "White Paper," however, was unprecedented in two respects: its size—1,000 pages (as Cleeve once said, "If I had time, I would write you a shorter letter"), and its inclusion of reports from Foreign Service officers in the field (Davies and Service) and memoranda outlining the views of John Carter Vincent, then Chief of the Division of Chinese Affairs, who accompanied Vice President Henry A. Wallace on his mission to China in June, 1944. Senators thought that these Foreign Service officers were too "soft" on the Chinese Communists and went to work.

Identity Withheld

The State Department soon regained its sanity, and the following summer Secretary of State Acheson refused to identify for the Senate committee inquiring into the circumstances of General MacArthur's removal the Foreign Service officers who had prepared a paper (December, 1949) giving guidance to information officers as to the American line in the event that Formosa fell to the Reds. Mr. Acheson said that he took the responsibility.

In January, 1952, the State Department was quite firm with the McCarran committee, then investigating the Institute of Pacific Relations: "It is the view of the department that preserving the integrity of the reporting by departmental officers is a matter of principle of the highest importance. It is equally important to protect the integrity of the internal memoranda in which views are exchanged in the formation of policy. The release of these documents [requested by the committee] would undoubtedly inhibit the free and frank expression of views by the officers of the department."

This attitude was impeccable. The Senate Committee was not entitled to see such documents. If Mr. Acheson's law firm had lost an important case it would not have conceded the right of its client to see the memoranda that junior lawyers had prepared to enlighten Mr. Acheson and his partners.

Effect on Officers

The publication in the China "White Paper" of reports from the Foreign Service officers in the field began the chain of events which led to the situation described by a group of former Foreign Service officers, whose eloquent letter The New York Times published on Jan. 17:

"The conclusion has become inescapable, for instance, that a Foreign Service officer who reports on persons and events to the very best of his ability, . . . which at the time he conscientiously believes to be in the interests of the United States, may subsequently find his loyalty and integrity challenged and may even be forced out of the service and discredited forever as a private citizen after many years of distinguished service. A premium therefore has been put upon reporting and upon recommendations which are ambiguously stated or so cautiously set forth as to be deceiving."

measures to curb the Communist in the field of foreign policy than has the majority of the Republicans.

ALFRED BAKER, LEXINGTON,

New York, Nov. 4, 1954.

To Curb Lead Poisoning

Health Department Decision Relative to Label on Paint Commended

TO THE EDITOR OF THE NEW YORK TIMES: The item in The Times of Oct. 31 reporting the adoption of a sanitary code by the Health Department which requires a warning label on paint containing more than 1 per cent lead stating that it is "harmful" and "should not be applied to toys, furniture or interior surfaces which might be chewed by children," is good news to those concerned with the prevention of lead poisoning in children.

For the years 1931-32, there were 1,000 deaths and 155 cases of childhood lead poisoning have been reported by the Health Departments in New York, Chicago, Boston, Cincinnati, St. Louis and Baltimore. The New York City Health Department's regulation is part of a broad-scale national attack on this problem which has engaged the efforts of many individuals and organizations for the last three years. One phase of this program has been to develop more informative labeling on paint, especially that sold at retail. The need for this has increased with the rise of the "do it yourself" movement.

Creation of Standard

Some may be curious as to how the figure of 1 per cent has been determined. It is the result of a project initiated in March, 1953, by the American Academy of Pediatrics, through the American Standards Association, to create a standard for paint which may be safe for use on children's toys, furniture and interior surfaces of domestic dwellings. Through the facilities of the American Standards Association and the full cooperation of the Lead Industries Association and the National Paint, Varnish and Lacquer Association it has been possible to bring together experts in children's diseases, toxicology, paint manufacture and public health under the chairmanship of Dr. A. G. Cranck of the Union Carbide and Carbon Company. It is this multi-discipline group which has recommended, after careful study, the standard of 1 per cent or less for paints to be used on surfaces which may be chewed by children.

It is recognized by all the experts that informative labeling is only one step in preventing lead poisoning. The peeling of paint containing a high percentage of lead applied to walls and woodwork years ago in slum areas of our cities is the source of much of the childhood lead poisoning we see today. For this prevention we need a vigorous program of education which will reach parents of pre-school age children in these localities and intensification of slum clearance to rid communities of housing which breeds this and other health problems.

GEORGE M. WHEATLEY, M. D., Chairman, Committee on Accident Prevention, American Academy of Pediatrics. New York, Nov. 3, 1954.

Members of Housing Committee TO THE EDITOR OF THE NEW YORK TIMES: In your issue of Nov. 3 you printed

NY Times

Nov. 9, 1954, p. 26