



supply of trained personnel, carefully chosen for its limited initiative and unlimited loyalty to Politburo leaders, who can fill in. The executive offices

can always find occupants as long as the party treasury is full; and as long as there is a Robert William Weiner, it won't be empty. —CLAIRE NEIKIND

The Art of Spy-Catching

With the development of super-lethal, super-secret weapons, espionage and sabotage may easily decide wars. With its traditions of discipline and conspiracy, the Communist Party provides effective operatives for an intelligence and sabotage organization. The Internal Security Act of 1950—the McCarran Act—is an effort to thwart such activities by striking at the entire party, which is undoubtedly the nursery and training school for many agents.

The McCarran Act places its first reliance on punishing Communists for refusal to register with the Attorney General. Realizing that Communists might refuse to register on the grounds that they cannot, under the Constitution, be forced to incriminate themselves, Congress put this sentence into the law: "Neither the holding of office nor membership in any Communist organization . . . shall constitute per se a violation . . . of this section or of any other criminal statute."

Thus the heart was cut out of the strongest provision in the Smith Act, passed in 1940, which made it unlawful knowingly to "become a member of . . . any society, group, or assembly

of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence." Eleven leaders of the Communist Party have been convicted under this law. The case is now before the Supreme Court.

If the Supreme Court upholds the conviction, no one in the party can possibly claim ignorance of its revolutionary objectives and illegal character. Relying on the Smith Act, the Justice Department would have merely to prove, first, that the party had not changed for the better, and, second, that the accused had been a member of the party at any time after the Supreme Court decision.

The McCarran Act, it is true, leaves some of the provisions of the Smith Act intact. Communists can still be prosecuted for specific acts that will further their conspiracy.

The new law orders all persons who have been members of the party or officers of Communist-front organizations at any time since October 22, 1949, to register with the Attorney General. But when the deadline for

registration arrived, not one member of the 150-odd organizations on the subversive list had registered.

The procedure for uncovering all of these elusive Communists must start with hearings before the Subversive Activities Control Board, a panel appointed by the President and headed by Seth Richardson. After long hearings, in which the Communist Party will doubtless claim that it is a peace-loving, progressive alliance, the board will probably decide that the Communist Party is a Communist-action organization. The party can then appeal to the courts. If the Supreme Court upholds the board, party members will have sixty days to register. Failure to do so may be punishable by a \$10,000 fine and five years' imprisonment for each day of nonregistration after the deadline. Thus anyone signing up a week late could go to prison for thirty-five years.

The punishment imposed is certainly harsh, particularly since the law declares clearly—and not quite consistently—that membership in the party is itself no crime and since the offense is merely refusal to fill in a blank.

A recent unanimous Supreme Court decision has probably torpedoed the registration provisions of the law anyway. The Court ruled that a certain Patricia Blau had every right to be silent concerning her Communist affiliations because her answers "could have furnished a link in the chain of evidence" needed to convict her under the Smith Act. The implication seems to be that individual Communists cannot be forced to register. However, the party

as a whole probably can be made to do so.

Unless the McCarran Act is patched up, the Justice Department is unlikely to make any effort to force the registration of individual Communists. Congress cannot both have and eat its cake. It cannot force Communists to reveal their membership, unless such membership is not a crime. If it wants them indicted for membership it cannot disregard their constitutional privilege not to incriminate themselves.

In any case, there will probably be a minimum two-year delay before the Supreme Court rules on the various issues of constitutionality. During this period, Communists will be free to agitate and conspire.

If war with the U.S.S.R. should break out within the two-year period of indecision, the registration provisions would probably prove pointless. All known Communists could be promptly interned under Title II of the McCarran Act, and, once they had been rendered harmless, there would not be a great deal of point in prosecuting them.

The new law strengthens the espionage laws by covering acts preparatory to actual spying, provided their intent is to injure the United States, but here the stumbling block will be proving intent. In 1945, certain government officials were arrested for transmitting secret documents to *Amerasia*. But there was no proof that these documents went from *Amerasia* to any foreign agent and, if there had been, there would have been no proof that the officials knew their destination.

A further obstacle is that the Constitution guarantees public trial for any offense. This may mean forcing the



government to produce secret data in court. In a spirit of mischief, some young men once stole photographs of the atomic bomb. They were let off with a nominal sentence. Had the government been hard-boiled or the culprits been true conspirators, their lawyers could have insisted on producing the photographs as evidence.

The next debatable provision of the Internal Security Act calls for the internment of those suspected of intending to commit sabotage or espionage in time of war, invasion of U. S. territory, or armed insurrection.

The standards which the Detention Review Board, which will handle such cases, must consider are Communist Party membership since January 1, 1949; a past record of sabotage or espionage; and training in these activities in schools controlled by Communist organizations or foreign governments. But no individual need necessarily be detained merely because he falls into one of these groups.

The main weakness of this provision is that it does not permit internment of agents who are kept out of the Communist Party because of their usefulness to it. The atomic spy Harry Gold was ordered by his Soviet superior never to read the *Daily Worker* or join the Communist Party.

The internment provisions are also of dubious constitutionality. People are to be imprisoned not because they *have* committed a crime but because they *might*. The law does give the interned the right to appeal for a writ of habeas corpus. This means they can demand to be charged with a crime or set free.

This provision of the McCarran Act is not, however, a peacetime measure. It operates in war, invasion, or revolution. The war powers of the United States government are vast. The boundaries where these powers come into possible conflict with the Bill of Rights are ill defined.

Practically speaking, ever since the days of Chief Justice Taney, the Supreme Court has been reluctant to meddle with wartime military or internal security operations.

In December, 1944, the Supreme Court by a 6-3 decision upheld the barring of Korematsu, an American citizen, from the Pacific defense area, but the issue of actual preventive arrest has never come before the Court. All that can be said is that, even in wartime, it has never been upheld as constitutional.

In the event of war, however, American internal security obviously will require internment of those Communists capable of serving as soldiers in a Soviet fifth column. The detention plan provides this. In wartime, no court is likely to release them.

In the penumbra between war and peace, the Smith Act provided an effective means of prosecuting the more dangerous Communists. The 1950 law partially repeals this, substituting provisions whose constitutionality probably cannot be determined for two years, at the very least.

The frontiers between the conflicting social values of freedom and security change with the degree of jeopardy to the nation. Today the balance is heavily weighted toward security. It remains to be seen whether the McCarran Act will provide that security.

—NATHANIEL WEYL



The McCarran Act

And the Voters

On the afternoon of September 22, 1950, in the cramped, temporary, and noisy quarters of the House of Representatives, forty-eight Congressmen made a decision that seemed fraught with political danger. Speaker Rayburn had put the question: "Will the House, on reconsideration, pass the [McCarran Anti-Subversive] bill, the objections of the President to the contrary notwithstanding?"

There were strong temptations to ignore the President's plea. After all, this was "the" anti-Communist bill, and we were at war with the Communists. With adjournment still hours away, many a political opponent was already on the stump, hitting hard at the "bungling, Communist-coddling Administration" which was causing "mass murder in Korea." Only six weeks remained until Election Day.

When the clerk had finished calling the roll, 286 "Ayes" overshadowed the small group of forty-eight Congressmen who answered "Nay." Eight, among the absent for this vote, joined the minority by "pairing" against the bill. Among the dissenters were fifty-three Democrats, two Republicans, and one American Laborite. The next day they left Washington and stepped into the middle of a campaign in which "softness toward Communism" was to be, in many cases, the only issue.

Six weeks later, only twelve of the fifty-six dissenters found themselves defeated. Even the first-termers, many of them in "marginal districts," had survived. Why hadn't this piece of political dynamite called the McCarran Act exploded in the faces of more of its opponents?

In order to find out, a questionnaire was sent to most of those who had opposed the bill. "How important an issue has 'softness toward Commu-



Harris & Ewing

Senator Patrick McCarran

nism' been in your campaign? Were you specifically attacked on your vote against the McCarran bill, and how many of your constituents were aware of that vote? What effect do you think that vote had on the election results? What difference would it have made if you had voted *for* the McCarran bill instead of against it?"

These questions were derived from a campaign which I was able to observe at first hand, as the legislative assistant to Congressman Henry M. Jackson, a liberal young Democrat who has represented Washington State's Second District (north of Seattle) since 1940. Even before the primary, his opponent had charged that in a series of seventeen votes in Congress, dating back to 1942, Jackson had "voted with Joe Stalin's underground group in Congress." After the primary, this attack was taken up full force, with the vote against the McCarran bill added.

Henry Jackson is a man who lives politics seven days a week, twelve months a year. For him, every year is a campaign year, and he makes a careful point of touring his entire district if he is home for as much as two weeks. The result is an extraordinarily wide personal acquaintance throughout the district, and a general feeling of trust in Jackson. These have been the foundations of his political strength, to which his largest "off-year" majority, in 1950, may be primarily attributed. The violence of the personal attack on Jackson's integrity seems actually to have helped him. Only a few of his constituents appeared to know or care how he had voted on the McCarran bill, and only rarely was he asked about it. When questioned, he was usually successful in ridiculing the Communist-registration feature by borrowing President Truman's comparison of "requiring thieves to register with the sheriff."

Judging from his unusually strong showing in a Republican year, Jackson now believes that he lost at most a modicum of votes as a result of his opposition to the McCarran bill, and admits that a vote *for* the bill would have gained him little, since the attack upon his supposedly "left-wing" tendencies began considerably before September 22.

The returned questionnaires brought descriptions of campaigns similar to Jackson's. In most cases, "softness toward Communism" had been, if not the only issue, one of the most prominent. Significantly, in most instances where the McCarran vote was specifically attacked, the experience was identical to Jackson's: Rather than being singled out or highlighted, it was merely tacked on to a long list of previous "pro-Communist" votes. According to their questionnaires, most