

THE BATTLE AGAINST DISLOYALTY

By
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THE BATTLE
AGAINST DISLOYALTY

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To Sylvia and My Mother

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Chapter One

FIFTH COLUMNS IN AMERICA

THROUGHOUT 175 YEARS of American history, the people of the United States have successfully met the challenge of sedition, disloyalty, and espionage. This book is a record of that struggle. It records the ways in which disloyalty was combatted and stamped out in the past. It deals with what is being done about it in the present period of crisis. It discusses what is not being done, but should be done.

While the Federal Bureau of Investigation bulks large, this is not merely a cloak-and-dagger struggle between G-men and espionage agents. Since we live under a rule of liberty and of law, it is the task of the Supreme Court to define and redefine the shifting frontiers between the civil rights of the individual and the power of the republic to protect itself against destruction.

While the treatment is historical, the overriding emphasis in this book is on contemporary conspiracy. Despite the internal vitality of American democracy, its existence is more seriously jeopardized by Soviet communism than by any of the previous subversive forces which have dashed against it.

Any writer on this subject, especially during the present times of trouble, has a difficult responsibility to discharge to the public. Exaggeration and alarmism lead to witch hunts and smear terrors. These do more than destroy the reputations and lives of blameless men. They encourage Americans to turn aside from the task of fighting Soviet forces on the real battlegrounds, where blood must be

spilled and lives sacrificed, in order to engage in the exciting work of spy chasing. Obsession with the power and influence of the enemy within may create a state of mind in which the public believes that the American government is rotten with Communist influences which are prepared to betray its armies and surrender the people to slavery.

These moods of anxiety and mistrust create dry rot and ultimate defeat. A pervasive attitude of hopelessness gradually seeps through every phase of social activity. The military collapse of France in the face of the Nazi assault of 1940 was in large part the result of a social breakdown in which rival totalitarian systems spread the conviction that the whole nation was moribund and incapable of unified resistance. Armies need morale as well as leadership and nations need leadership and faith as well as high living standards and material comforts. If Communist-hunting on the home front leads to a divided nation and an impotent government, the Soviets will find it easier to sweep over Asia and pound against the defenses of Western Europe.

In this century, the United States has waged three wars against messianic authoritarian systems. Each of these successive systems marks a further development toward a new and insidiously evil form of world despotism.

Imperial Germany of 1914 was merely a transitional form between militaristic nationalism and the emerging messianic authoritarian system. The Third Reich represented an enormous forward leap toward the new form of world dictatorship, and Soviet Communism is perhaps the culmination of the process. The contrasts between the Nazi and Soviet empires reveal the lines of development.

The first criterion is internationalism. Hitler's international power system was a complex fabric based on alliances between three independent expanding military states, conquest and subjugation of Germany's weak neighbors, and the loosely coordinated subversive work of autonomous fascist parties in the nations marked for destruction. By contrast, the Communist parties of the world are subject to an absolute and monolithic discipline; the Soviet satellite states are controlled by the Kremlin; the alliances between the U.S.S.R. and non-Communist powers are trial marriages to be broken wherever expedient. Whereas Hitler tolerated Tito-like movements, Stalin seeks

to destroy them. In this new world system, nationalism is rapidly becoming obsolete, except as a source of propaganda appeal. The Communist order is controlled by an international leadership elite, accepting a common philosophy and an iron discipline.

Second, the Nazi appeal was not universal, whereas that of Communism is. The Nazi concept of world organization entailed a racial hierarchy, in which certain groups were exterminated and others relegated to the role of servile laborers. For this reason, the world fascist movement consisted primarily of Nordics, and its strength in the democratic countries was closely related to the size of the population of German blood. Soviet communism, by contrast, appeals to all of mankind, recognizing no differences of race or color. Members of the upper class are free to join the communist movement and rise to leadership within it. This characteristic of universality gives communism cohesiveness and strength. Soviet fifth columns appeal to the underprivileged in all countries and can become powerful everywhere.

Finally, though it is less brutal, irrational, and savage, Soviet totalitarianism is far more pervasive and rigorous than Nazi totalitarianism. Nationalization of industry and collectivization of agriculture have destroyed all independent clusters of economic power capable of opposing the dictatorship successfully on day-to-day issues.

This then seems to be the culmination of a process which has been developing throughout the present generation and which could not have been foreseen a century ago. With the growth of religious tolerance and economic and political freedom, authoritarian states had seemed to be vanishing landmarks of a dark age in man's history. It was believed that the evolutionary impact of science and popular education would sooner or later sweep them away—that they would all be submerged under the rising waters of democracy and progress.

What actually happened was that the power of science was applied to despotism. New techniques of communication and dissemination of ideas armored the authoritarian states against dissenting doctrine. The voice of the leadership was stentorian and all-pervasive; it shaped men's thoughts into patterns of monstrous distortion. The democracies, on the other hand, were necessarily receptive to all the

winds of opinion. The totalitarian virus was injected wherever possible. Wherever the faith of the people was weak, the contagion spread.

A third element in this sinister development was the neurotic demand for absolute goals and fixed beliefs, for an authority that commanded and removed doubts. As Erich Fromm has shown in his *Escape from Freedom*, weak personalities tend to disintegrate in a social environment of free intellectual choice. They find doubt and the necessity for making personal decisions great sources of anxiety. Now the liberal state cannot impose on people purposes and value standards. It can create conditions under which people have the opportunity to make choices and to develop their latent capacities. This is a system in which well-integrated personalities thrive, but it creates disquiet and dread among those who are overdependent. Possibly, the same factors which created the mass religious fanaticism of previous centuries have successfully been harnessed to the new secular totalitarian gods. Thoroughgoing psychiatric investigation of the neurotic aspects of the totalitarian mind is urgently needed.

Communism has never made any deep inroads on the American mind. It has been most successful as a political movement where it has masked its true philosophy as democratic, liberal, and pacifist—in short, where it has made a fraudulent appeal to the traditional values of our society.

The record of the past decade, as it appears in these pages, is chiefly one of espionage and infiltration. The activities of Soviet espionage agents in the United States, England, and Canada brought about a dangerous shift in the world balance of power. The British spy, Klaus Fuchs, told the Russians everything he knew about the atom bomb and the proposed hydrogen bomb and, at the time, he was as well informed as any American scientist. While the Soviets will encounter technical difficulties in combining their A-bomb and H-bomb programs, the data received from Fuchs and other less well-known atomic spies eliminated a great deal of the technological lag of Russian nuclear-weapons production.

At the time when it lacked atomic weapons, the Soviet Union shrank from a test of arms in either Iran or Greece. In Korea the

pattern was different partly because the Russians were already producing atomic bombs. Perhaps for the first time in history, espionage has become a crucial factor in deciding wars and the fate of whole civilizations. The Soviets were quick to recognize the role of the super-lethal weapons and the fact that the rule—military potential equals economic potential—was becoming obsolete. The broad intellectual appeal, the indoctrination methods, the discipline and conspirative training of the Communist parties provided the basis for superlatively effective intelligence organizations. Where the Nazi spies in America were largely skilled mechanics and engineers, who filched blueprints, the Soviet Union was able to appeal ideologically to a few of the creative scientists of the West and develop a network of parallel, competing espionage organizations which concentrated on the nuclear-weapons field.

The second major success of the Soviet conspirators in America has been in the field of infiltration. This is very different from agitation and propaganda which seeks to win men's minds to a set of ideas or a course of action. Infiltration is the process of penetrating the control positions of a hostile government for the purpose of bending its policies toward national suicide. The Communist infiltration agent will generally appear conservative and patriotic; he will propose that course of action which the Soviets would like to see taken, advancing reasons which have nothing to do with radicalism. Where open Communist propaganda is only largely mendacious, the advice given by the infiltration agent is a total lie.

During the New Deal era, Communist infiltration agents in the government espoused the cause of the Chinese Soviet regime on grounds of military necessity, the need for a new democracy in Asia, the urgency of agrarian reform, and the desirability of lifting the peasant millions from their traditional morass of poverty and hunger. A similar agent today might urge American withdrawal from the areas athwart the Soviet route of aggression on utterly dissimilar grounds. Propaganda for freedom of the seas, sowing suspicion of British motives, the claim that American forces face a hopeless contest and will be annihilated and engulfed unless withdrawn—these or any other equally effective arguments might well be used. The

one criterion is that the end result be to weaken the United States and strengthen the enemy.

There is little that either the average American or his representatives in Congress can do to penetrate these labyrinths of lies and identify the agents of enemy infiltration. It is certainly not helpful to brand people as Communist stooges on the theory that their words give aid and comfort to the Soviets. The political problems of today are incredibly complex. Dogmatic solutions are dangerous and often wrong. The area in which honest differences of opinion are possible is vast. The man who gives bad advice is generally far from being a traitor and the aid-and-comfort method of intellectual intimidation simply serves to stifle that free discussion which is necessary if intelligent policy decisions are to be arrived at. The task of discovering the hidden Soviet agents of espionage and infiltration is an increasingly specialized counterintelligence function. As the crisis becomes more grave and the fate of the free world becomes more uncertain, the responsibilities upon the Federal Bureau of Investigation increase and the work of well-meaning amateurs becomes more positively pernicious.

Disloyalty is often used as an epithet—as a synonym for unpopular opinions and theories of government and society. In totalitarian societies, social revolutionaries have been harried throughout history as heretics or traitors. Even the terminology has remained surprisingly constant for over a thousand years. The Mazdak communist movement of eighth-century Islam called itself *Surkh Alam*, or the Red Flag, and its successor organization, which held Azerbaijan for over twenty years and supposedly killed a quarter of a million soldiers and captives, was known as the *Muhammira*—or Reds.¹ Needless to say, the punishment finally visited on these early revolutionaries was savage and terrifying.

A free society does not wage war on maverick creeds. It holds that the state has the duty of maintaining order and protecting liberty, that it must not seek to impose any official philosophy, that truth is elusive and can best be approximated through trial and error, free discussion, and the battle of ideas. It assumes that the dissenting opinion which is considered obnoxious and evil in one age may become a commonly accepted premise of the next. Freedom of dis-

cussion and opinion is regarded both as an end in itself and as the yeast of progress and social advancement.

The free society both guards liberty and maintains its existence. At all points in the battle against disloyalty, balances must be struck between these conflicting values of security and freedom. Under the rule of clear and present danger, these balances are variable and must be continually redefined in each successive national crisis. "The provisions of the Constitution," Mr. Justice Holmes once wisely observed, "are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil." ²

Though there are shadings and exceptions, the dividing line is broadly that between heresy and conspiracy. Toleration of freedom of opinion does not always cover the use of words to incite others to commit crimes. The no man's land, through which the Supreme Court draws a sometimes jagged frontier, is the area in which a political movement both propounds a philosophy and incites to such manifest crimes as espionage, sabotage, riot, armed uprising, and treason.

In the American tradition, nobody is considered disloyal merely because he urges reforms repugnant to the vast majority of the people. Disloyalty is defined as entailing one of two things:

First, activity directed toward the violent overthrow of constitutional government in the United States.

Second, activity by American citizens as agents of a foreign power against the interests of their own country.

These two yardsticks are deeply embedded in the heritage of this nation. They are the matrix of the crime of treason as defined in the Constitution.

It is surely not unreasonable to insist that a man who enjoys the privilege of American citizenship comply with the few duties which this entails. He is not compelled to remain an American and can abjure his nationality at any time by a simple oath. If he retains American citizenship and, at the same time, becomes a secret subject of a foreign power, he is disloyal. Allegiance is very different from sympathy or good will. It means subordination to the authority of the foreign power and, in time of war, serving its interests against

those of one's own country. An American is a traitor under the Constitution if he willfully serves a foreign enemy in wartime, giving it aid and comfort.

The fact that the American democracy outlaws efforts to destroy the democratic process by violence is equally understandable. We restrict liberty somewhat in the present to preserve it over the indefinite future. To allow totalitarian organizations to prepare for the seizure of power with impunity until they feel strong enough to resort to open revolution would be, not liberalism, but suicide. The Founding Fathers never intended to give this latitude to revolutionary conspiracies against liberty. Given a clear and present danger, the American republic, it has never been seriously suggested, is powerless to stifle sedition.

Throughout most of American history, the temper of the people has been to distrust law-enforcement agencies, to confine the power of the state to a bare minimum, and to prefer even revolution to anything smacking of despotism. It was only when the United States plunged into the maelstrom of European conflicts and found itself facing conspirative organizations, which were in essence mere forward columns of a foreign enemy, that the need for a complex federal organization to investigate, expose, and secure the punishment of disloyalty became evident.

The Communists everywhere have appealed to the Western traditions of liberalism, which they explicitly repudiate, asserting that these should become an absolute shield for their intrigues. Recently, Prime Minister Clement Attlee commented:

"I constantly get hypocritical resolutions protesting against alleged infringements of freedom in this country [Great Britain]. I get protests because we keep out from places where secret work is carried on people who cannot be trusted. This from Communists who know that their fellows in Communist countries carry on a constant purge and ruthlessly remove from office anyone who shows the slightest sign of deviating from what their rulers consider to be orthodoxy. It is sickening hypocrisy."³

The form that this hypocrisy takes in the United States is for the Communists to associate themselves with those classic defenses of the liberties of man and of the right of the citizens to rise in arms to

defend them. One of the great expositions of the need for due process of law and freedom of political dissent was delivered almost a century ago by Jeremiah Black, one of the forgotten giants of American statesmanship.

"In peaceable and quiet times," Judge Black declared, "our legal rights are in little danger of being overborne; but when the wave of power lashes itself into violence and rage, and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken Constitution to save us from destruction."⁴

All this is true. However, the Constitution is not a rigid coat of mail but a flexible structure designed to balance conflicting rights and powers and to enable a free society to grow, change, and adapt itself to successive crises.

The test of clear and present danger is an element in this evolutionary and plastic concept of the structure of our society. It presupposes that a democracy must have the power to protect itself and also that it may assume authority in wartime and in periods of national jeopardy which would not be tolerable in calmer times. Many of the old American liberals, who regarded the clear and present danger as their gospel in the quiet decades between two world wars, believe that the United States is now trending in the direction of some sort of police state. They forget that clear and present danger is, of necessity, a two-edged sword and that there are therefore times, such as the present, when the balances must be heavily weighted toward security as against liberty.

Chapter Two

SONS OF LIBERTY AND SECRET AGENTS

DISLOYALTY generally becomes a serious problem in times of social tension and civil war. Political police systems frequently spring from the wartime organizations of military counterintelligence. An efficient, centralized police system arose in France as early as the reign of Louis XIV and displayed sinister capacity to ferret out dissenters and subversives. This "secret instrument for the purposes of despotic government" was immensely extended and improved during the era of the Napoleonic Wars.¹ The suppression of internal enemies of the state became vital to military security. Napoleon delegated powers to his saturnine secret police chief, Joseph Fouché, considerably greater than those he granted the marshals of France.

As the American Revolution was a civil war, in which perhaps a third of the Colonists remained loyal to the British Crown, organizations were swiftly improvised to probe for hidden traitors and enforce patriotism by mob action. Moreover, the Continental Army created espionage, counterespionage, and psychological warfare organizations. The elements of a powerful political police system were thus at hand, but once the crisis passed they disappeared, leaving scarcely a trace.

By all the rules of the game, the American Tories were carrying out their sacred obligations of allegiance to their sovereign, and those who opposed them were rebels and traitors. Sir William Blackstone was merely recording the immemorial law of all civilized states when he defined the allegiance of a citizen to his king as "a debt of

gratitude, which cannot be forfeited, cancelled, or altered by any change of time, place or circumstances . . ." The traditional oath of English officeholders had been "to be true and faithful to the king and his heirs, and truth and faith to bear of life and limb and terrene honour, and not to know or hear of any ill or damage intended him without defending him therefrom." ²

Against these ancient and established doctrines, the American rebels advanced the newfangled and untested theories of the European Enlightenment. The American conception was that man was endowed by his Creator with certain inalienable rights, that governments were established to protect them and that, when any government failed, it was the duty of the people to overthrow it. This theory, at one blow, made loyalty to the crown treason and treason to the king patriotism.

It was promptly imposed with energy and force. The states passed laws that made pro-English utterances, adherence to the Loyalist cause, and even bare refusal to take the oath of allegiance to the new nation acts of high treason. The punishment, however, was generally mild. Whereas Colonial legislatures had ordered male traitors drawn, hanged, and quartered and female traitors burned at the stake, most Tories merely suffered confiscation of their properties.

As in the stormy years before the Declaration of Independence, bands of patriots calling themselves Sons of Liberty struck with heavy hand against Tories and appeasers. They set up Liberty Poles to the fury of the British garrisons and mobbed Myles Cooper, the dignified president of King's College in New York, forcing him to hurdle a fence at night and scamper off to safety. Once the war was on in earnest, the Sons of Liberty took the leadership in the popular sport of Tory hunting. In every state, men of dubious loyalty were interned. Patriot committees drew up eloquent declarations of principles and each American was given the free choice between subscribing to them or being mauled, pilloried, jailed, deported, or deprived of his property.

A brilliant young combat officer, named Aaron Burr, watched the mobbing of American Loyalists during a respite between campaigns and found that his sympathies lay with the victims. Another outstanding commander of the Continental Army, when accused by

civilians of disloyalty for having squired Tory belles while military commandant at Philadelphia, retorted shortly that he had "not yet learned how to make war on women." His name was Benedict Arnold.

As a measure of obvious military necessity, the Loyalists were forbidden to buy or sell land, to trade with the enemy, or to travel at will. Before being permitted to practice their professions, school-teachers, lawyers, and even apothecaries were forced to swear that they believed the War of Independence to be just. Expropriated and denied the right to vote or the opportunity to earn a livelihood, many of the American Loyalists emigrated to Canada when Britain was defeated.

The war for men's minds and allegiance soon became the work of specialists. British headquarters, under Sir Henry Clinton, was busily buying treachery. The most skillful appeals to avarice and ambition were sugar-coated with patriotic cant.³ Some American generals turned down such offers with icy scorn; others were less scrupulous. For over a century, England guarded the identity of the underground agents of her lost cause and even today the full roster of those who betrayed their allegiance to the United States is unknown.

General Sir Henry Clinton was able to offer American military leaders solid inducements in return for treachery: great estates and high official positions in the Colonies if the rebellion were put down; pensions in England or the West Indies if it succeeded. The British secret service invariably honored its bargains. Although he failed to betray West Point, Benedict Arnold was given the £6,000 he had demanded and the rank of brigadier general in the British forces as well. He died the best-rewarded officer of the Continental Army. By contrast, the reward for fidelity to the American Revolution, had it failed, might have been the grisly death of hanging and disemboweling before jeering mobs at Tyburn Dock.

While the main British effort was aimed at general officers, psychological-warfare methods were also tried on the humble foot soldiers of the Continental Army. By today's standards, these attempts were crude. The appeal was openly mercenary on the theory that the common man had no ideals or political opinions.

During the bleak winter of Valley Forge, Lord Howe appealed to patriot troops to desert. His Majesty's government offered two hundred acres of land to each noncommissioned officer and fifty acres to each private who would cross over to British lines and enlist. "Such spirited fellows," Lord Howe's proclamation read, "who are willing to engage will be rewarded at the end of the war, besides their laurels, with fifty acres of land, where every gallant hero may retire and enjoy his bottle and his lass."⁴ While the bottle and lass were to be acquired through the deserters' individual efforts, His Majesty's government assisted to the extent of paying five dollars to each turncoat upon enlistment.

By March 25, 1778, according to the statistics of the able Loyalist leader, Joseph Galloway, 1488 soldiers of the Continental Army had deserted to the "bloody backs," as the oft-flogged British soldiery were called. Of these, 649 had been born in Ireland, 358 in the United States, 274 in England, and 78 in Scotland. The high proportion of Irishmen resulted from the fact that Washington resorted to anti-Catholic propaganda to encourage desertions among the British and Hessian enemy. This boomeranged and made Catholic soldiers with the patriot forces dubious of the cause.

In mass psychological warfare, the American leaders were infinitely more skilled than the British. They appealed to ideas as well as stomachs. In the field of general propaganda, few writings have ever equaled Thomas Paine's clear and brilliant exposition of the American case in *Common Sense*—"the book that won the war."

The patriots controlled most of the press, shaping it into an effective weapon with a barrage of propaganda copy and by outright intimidation. "When the newspaper proprietors veered too far to the Loyalist side, they were warned to keep to a more Patriotic line. If, in the face of counter-threats from the Loyalists, the newspaper threatened going out of business altogether, it was warned that suspension of publication would be taken as treason to America."⁵

The patriots scattered front-line propaganda among British troops at Bunker Hill. The appeal was clear, brief, and anonymous. The American cause was designated as "Prospect Hill"; service with the British as "Bunker Hill." The contrast was the following:⁶

The Battle Against Disloyalty

PROSPECT HILL

- I. Seven Dollars a Month.
- II. Fresh Provisions and in Plenty.
- III. Health.
- IV. Freedom, Ease, Affluence and a good Farm.

BUNKER HILL

- I. Three Pence a Day.
- II. Rotten Salt Pork.
- III. The Scurvy.
- IV. Slavery, Beggary and Want.

American propaganda utilized the religious strife in England to urge British troops to desert. An "Address to the Soldiers" began with the sentence:⁷ "GENTLEMEN, You are about to embark for *America*, to compel your Fellow Subjects there to submit to POPERY and SLAVERY."

The conclusion of the appeal was:

"Your Honour then, Gentlemen, as Soldiers, and your Humanity as Men, forbid you to be the Instruments of forcing Chains upon your injured and oppressed Fellow Subjects. Remember that your first Obedience is due to God, and that whoever bids you shed innocent Blood, bids you act contrary to his Commandments.

I am, GENTLEMEN,

your sincere Well-wisher,

AN OLD SOLDIER."

The American achievement in psychological warfare was by no means matched in the closely related area of espionage and counter-espionage. Perhaps nobody more desperately needed a good military intelligence system than General Washington and few commanders have ever had a worse one. Fortunately, or perhaps he would have had none at all, the Commander in Chief took a keen interest in the subterranean war.

The most famous of the American attempts to penetrate a British headquarters with military-intelligence agents ended in fiasco. In September, 1776, Nathan Hale, a courageous young schoolteacher and infantry captain, volunteered to spy on British positions in New York. He failed, was captured, and was hanged. How many comparable attempts, both failures and successes, were made by both sides, will never be known.

Shortly after Hale's execution, Washington appointed the dead man's closest friend and his former classmate at Yale, Major Benjamin Tallmadge, to head secret-service operations in the New York area. Tallmadge's desire to avenge Hale was not enough to make him a brilliant espionage director. He failed to penetrate the Benedict Arnold conspiracy although the negotiations were between West Point and New York. It was by sheer accident that Tallmadge arrived on the scene in time to prevent an unimaginative line officer from sending the captured British agent, Major John André, back to his coconspirator, Benedict Arnold. Had this been done, West Point might have been betrayed and Washington's military position been undermined.

Washington was keenly concerned with psychological warfare, espionage, and counterintelligence. To these matters he brought a singularly cold, clear, and secretive mind. While the Commander in Chief assigned responsible work to Tallmadge, he kept him in ignorance of other and separate espionage channels.

Major Tallmadge's most valuable agent in New York was a gossip columnist for a local newspaper. British officers would chatter with him about fashions, scandals, and masked balls. Incidental information would inevitably fall his way concerning military matters. The spy-reporter collected data on British troop strength and the scheduled arrival of reinforcements. These morsels were relayed by mounted couriers to the two key espionage agents on Long Island who used the *nom de guerre* of Culper. From the Culpers, the espionage reports crossed the Sound by rowboat at night and were delivered to Tallmadge. In all this, the main communications channel was one of George Washington's horses. This beast was stabled in New York for the duration of the British occupancy. Unlike similar animals, it had the distinction of being provided with feed from the secret fund of the Commander in Chief of the Continental Army.

The Culpers were possibly the first spies to dabble in secret inks. James Jay had written Jefferson from Europe concerning "curious experiments in Sympathetic Inks, fluids with which if one writes on the whitest paper the letter immediately becomes invisible." Jay thought this invention might have military uses. He sent a secret-ink

despatch from London which was "the first authentic account which Congress received of the determination of the British Minister to reduce the Colonies to unconditional surrender . . ."

This precious ink percolated from Jay to Washington and thence to Tallmadge. Some of it reached the Culpers in July, 1779. Immediately, the Long Island spies showed that they were abysmal tyros at undercover work. Neither of them grasped the fact that the way to use the ink was to write between the lines of seemingly harmless letters. In exasperation, Washington wrote Tallmadge:

"C——r, Jr. should avoid making use of the Stain upon a Blank sheet of paper (which is the usual way of its coming to me). This circumstance alone is sufficient to raise suspicions." ⁸

The Long Island agents sometimes went through crises of nerves lasting several weeks, during which time they sent no reports. Yet the war was still going on. Their most valuable discovery—advance information concerning an enemy raid on Continental Army positions in June, 1779—reached Washington after the "bloody backs" had already struck.

At first, Washington thought the Culpers' information in general "of very great importance" and, on February 5, 1780, he praised their reports as "intelligent, clear and satisfactory." ⁹

Later he revised this opinion. On September 11, 1783, Washington wrote Tallmadge:

"I have no doubt, because I suppose S:C: to be an honest Man, that the Monies charged in his Acct. had been expended, and therefore should be paid; but the Service which was rendered by him (however well meant) was by no means adequate to those Expenditures." ¹⁰

Washington had steadily hoped for improvement. Otherwise, he added, "I should have discontinued the services of S.C. long before a cessation of hostilities took place, because his communications were never frequent and always tedious in getting to hand." ¹¹

In postbellum years, neither of the Culpers ever revealed the services they had rendered as spies of the Revolutionary cause. The four or five subordinates in their apparatus were equally taciturn. The cause of this was neither modesty nor fear of Tory reprisals. It was simply that espionage was considered to be a sordid business.

A man might decide to be a spy for patriotic reasons, but he would prefer not to talk about it.

The true identity of the Culpers was masked even from General Washington. On security grounds, he refused to meet either of them or learn their names. "You will be pleased to observe the strictest silence with respect to C—," he wrote Tallmadge on November 20, 1778, "as you are to be the only person entrusted with the knowledge or conveyance of his letters."¹²

Samuel Culper, Sr., was Abraham Woodhull of Setauket, Long Island, and Samuel Culper, Jr., was Robert Townsend of Oyster Bay. These two identifications were established in 1939 by the historian Morton Pennypacker after prodigious and tireless tracking of graphological and genealogical clues. The Long Island espionage agents concealed their role in American history until about a century and a half after their deaths.

Sergeant Major John Champe of Lieutenant Colonel "Light Horse" Harry Lee's dragoons may have been the first in a long line of American top-level cloak-and-dagger men. He was given one of the most dangerous and difficult tasks of the subterranean war—that of snatching the traitor, Benedict Arnold, from Sir Henry Clinton's headquarters in New York. His failure was the result of bad luck, not lack of intelligence or daring. Unlike the OSS men who parachuted into the heart of Nazi territory in World War II, or their CIA successors who operate behind the Iron Curtain today, Champe carried no quick-acting poison to serve as a last resort in the event of detection.

Arnold's treason was discovered in the autumn of 1780. The germs of mistrust soon began to infect the ranks of the Continental Army. No man could say what other American officers had been bought with British gold and were merely awaiting a favorable moment for open treachery.

Shortly after John André's apprehension, George Washington summoned "Light Horse" Harry Lee to his headquarters near Tappan. Outwardly calm, the Commander in Chief was possessed by a glacial and utterly implacable hatred. Arnold's defection was both treason against his country and a personal betrayal of Washington, who had been his patron.

"I have sent for you," Washington informed Lee, "in the expectation that you have in your corps individuals capable of an independent, delicate and hazardous project."¹³ Any volunteer for this mission, he added, will "lay me under great obligations personally, and in behalf of the United States I will reward him amply."¹⁴

Washington proposed that a dragoon of great daring and self-reliance desert from the corps, join the British, and enroll in the "American Legion" which Benedict Arnold was recruiting in New York for the Virginia campaign.

The undercover agent would have two tasks to perform:

The first was to penetrate Sir Henry Clinton's headquarters and find out whether or not Arthur St. Clair, a major general in the Continental Army, was secretly in British pay.¹⁵

The second was to kidnap Benedict Arnold and bring him to Washington's headquarters. Under no circumstances was Arnold to be killed. "His public punishment is the sole object in view," Washington said emphatically.¹⁶

The American undercover agent would be given two letters of introduction to Washington's spies in New York. He was to operate with these individuals, but under no circumstances to let either know the identity of the other. Apparently, the Culpers were not involved in the plan and Major Tallmadge was uninformed of it. Washington had independent espionage agents in New York who reported through other channels.

Lee thought the plan excellent. However, there was an apparently decisive stumbling block. Lee "could not propose to a commissioned officer an enterprise the first step of which was desertion."¹⁷ Washington at once agreed. He thought that an officer "always ought to be scrupulous and nice in adhering to the course of honour."¹⁸

John Champe, the man Lee chose for the mission, had enlisted as a private in 1776, being about twenty at the time. His face was fat, sleepy, and pronouncedly asymmetrical. He had heavily lidded, alert eyes, a rather effeminate mouth, and a double chin.¹⁹ Champe was large-boned, a big, somber, taciturn fellow of enormous muscular strength. In combat, he had shown outstanding courage and stamina. His life's ambition was to be an officer.

At first, Sergeant Major Champe refused to consider Colonel Lee's proposition because "the first step involved a disgraceful act." He added that desertion would be "an insuperable bar in his way to promotion."²⁰

Lee finally persuaded him that nothing dishonorable was involved in view of the fact that he was acting under orders of the Commander in Chief. Finally, and with great reluctance, Champe agreed. He insisted that nobody in the corps know of the plan, for if information leaked to the British he would be hanged as a spy.

Thus, on a rain-sogged night, Champe packed his gear, saluted his commanding officer, and rode off silently toward the British lines.

At half past eleven that evening, a certain Captain Carnes returned with a patrol and reported to Colonel Lee that he had fallen in with a dragoon. On being challenged, this man had spurred his horse and escaped.

Now the morale of the dragoons was exceptionally high. Although they were a swift-moving, raiding element, operating in small detachments and often within enemy lines, there had been practically no desertions to the British. The truant dragoon was seemingly an exception. He had been headed toward enemy positions. Carnes urged that energetic steps be taken to capture or kill him.

Although the time element was critical, Colonel Lee apologized for being tired and insisted that Carnes repeat his entire report. When this had been done, Lee said that it was ridiculous to believe that any dragoon would desert.

Instead of ordering a larger patrol to ride off in pursuit of the delinquent, Lee ordered his squadrons of horse to fall in and called the roll. About a quarter of an hour was thus wasted.

When it became clear that the man who had disappeared was Champe, Colonel Lee suggested that the sergeant major had gone into town to spend the night with a woman. Nobody believed this. Finally, Colonel Lee ordered a pursuit patrol sent out and placed it under the command of Coronet Middleton, an officer who was known for "tenderness of disposition." The patrol was ordered to pursue Champe as far as it could safely proceed.

"Bring him alive that he may suffer in the presence of the army," Colonel Lee ordered.

Captain Carnes rubbed his eyes. Lee had already procrastinated for an hour, thus giving Champe time to escape. The roll call, Carnes now realized, had been entirely unnecessary. It had been raining earlier that night and the truant dragoon had left clear hoofprints. The horses were all shod by the squadron farriers and each horse had the private hoofmarks of its owner. Sergeant Major Champe could have been identified in five minutes and the pursuit patrol could have taken off immediately.

Was Colonel Lee a traitor to the American cause? Carnes wondered.

Coronet Middleton's patrol sighted Champe half a mile from the town of Bergen. Middleton assumed that his destination was Paulus Hook. He divided his patrol so as to block both routes to a bridge which he thought Champe would have to cross.

The sergeant major had evidently anticipated this. Spurring his horse, he galloped through the town of Bergen, then veered sharply to the right. When he came to the marshy shore of the Hudson, Champe dismounted, threw away his cloak, sword, and scabbard and lashed his valise, containing clothes and orderly book, on his shoulders.

British ships were idling at anchor in midstream. Champe called out to them and waded into the river. Soon he was swimming toward the enemy. Coronet Middleton reached the shore and ordered his patrol to fire volleys at the deserter, but Champe swam out of range and climbed aboard an enemy warship.

Champe was taken to New York under guard to report to the adjutant general of the British Army. The American secret agent talked easily. He said that Benedict Arnold's example had inspired the American Army. In a sense, this was true, for a hot, searing anger against the traitor had spread through all ranks. He added that discontent was rife. Given any suitable opportunity, some of the best troops were ready to join the British.

Since this was what the adjutant general wanted to hear, he believed it. Champe was ushered into the presence of the Red Coat commander, General Sir Henry Clinton. They talked for an hour,

with Champe cautious, wary, and taciturn. The sergeant major realized that there was danger in appearing too eager, too intelligent, or too well-informed.

After they had discussed the supposed decline in Washington's popularity with the Continental Army, Sir Henry Clinton asked what inducements he should offer the troops to desert. Champe replied with feigned stupidity that a large part of the army was discontented.

Clinton's next question was "whether any general officers were suspected by Washington as concerned in Arnold's conspiracy."²¹ If so, who were they? Champe replied that General Washington was not in the habit of making sergeants his confidants in such matters.

After leaving Sir Henry Clinton, Champe "accidentally met Colonel Arnold in the street which has proved a natural way for further acquaintance."²² The traitor assigned Champe quarters with the recruiting sergeants of the American Legion. He urged him to enlist at his old rank and pay with good prospects of promotion.

Champe demurred, pointing out that if the Americans caught him in uniform he would surely be hanged. His real reason was that he had two American secret agents to contact in New York and could move about more freely as a civilian.

The American undercover men in the city had spent the past month in a state close to panic. They knew that Arnold had been close to Washington. The American commander had known Arnold's charming young wife and fellow traitor, Peggy, since her fourteenth year. It seemed more than possible that Washington had dropped some hint to the Arnolds concerning his espionage organization. Did Sir Henry Clinton know the identity of the American spies? Did he have clues to work on? Was he waiting for more information before closing in on the various spy nets? These were questions of life and death for Washington's undercover agents.

The first secret agent that Champe met was wary. He had no way of knowing that the letter Champe carried from General Washington was not a clever forgery. Fearing entrapment, he nonetheless promised to do everything possible to help the sergeant major "consistent with his safety." He added that guarding this required "the utmost prudence and circumspection."²³

Five days after his arrival in New York, Champe reported in code to Colonel Lee. In some unknown way, he had been able to disprove the charge that Major General St. Clair was a traitor to the American cause.

Kidnaping Arnold was somewhat more difficult. Champe made contact with the second spy. This agent was ready to do anything possible to help bring the traitor to his death. A third man was then brought into the plot.

These agents were promised rewards. Washington characterized Champe as "a very promising youth of uncommon taciturnity and invincible perseverance."²⁴ He stated that Champe was in charge of the affair and added: "To him I have promised promotion."²⁵ The second spy was a resident of Newark. Washington trusted in his "fidelity" and added that he had excellent contacts with the enemy. "To this man," Washington added, "I have engaged one hundred guineas, five hundred acres of land and three negroes. . . ."

Now that he had made his contacts, Champe went to Arnold and enlisted as a recruiting sergeant of the American Legion. This gave him access at all times to the house of his victim. The next step was to work out a practical plan for abduction.

All that Champe had to do was overpower an exceptionally vigorous man, who was prominent, well-guarded, and shrewd enough to anticipate some such project, smuggle him through the streets of lower New York, and then get him across the river to a rendezvous in the woods near Bergen.²⁶ This had to be done without killing Arnold. "No circumstances whatever shall obtain my consent to his being put to death," Washington had ordered. "The idea which would accompany such an event would be that ruffians had been hired to assassinate him. My aim is to make a public example of him."²⁷

In ten days, Champe finished his preparations. General Arnold returned to his house regularly around midnight. Before going to bed, he always took a stroll in his garden. This was to be the time and the place for the assault.

Champe removed some of the palings from the fence that separated Arnold's garden from the neighboring alley. Those that he substituted could be pulled up silently. While Arnold was admiring

his garden, the conspirators planned to creep through the breach and seize and gag him.

The second spy—the man from Newark—was to help Champe in the actual abduction. Raising Arnold by the shoulders, they intended to hustle him through the darkest and most unfrequented alleys of the city. In case they were challenged by the night watch, they would explain that they were carrying a drunken soldier to the guardhouse.²⁸ With the third man in the plot posted at a wharf on the Hudson, they planned to force the gagged traitor into a waiting rowboat and take him across to American-held New Jersey.

Washington thought the project excellent. He agreed to pay Champe five guineas immediately and added the warning that the sergeant major must not excite suspicion by suddenly appearing affluent.²⁹

Finally the day arrived. On Washington's personal orders, Colonel Lee commanded the welcoming party. The small patrol of dragoons left camp late at night and arrived at Hoboken at midnight. Lee and his men concealed themselves in the woods. They had no doubt that Champe would succeed.

The dragoons had three led horses. Arnold, Champe, and one of the other agents were to ride back with them to American headquarters. One of the spies—presumably the Newark man—was to return to carry on his dangerous undercover work.

They waited from midnight until dawn. As the day broke, they returned to camp. Lee reported to Washington that he was "mortified." Seemingly Champe had been guilty of blundering, cowardice, or treason.

Actually, the sergeant major had had incredibly bad luck. The day before the attempt, Arnold moved without warning to a house in another part of town. The men of the American Legion, Champe included, were transferred from their barrack and loaded on transports.

John Champe landed in Virginia, where he was forced to fight against his own countrymen. At Petersburg he deserted.

To the vast astonishment of Captain Carnes and the other dragoons, Colonel Lee greeted the "deserter" with great cordiality and immediately introduced him to General Nathanael Greene. Wash-

ington, who had perceived at the outset that the dominating drive of Champe was a "thirst for fame," received him warmly but did not give him the commission he wanted.

Two decades later, when President Adams called on General Washington to raise an army for war against France, the latter instructed Lee to find John Champe and bring him into the field as an officer in command of an infantry company. The decision was made too late to satisfy Champe's military ambition. The secret agent had migrated to Kentucky and died.

Had the United States developed as a military power, the skeleton secret-service organizations of the Revolutionary War might have become deep-rooted and permanent. One suspects that the most effective nucleus for such an organization was the dragoon corps of "Light Horse" Harry Lee. Both Champe and Lee showed considerably greater daring, resourcefulness, and capacity than the Long Island ring of the Culpers. Until modern warfare made the cavalry obsolete, the best fifth column groups were frequently drawn from light horse raiding detachments. Thus, in the Civil War, Morgan's Raiders provided the recruiting ground for the leadership of the Northwest Conspiracy, for the attempt to burn down New York, for the piracy ventures on the Great Lakes, for the raid at St. Albans, and for the attempt to abduct Vice President Andrew Johnson.

However, it happened that there was no institution which the American people hated and feared more than a standing army. This they associated with despotism, with illegal search and seizure, with the importation of foreign mercenaries to break up political gatherings.

Once peace came, the military fell into such disrepute that the ragged veterans of the Continental Army had to march on Philadelphia to get the back pay due them. In Massachusetts, the debt-ridden soldiers who had won American independence were taxed to the point of armed rebellion. Together with their leader, Daniel Shays, they were prosecuted as traitors. Shortly after the Revolutionary War, a bill to maintain a standing army of 896 men "was deemed a potential menace to American liberties."⁸⁰ Congress eventually demobilized the entire military except for eighty men to guard the stores at Fort Pitt and West Point.

In 1783 a fraternal organization of the officers of the Continental Army was created with Washington as its president. This Order of Cincinnati caused great popular alarm as the first step toward a military aristocracy. On the advice of Jefferson, Washington withdrew from the order and it ceased to be a political force.

This innate hostility to everything smacking of militarism stamped its mark on the next eighty years of American national development. Government remained weak, particularly in respect to the coercive instruments at its disposal. Each successive crisis was met by raising militia. The scope of federal law was confined within the narrowest bounds. Disloyalty was either tolerated or, when that proved impossible, put down by improvised means.

Chapter Three

FROM NIGHT WATCH TO NIGHT STICK

THE POLICE force is the lowest stratum of the pyramid of law enforcement. Yet without it the entire machinery of crime suppression would be paralyzed.

During the first seventy years of the American republic, the power of the nation to enforce the laws and maintain security was negligible. The machinery for this—including efficient municipal police systems—scarcely existed. In the West, citizens formed vigilante bands and imposed a rough frontier justice with lash, rope, and pistol. Throughout the rural areas, the majority was in the habit of “hating” dissenters out of the region—a process that ranged from boycott through tarring and feathering to arson and occasionally branding and lynching. Armed gangs ruled the wards of the seaboard cities and the police were no match for them. When urban riots reached the proportions of full-scale battles, the militia, and even naval units, were sometimes called upon to quell them.

It was not until the middle of the nineteenth century that modern police systems began to emerge in America's cities. They came out of strife, turmoil, mob action, and blazing riot. The growing pains of industrialism, the swift expansion of squalid cities, the ferment of immigration, and an epidemic of fevered revivalism—these were the ingredients. Efficient police systems evolved because the alternative was rule by armed mobs.

From a superficial point of view it might seem that the sluggish development of the American police resulted, not from democratic

dogmas, but from vast spaces, sparse population, and inadequate transportation. Russia, however, which had similar geographical features, was the most police-ridden state in Europe. A separate political police system was created in the reign of Nicholas I (1825-1855) and this organization was to expand in power and scope for a century, reaching its climax of authority under the Soviet regime. By the middle of the nineteenth century, the Third Section of the Russian police was the most dreaded organization of its kind in Europe. Its myriad functions included surveillance of all public and private meetings and even censorship of visiting cards, seals, and rubber stamps.¹

The American and Russian tempers were at polar extremes. In the United States, fear of public authority of every sort was deeply ingrained. Wherever government was represented by bodies of armed men, the potential peril to republican liberties seemed greatest. If Jacksonian democracy held back the development of an efficient police system, it was also a bulwark against any institution even remotely resembling the czarist Okhrana.

There was a constabulary of a sort in America from the earliest days of English settlement. The Colonists had brought with them the English system of parish constables aided by a civilian watch. The first night watch was established in Boston in 1636. Almost immediately thereafter, towns began to complain that the men of the watch droused on duty. Thus New Haven decreed in 1642: "Itt is ordered by the court that, from henceforwarde none of the watchmen shall have liberty to sleep during the watch."²

In many towns, all citizens were obliged to take turns on the night watch as a civic duty. This became the rule in Philadelphia after 1700 and, except for differences in dress, the night watchmen might have stepped out of Rembrandt's famous canvas.

Well-to-do burghers found the chore irksome and soon hired substitutes. By the early decades of the nineteenth century, the night watchmen were professionals.

The New York night watch consisted of "jaded stevedores, teamsters and mechanics," who worked twelve hours a day at other jobs, when these could be had, and then patrolled the streets at night to add to their wretched wages. They had no *esprit de corps*, no desire

whatsoever to grapple with nocturnal robbers. If they managed to stay awake, that in itself was remarkable.

The New York night watch had always been a subject for ridicule. Returning drunk from parties in the early hours of the morning, the gay blades of the town would amuse themselves by surrounding the watchmen's boxes and overturning them. The slumbering "Leather-heads" would be rudely awakened and sometimes roughhoused. Another favorite sport was to tie up the watchmen in their boxes, leaving them in these improvised cocoons till liberated at daybreak.

Until 1838, no American city provided police protection during daylight. Since the night watch sometimes went off duty as early as three in the morning, splendid opportunities were provided for burglars, strong-arm men, and assassins.

By 1845, the larger American cities had both day and night watches. These two organizations, however, were entirely separate and independent. In New York, two constables in each of the seventeen wards were responsible for maintaining order by daylight in a city of half a million inhabitants.

The night watchmen of the time wore no uniform except for a leather hat like a fireman's. Carrying their poles and lanterns, they cried the hours of the night as of old and called the alarm in case of fire.³

This anarchic system further deteriorated under the impact of Jacksonian democracy. The new theories of universal manhood suffrage, rotation in office, and appointment to public posts without regard to merit were promptly applied to the police. By 1840, Cincinnati members of the night watch were elected by the citizens of the wards in which they served. In New York, the individual constables were appointed to serve one year by the aldermen of their wards. Naturally, these appointments were on a patronage basis. No central control could be exercised over the police and no single individual had the authority to fire those who were dishonest or delinquent.

To ensure reappointment, the constables had to prove themselves devoted henchmen of their ward heelers. In Baltimore in 1857 the police force served the Know-Nothing element which controlled the city government. It devoted its energies principally to putting down

the Irish and sixty-eight members of the Baltimore force were formally accused of "ruffianism" and "bloody tyranny." In New York, the most common offenses of the policemen were assaulting their officers, refusing to go on patrol, extorting money from prisoners, and releasing every criminal who paid a bribe.⁴

The catalytic agent that was to force some degree of centralization and discipline in American police systems was the upsurge of racial and religious riots between 1830 and 1855. The immediate cause of this was rising immigration. Between 1831 and 1860, about 5 million immigrants, driven from Europe by hunger, entered the United States.

Even at its birth, the new American republic offered the common man wealth and opportunity such as he had never dreamed of. By contrast, living standards in western Europe declined drastically—in fact, to an Asiatic level—during the Industrial Revolution. Colin Clark, the foremost authority on the subject, places the real income of the average Englishman in 1800 at \$121 of 1925-34 purchasing power.⁵ The real income of the average American in the same year was approximately \$255 of like value.⁶ Despite the fact that one-fifth of them were slaves, the Americans lived more than twice as well as the British.

As early as 1828, American municipal health officers began to complain that the English parishes were dumping their paupers in the United States. The arrivals were "lame, blind, and others in a state of idiocy." ⁷ This lament was to recur for the next twenty years. "Most of the beggars who swarm our streets, besiege our dwellings, and persistently demand alms are immigrants of the kind described," the New York Association for the Improvement of the Condition of the Poor commented uncharitably in its 1854 annual report.

Out of this immigrant mass, some 2 million were Irish and 1.5 million German. The Irish, in particular, concentrated in the large seaboard cities. Except for the free Negroes, the Irish were the pariahs of the northern states. They had crossed the ocean in the wake of potato famine and, on arrival, were obliged to accept the hardest and most ill-paid work. Being undereducated and underprivileged, they were feared, hated, and victimized by the more fortunate. In self-defense, they entered politics, becoming the tools

of corrupt Democratic Party demagogues in the coastal cities. It was charged that they constituted the backbone of crime. Of the 17,328 persons arrested in New York in the summer quarter of 1858, some 10,477 had been born in Ireland.⁸

The earlier groups of Irish immigrants had been staunch Jeffersonians, fighters for freedom of the press and enthusiasts for the French Revolution. The Alien Act of the John Adams administration was specifically designed to ensure their deportation without trial to an England which had no scruples about hanging them.

The Know-Nothing, or Nativist, movement developed as a powerful reaction against the growing stream of immigration. The flames of national and religious intolerance were fanned by abusive propaganda against the Catholic faith, to which some of America's most eminent citizens lent their names and pens. Thus, in 1835, Samuel F. B. Morse, inventor of the telegraph, published a tract entitled *The Imminent Dangers to the Free Institutions of the United States Through Foreign Immigration*, which assailed the Jesuits as "papal puppets" and the Church as an engine of foreign tyranny.

A more lurid and popular form of propaganda was an outpouring of exposé books on supposed crimes and sexual orgies in Catholic institutions. A representative example was *Rosamund, or a Narrative of the Captivity and Sufferings of an American Female, under the Papish Priests in the Island of Cuba*, which alleged that the Cuban priesthood kidnaped small Negro children, ground them into sausage meat, and sold them to Havana butcher shops.

The notorious Maria Monk told of midnight revels between priests and nuns in her immensely popular work *Awful Disclosures of the Hotel Dieu Nunnery of Montreal*. Investigation revealed that the secret tunnel of the nunnery in which illegitimate children were supposedly buried did not exist. Although she had been sponsored by the eminent editors of Harper & Brothers, Miss Monk abandoned her literary career for prostitution and eventually died in prison under sentence as a pickpocket.

With the financial panic of 1834, an outcrop of religious riots occurred. A woman called Rebecca Reed had fled the Ursuline Convent on the outskirts of Boston. She told stories of harsh pen-

ances and libidinous pleasures. Shortly thereafter, the false rumor was spread that a Sister Mary John was confined in a dungeon of the convent or else had been murdered there.

An angry mob stormed through the streets on the night of August 11, 1834, ousted the nuns and students from their beds, sacked the convent, and set it on fire.

The police proved utterly useless in this emergency. The mayor promptly called a meeting at Faneuil Hall and pledged the Protestants of Boston to protect the rights and property of their "Catholic brethren." A vigilance committee was named to preserve order and discover the identity of the rioters.

All this, however, had no influence on the Nativist mob. It rose the following night and again destroyed Church property. Irish railroad workers from the surrounding towns then began to move on Boston to protect their houses of worship. Large-scale street battles were avoided only because Bishop Fenwick sent the Boston priests out to turn the railroad workers back. He told them that retaliation was no part of Christian doctrine and that the authorities would protect the Church.

Order was maintained by recruiting civilian patrols in each ward and by moving in troops. Twelve men were indicted for their part in the rioting, but the trial jury shared the prejudices of the mob. An anonymous leaflet was distributed reading: "All persons giving information in any shape, or testifying in court against any one concerned in the late affair at Charlestown may expect assassination . . ." ⁹ With one exception, the rioters were acquitted.

Mob action against free Negroes also flared through the North. In Philadelphia in 1834, crowds of laborers raided the Negro district, sacked churches and houses, and killed all colored men who resisted. The main cause of the outbreak was wage competition between whites and blacks. As in the Boston affair, the disorder was quelled, not by the police, but by armed bands of volunteer citizens.

The depression of 1837 brought a new harvest of tension and religious strife. Some fifteen thousand citizens of Boston mauled each other in that year when the fire companies tangled with the Irish. The police as usual were nowhere to be found and the disturbance was finally quelled by the militia.

Seven years later there were serious disturbances in Philadelphia. These started when Irishmen opened fire on an anti-Catholic rally. For several days the mobs milled through the streets, burning churches. Finally the militia, aided by the crew of the U.S.S. *Princeton*, restored order.¹⁰

Retaliatory preparations were immediately made in New York. The *American Republic* issued an inflammatory appeal to avenge the slain Philadelphia Nativists: "A revolution has begun. 'Blood will have Blood.' It cannot sink into the earth and be forgotten. The gory vision will rise like the ghost of the murdered Banquo and call for revenge."¹¹

Know-Nothing mobs soon swarmed out of the slums to riot, loot, and burn the Catholic institutions. Bishop Hughes appealed to the city authorities for protection, but his request was ignored. Recruiting a Catholic army, the Bishop stationed a thousand to two thousand men around each church and thus saved the Church buildings from arson.¹²

The police proved totally unable to cope with these holocausts of racial and religious intolerance. Several years earlier they had demonstrated their incapacity to cope with ordinary crime. Gangs, composed of compact, unassimilated immigrant groups, of bigoted native Americans, and of plain, garden-variety toughs, terrorized the cities. Philadelphia was the scene of bloody affrays between Buffaloes, Blood Tubs, Copperheads, Rats, and Schuylkill Rangers. The Stingers held sway in Baltimore. The Chesapeake and Ohio Canal line was dominated by the gangs of the immigrant construction workers—the Longfords and Corkonians. In New York, Dead Rabbits and Bowery Rats fought pitched battles, while American Guards goaded the Irish.

These gangs sometimes had a social program of sorts and there was a powerful element of Jacksonian radicalism blended with their violence, chicanery, and rigging of elections. Mike Walsh, leader of the Spartan Bands, spouted about the coming victory of "the Subterranean Democracy." He told spellbound audiences: ". . . you are slaves. No man, devoid of all other means of support but that which his own labor affords him, can be a freeman under the present state of society."¹³ A roistering, rhetorical rabble-rouser, endowed

with a golden tongue and a deep-seated hatred of the employing class, Walsh urged his stalwarts to "vote early and vote often." When Thomas Wilson Dorr fought for universal suffrage in Rhode Island in 1845, Mike Walsh joined the battle and promised to take five hundred of his Spartans to help make Providence "as level and desolate as ancient Jerusalem was made [sic] by the Romans."¹⁴

The police, who were supposed to control these political, racial, religious, or merely criminal bands, still were an ineffective, nonuniformed lot. Each New York constable was required "to wear a medal inside his clothes, suspended round his neck, both day and night when on duty, and shall expose the same when about restoring peace . . ." Some wore straw hats; others went about in rags; and the New York force as a whole was described by a contemporary as a Falstaff regiment. Armed only with 33-inch clubs, they understandably had no desire to grapple with the Dead Rats and the American Guard, whose members generally carried knives or firearms. "They inspire no respect, they create no fear," a New Yorker wrote as late as 1853.¹⁵ The more cowardly constables kept their medals concealed when the gangs were out on the streets in force.

After the bloody Irish-Nativist riots in New York in 1844, the Know-Nothing mayor of the city ordered that a consolidated day-and-night force of two hundred men be established. Each policeman was to wear a blue coat with his number and the letters "MP" on his collar.

The police force went into open rebellion. "They were not liveryed servants and would wear no uniform."¹⁶ Their revolt was temporarily successful. New York appointed a police force of eight hundred men in 1845 to "light the lamps, ring the fire-bells, attend the fires, report disorderly houses and gambling dens, and see that the city ordinances were duly enforced," but they still wore no uniforms.¹⁷

By 1850, consolidated day-and-night forces had been created in the main American cities. The men wore merely a star on their breasts which could be removed quickly in case of serious trouble. Three years later, the New York police were finally ordered to don a uniform, consisting of a blue cloth coat with brass buttons, gray pantaloons, and a blue cap with the word "police" inscribed on it.

Again there was an outcry concerning the rights of the constables as free Americans. The police claimed that the "livery ordinance" infringed their rights under the Constitution of the United States and raised a fund to fight it in the courts. The case was lost and, finally, uniforms were imposed.

In the next decade three major changes were instituted. The police forces were consolidated into a single day-and-night organization under a central authority, thus ceasing to be Chinese armies, each member of which owed his job to a different ward heeler. With the police in uniform, when victims of crime appealed for protection, the police were no longer able to pretend that they were mere private citizens. Finally, following Sir Robert Peel's reforms in England, police boards were instituted.

Despite these changes, the police departments in many American cities remained morasses of graft and imbecility. The District of Columbia force towered above the others in at least the latter respect. Had it been only reasonably efficient and honest, John Wilkes Booth would have failed in his assassination of Lincoln.

The Washington police force was organized in September, 1861. Since there was no Secret Service in the Treasury at the time, the White House guards were picked from the Washington force. One of them—the man who happened to have the responsibility of protecting the President's life at Ford's Theater on the evening of April 14, 1865—was a certain Patrolman John F. Parker.

Parker's record on the Washington force was such that no responsible police chief could have acquiesced in his assignment to the White House guard. He had been charged on various occasions with insubordination, "exceedingly violent and disrespectful" language, conduct unbecoming an officer, sleeping while on duty, and failing to restrain disorderly Negroes who were insulting a lady.¹⁸ Two years prior to his selection to guard the life of the President, Parker had been charged with visiting a house of prostitution, going to bed with one of the inmates, and getting drunk and firing his pistol through the windows of the bawdy house. Despite the evidence, he was exonerated by the Washington police board.

On the night of Lincoln's murder, Parker's assignment was to guard the President's box and prevent any unauthorized person

from entering it. He was in plain clothes and armed with a .38 Colt revolver.

As might have been anticipated from his record, Parker disregarded his instructions. It is probable that he left his post for a seat in the orchestra where he could see the play. There is definite testimony that he took the President's footman out for a drink during an intermission.¹⁹

Parker was tried on May 3, 1865. The charge was that he "allowed a man to enter the President's private Box and Shoot the President." Strangely enough, he was exonerated; the records of the proceedings were destroyed, and the entire matter was hushed up.

"Parker was not shot; nor was he court-martialed," the author Eisenschiml points out. "He not only kept his life, he also kept his position. He was not reprimanded, nor dismissed, nor even immediately relieved of his White House appointment."²⁰

A veteran member of the Washington police force, Parker may have been in a position to blackmail his superiors. This would explain his White House appointment despite his unsavory career. It would explain his successive acquittals on misconduct charges. It would shed light on his miraculous good fortune in escaping punishment for having abandoned his post and thus caused the President's death. It would explain why the transcript of the police board hearing was suppressed, why Parker was never called as a witness at the conspiracy trial of the Lincoln assassins, and why the voluminous contemporary accounts do not mention him. Even the fact that Mrs. Lincoln believed that Parker was a cog in the Booth murder plot did not result in his dismissal.²¹

By the end of the Civil War, a machinery existed in most American cities capable of enforcing the laws and maintaining some sort of order. Whether or not the police departments chose to do so was, of course, an entirely different matter. For at least half a century, flagrant and open alliances between municipal police forces and organized vice were the rule in most American cities. This was exposed by Lincoln Steffens and other reformers and documented in the Wickersham Commission reports on *Police and Lawlessness in Law Enforcement*.²²

Following the assassination of President McKinley by the native-

born anarchist, Leon Czolgosz, in 1901, fear of political murders and bomb outrages became widespread. Several states passed laws against criminal anarchism and a few of the larger municipal police departments organized bomb squads to cope with political assassins. The activities of these local police organizations in the loyalty field were often characterized by brutality, incompetence, and lawlessness.

When the problem shifted from the pursuit of isolated and comparatively harmless anarchists to the destruction of the fifth columns of hostile foreign states, responsibility for internal security was transferred to Federal agencies. Since 1939, this activity has been centralized in the FBI, and the role of the local police has become subordinate and ancillary.

Chapter Four

THE RISE OF FEDERAL JUSTICE

FOR THREE-QUARTERS of a century, the Attorney General was the orphan of the Cabinet and it was not until 1870 that the United States organized a Department of Justice.

The laggard pace of this development had more basic causes than the glacial tempo at which the city police systems evolved. Primary among these retarding forces was fear of autocratic governmental power. The men who fought the American Revolution and framed the Constitution remembered the history of Star Chamber. They felt themselves allied in spirit with those English Whigs who had fought for centuries against both monarchical despotism and political courts which were, as Henry Hallam put it, "little better than caverns of murderers."

The sharpest weapon for stamping out political dissent in England was the treason laws. Throughout English history, the charge of high treason had been used, Jefferson contended, to draw "the blood of the best and honestest men of the kingdom . . ."

The framers of the Constitution, having for the most part taken up arms against their king, were traitors by English law. Had the American Revolution failed, Washington, Hamilton, Franklin, Jefferson—in fact, every foot soldier who froze and fought at Valley Forge—could have been transported to England to suffer death. Fearing despotism more than they feared disloyalty, the Founding Fathers circumscribed the crime of treason against the United

States and defined it once and for all in the Constitution. No other felony was thus honored.

"Treason against the United States," Article III, Section 3, reads, "shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort."

The purpose of this was to prevent Congress from creating any new political crimes. There was fear that, in the future course of the nation's history, majority factions might consolidate their power by enacting laws which made their opponents felons. In the *Federalist*, James Madison praised the framers of the Constitution for having protected the states and the citizens against "new-fangled treasons." Jefferson inveighed against the British doctrine of constructive, or judge-made, treason, calling it a "deadly weapon of tyrannical Kings, and . . . weak and wicked Ministers."¹ James Wilson, the conservative Philadelphia lawyer who was chiefly responsible for the treason clause of the Constitution, never doubted that this was the only political crime against the nation which Congress was empowered to punish.

While the states were free to enact laws against sedition, seditious libel, and espionage, the federal government was not. Powerful centrifugal forces, rivalries among the states, jealousies between geographical sections and, above all, a deep belief in the inalienable rights of man contributed to this narrow conception of the power of the nation.

Almost immediately after its establishment as a republic under the Constitution, the United States became involved in the vast dynastic struggle between revolutionary France and the monarchic powers surrounding her—a struggle which was to shake Europe for a generation. The nation was rent by faction and each of the two contending European alliances had zealous, powerfully placed enthusiasts in the United States. Partisanship reached such a pitch that President John Adams once publicly characterized Alexander Hamilton as a British agent. The sober and philosophical Jefferson believed that "the liberty of the whole earth" rested on the fate of the French Revolution and added: "rather than it should have failed I would have seen half the earth devastated."

On April 22, 1793, President Washington issued a neutrality proc-

lamation, explaining that American self-interest required strict impartiality toward the European conflict and directing law enforcement officers to arrest American citizens engaged in privateering for either of the belligerent coalitions. This proclamation may have been a violation of America's treaty obligations toward France but was nonetheless necessary. The new republic was too weak to risk a second war with England and involvement on either side would have split the nation.

The Jeffersonian Republicans, however, were actively engaged in fitting out vessels to prey on English merchantmen in behalf of France. This activity was motivated by a combination of idealism, business acumen, and love of adventure. When a certain Gideon Henfield of Salem, Massachusetts, sailing as prize master aboard the French privateer, *Citizen Genêt*, captured a British ship and brought her into an American port, he was promptly arrested for having violated the President's neutrality proclamation.

Edmund Randolph, the first Attorney General of the United States, prosecuted Henfield personally. He urged that privateering was contrary to the peace treaty between the United States and England and that, under the Constitution, treaties were the supreme law of the land. The trial judge, James Wilson of Philadelphia, strongly supported the prosecution in his charge. Yet the jury acquitted Henfield and wild celebrations among the pro-French populace of Philadelphia ensued.

A staunch Federalist, an admirer of Washington, and a man who detested the French Revolution, John Marshall nonetheless applauded the jury's verdict. He believed that there was nothing in the Constitution or the laws that made Henfield's act a crime. If men were to be punished for violating executive proclamations, he considered, the end of American liberties would be in sight.

The European crisis drew the United States toward the vortex of war. By 1798 the nation was involved in naval action against France. Defeat faced the Federalists in the 1800 elections and some of their leaders believed that this situation could be changed by war against France and Spain to wrest the Mississippi Valley, the Floridas, and Mexico from the latter. By creating a military crisis,

the Federalists might establish a standing army to serve as a peacetime bulwark against democracy.

In this emergency, the Federalist majority in Congress passed the Sedition Act of 1798. This law provided maximum penalties of two years imprisonment and \$2000 fine for intentional and false defamation of the government. It was a partisan measure, designed to stifle Jeffersonian opposition to the war policy. A handful of arrests decapitated practically the entire Republican press. With editors of the opposition newspapers jailed for criticism of the administration, virtually the only remaining rallying ground for the peace faction was Congress.

The federal judges in their entirety belonged to the aristocratic party. They applied the statute in a harsh and partisan manner. Men were imprisoned for stating that the public debt was too large or that the credit of the nation was shaky. Judges such as the choleric Samuel Chase boasted, while traveling to the trials, that they would get convictions. Lawyers for the defense were silenced by the bench. When the evidence against the accused was flimsy, judges—such as Chase and Iredell—would deliver learned political harangues to hand-picked juries.

The Sedition Act was the first great step toward extending the power of Congress to punish putative disloyalty other than treason. This attempt to perpetuate the waning Federalist Party caused a massive political reaction. Newspaper editors, sentenced under the Sedition Act, were hailed as martyrs by the common people. Under the leadership of Jefferson, Madison, and Breckenridge, the state legislatures of Kentucky and Virginia assembled, declared the obnoxious law unconstitutional, refused to enforce it in their states, and hinted at secession.

In the Kentucky Resolutions, Jefferson expounded his constitutional views in plain language. Congress, he held, was empowered to "punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes, whatsoever . . ."

In 1800, the Jeffersonians were swept into power on a high tide of popular anger. By the time the new President took office, the

Sedition Act had already lapsed. Jefferson promptly pardoned all of its victims and reiterated that the statute had been unconstitutional.

While the Sedition Act has almost universally been regarded as a blot on American history, a larger issue remained. Could the United States weather the many crises that were to confront it with no power to suppress disloyalty other than that provided by the treason clause? From the outset, the federal courts sought a far broader authority than what had been given them under the Constitution and by Congress. Their main attempt was to incorporate the British common law in the American system without waiting for Congress to legislate. These judges had learned their law from Coke and Blackstone and their tendency was to apply what they had absorbed as if no American Revolution had ever occurred and George III were still sovereign over the Colonies. Some of them "were more British than they were American."² A contemporary observer said: "Let a stranger go into our courts and he would almost believe himself in the Court of the King's Bench."

The federal judges were enlightened enough to concede that entire periods of British judge-made law should be disregarded. Even the bellicose Samuel Chase spoke with scorn of applying precedents from eras in English history in which "law, justice and reason were perpetually trampled under foot" and "death and confiscation in the forms of law continually walked in the train of the victors."

The Jeffersonians had a deep-rooted distrust of the dominant English legal tradition. Even before the Revolution, a greater degree of freedom had prevailed in the Colonies than in the Mother Country. Among the Colonial cases, the Zenger trial was a landmark in the battle for a free press. As early as 1687, a Massachusetts justice declared: "We must not think the laws of England follow us to the ends of the earth." After the Revolution, New Hampshire judges refused to listen to arguments based on "quirks of Blackstone and Coke" and some states passed laws prohibiting attorneys from citing English precedents. "I deride the ordinary doctrine," Jefferson wrote, "that we brought with us from England the Common Law rights."

The storm center of conflict was the British law of seditious libel.

In Hanoverian England, this covered "the intentional publication, without lawful excuse or justification, of written blame of any public man, or of the law, or of any institution established by law." In an aristocratic society, the common man had no right to find fault with his masters; he owed them deference, respect, and obedience. The truth of a damaging statement did not justify it. In fact, "the greater the truth, the greater the libel."

Under the American system all this was jettisoned. Even the Sedition Act of 1798 made truth a justification and put it up to juries to determine whether a derogatory statement was true or false. As the law was actually administered, however, biased judges badgered juries into convicting the accused. They took the attitude, as did federal judges who tried Espionage Act cases in 1918-1919, that mere contradiction of official statements of the President was proof enough of both falsehood and sedition.

The effort of the courts to smuggle British habits of political censorship into the American system met defeat. This was not strange since "one of the objects of the (American) Revolution was to get rid of the English common law on liberty of speech and of the press."³ The John Adams Sedition Act was beaten at the polls. The Supreme Court, under Marshall, nullified the efforts of the judiciary to punish Americans for violating the common law. No man could commit a crime against the United States unless Congress had first defined it. The common law assumed its place as a fund of precedent and judicial interpretation, which shed light on the meaning behind the words of the Constitution and the federal statutes.

A trend toward political repression was thus reversed and a period of almost unparalleled political freedom—as far as federal law was concerned—began with Jefferson's inauguration in 1801, continued through the age of Jackson and his successors, and came to a close with the defeat of the Democratic Party in 1860 and the onset of the Civil War.

During this sixty-year period of virtually uninterrupted Democratic ascendancy, the federal government made practically no effort to bear down on treason, espionage, or sedition. Belief in states' rights made American Presidents chary of asserting the authority of the United States—particularly in the hypersensitive area

of sanctions against disloyalty. Two major wars were fought in this era—the conflict of 1812 and the Mexican War. In the former, the nation was almost dragged to defeat and disintegration by New England Federalist leaders, who prayed for their country's downfall, sabotaged recruitment and war financing, and urged secession. The only judicial countermeasures of any consequence were treason prosecutions and most of these resulted in acquittal.

In the Mexican War, defeatist propaganda, assaults on the integrity of the President, and direct appeals to American troops to desert were extensive. Appeals of this sort were indulged in by some of the outstanding statesmen and writers of the age—among them Abraham Lincoln, Daniel Webster, Ralph Waldo Emerson, and Henry Thoreau. None of these men were prosecuted for sedition or obstructing recruitment and no federal law restraining freedom of utterance was placed on the statute books.

The opposition to the Mexican War was largely moral and religious, the assumed purpose of the war being the extension of slavery. Intellectual leaders of New England, such as the Transcendentalist preacher, Theodore Parker, urged opposition to all wars as moral enormities:

"We can refuse to take any part in it; we can encourage others to do the same; we can aid men, if need be, who suffer because they refuse. Men will call us traitors; what then? That hurt nobody in '76. We are a rebellious nation; our whole history is treason; our blood was attainted before we were born; our creeds are infidelity to the mother church; our constitution treason to our fatherland."⁴

Parker scoffed at the theory that, while on the statute books, laws must be enforced. He commented acidly:

"So in Pharaoh's time it was a moral duty to drown the babies in the Nile; in Darius' time to pray to King Darius, and him only; in Herod's time to massacre the children of Bethlehem; in Henry the Eighth's time to cast your Bible to the flames. Iscariot only did a disagreeable duty . . ."⁵

The rebellion of the Northern intellectuals served as a counterpoise to the manifest destiny men of the Mexican War and the Ostend Manifesto; it merged later with that portion of the Abolitionist movement which resorted to direct action. As the cleavage

over slavery deepened, pro-Southern administrations were compelled to strengthen federal law enforcement as a means of upholding the Fugitive Slave Act. One vain attempt was even made to convict Northern Abolitionists of treason merely because they recaptured Negro prisoners from federal marshals.

In this climate of weak government and distrust of its police power, the executive machinery of federal justice had evolved slowly and against strong political opposition.

President Washington had thought the position of Attorney General important enough to nominate John Randolph to fill it. A member of one of the most eminent of Virginia's families, Randolph had devoted his young manhood to public service—as aide-de-camp to General Washington, governor of Virginia, and one of the chief architects of the Constitution. When the first American Cabinet was named, he was thirty-six years old, brilliant, courtly, erudite, and debt-ridden.

The post of Attorney General paid fifteen hundred dollars a year, considerably less than that of the other Cabinet offices. Even by the standards of the day, this was poor remuneration. Twenty years previously, Thomas Jefferson had earned double that sum in private practice.⁶ Disbarment of Tory professionals after American Independence had created a shortage of lawyers and cleared the field for young, ambitious patriots. Aaron Burr hurried through law school and was soon living in splendor at Richmond Hill on the proceeds of litigation and political deals. The frontier patriot, Patrick Henry, combined land speculation with the law and accumulated a fifth of a million acres in Virginia by the time the Constitution was ratified. John Marshall, another Virginia lawyer, was also deeply involved in huge real estate speculations.

Washington nonetheless prevailed on Randolph to accept on grounds of patriotism. He added that the office of Attorney General would give him "pre-eminence" in the legal profession and a "decided preference of professional employment."⁷

The salary measured the insignificance of the office. In Jefferson's first administration, "the law business of the government being light, the Attorney General was frequently absent (from cabinet meet-

ings), and, indeed, was not required to reside permanently in Washington. Rather the official counsel of government than the head of a department, he had no clerks or office-room . . .”⁸

The first Attorney Generals argued cases for private clients—generally before the Supreme Court. This meant that they might later be in the uncomfortable position of prosecuting their own clients, but there was no alternative in view of the meager salary.

Congress saw nothing improper in this. As late as 1830, the Senate agreed that the Attorney General should be encouraged to take private cases in his spare time. Thus, “his intellect would be strengthened, his mind improved, and his legal acquirements increased,” Senator Rowan of Kentucky thought, “so as to enable him to render more efficient and distinguished service to the Government.” To debar the Attorney General from private practice. Daniel Webster believed, would be as unreasonable “as for a gentleman to tell his physician that he should not feel the pulse of any other human being.”⁹

Finally, in 1853, after the Attorney General’s salary had been raised to equal that of the other members of the cabinet, Caleb Cushing established the precedent that he must serve the United States exclusively.

The physical appurtenances of the office were another measure of the public attitude toward federal law. When the gifted William Wirt was named Attorney General, thirty years after the establishment of a federal Government under the Constitution, the budget was a thousand dollars a year for a clerk and five hundred dollars to provide for stationery, fuel and “a boy to attend the menial duties.” Wirt asked Congress for a special appropriation so he could buy ten book presses, a stone pitcher, tumblers, a water table, and various other articles of furniture. “They’ought, I think, to be strongly made and neat enough not to be discreditable to the nation.”¹⁰

In this the Senate sniffed a plot to establish a grandiose law department of government, of which the stone pitcher and book presses were but the entering wedge. The plan flouted the maxim of “republican simplicity” and Wirt’s request aroused angry debate.

The electorate had a profound distrust for lawyers, considering them parasites, vampires, and thieves. The men of Shays' Rebellion wanted all lawyers "abolished" and, when Joseph Smith, the Mormon prophet, ran for President, he proposed: "Like the good Samaritan, send every lawyer as soon as he repents and obeys the ordinances of heaven, to preach the gospel to the destitute, without purse or scrip, pouring in the oil and the wine; a learned priesthood is certainly more honorable than '*an hireling clergy*.'" ¹¹

Until Wirt's time, there were no written records of the Attorney General's opinions, there being no employee in that office who had the time to copy them. Each issue had to be approached without regard to previous decisions on similar matters. An industrious man, Wirt toiled day and night to bring order from chaos, sometimes copying opinions in his own hand.

In 1850 the situation was improved by the creation of the office of Chief Clerk of the Attorney General at a salary of two thousand dollars. This sum was sufficient to secure the services of one George M. Bibb, a 74-year-old gentleman of the old school, who wore knee breeches and had previously been Secretary of the Treasury and twice a United States Senator. For this stipend, Bibb slaved eighteen hours a day and put his entire family to work copying manuscripts. ¹²

Thus, prior to the Civil War, the Attorney General was, in essence, a legal adviser to the Cabinet who also prosecuted the government's more important cases. He had no department and meager secretarial assistance. There was no effective machinery at his command for the detection of crime, the arrest of criminals and their prosecution. It is remarkable that men of outstanding ability as lawyers and statesmen accepted this onerous, ill-paid, and rather humble position. Among them were Edmund Randolph, William Wirt, Roger B. Taney, Caleb Cushing, Jeremiah S. Black, and Edwin M. Stanton.

During the first seventy years of America's existence under the Constitution, there was no federal detective force other than the United States attorneys. The Colonists had brought with them the traditional Anglo-Saxon instrument of the grand jury. These juries were composed of the more respectable and law-abiding citizens of the vicinage. Their business was to sift community gossip, weighing it against their personal knowledge of local affairs, and finally to

submit their findings of crime and delinquency to the king's justices for prosecution. They met in secret so that malefactors would not be forewarned and enabled to escape.

This was a more or less adequate method of detecting crime in rural communities, but with the rise of American cities it broke down. The personal knowledge of the grand jurors did not extend to the underworld and only a small fraction of the crimes committed could be punished. The work of the grand juries was supplemented by that of another English institution—professional informers, who received a share of all fines and recoveries.

The grand juries were drawn from the middle and upper classes. There has never been any theory in American or British law that they must represent "a cross section of the community."¹³ While they must come from the neighborhood in which the supposed crime was committed and must be drawn from a panel which is not partial, there is, even today, a property qualification. Until recently, grand jurors were selected by sheriffs and United States marshals, more or less at their discretion, and it was not until 1879 that the Supreme Court ruled that total exclusion of Negroes from the panel was sufficient cause for reversal of conviction.

Soon the prosecuting attorneys of the states and the United States attorneys took over the task of detecting crimes. They were also entrusted with deciding who should be brought to trial and, of course, with arguing the cases. While this system worked well enough in the early nineteenth century, it broke down as soon as American social life became more highly articulated.¹⁴

The United States marshals were another link in the law-enforcement chain. They were appointed in each judicial district to execute presidential and court orders, but soon they also became responsible for the detection of crime and the arrest of criminals. They were authorized to appoint deputies and organize posses of citizens to run down malefactors.

These marshals upheld the power of American law on the frontier, where they were often hated, mauled, branded, tarred, or lynched, where whole communities regarded them as trespassers and agents of a tyrannical power. During the Whiskey Rebellion of 1794—an agrarian revolt against the federal government's assertion of its right

to levy taxes—the marshals and revenue agents who went unprotected into hostile territory bore the brunt of mob violence. A contemporary describes the reception of one of them by whiskey rebels in the following terms:

“His Commission and all his papers relating to his Office tore and thrown into the mud and he forced, or made to stamp on them and Imprecate curses on himself . . . they then cut off one half of his hair, cued the other half on one side of his Head, cut off the Cock of his Hat . . . and in the above plight they marched him amidst a Crowd from the frontiers of the County to Westmoreland County, calling at all the Still Houses on their way where they were *Treated Gratis*, and exposed him to every Insult, and mockery that their Invention could contrive.”¹⁵

As the frontier surged westward, the conflict between pioneer society and the federal government assumed new forms. No longer were farmers prepared to take up arms to prevent the United States from levying taxes. While the lawlessness of later decades was not garnished with Jacobin theories, the mortality of United States marshals nonetheless remained extraordinarily high. “The number of deputy marshals killed in the Indian Territory averages twenty a year,” Attorney General William H. H. Miller complained as late as 1890.¹⁶ In the western district of Arkansas, during the course of eighteen years, some fifty-seven deputy marshals and guards were murdered and perhaps twelve times that number maimed or crippled.

The deputy marshals risked ambush and assassination for the meager reward of a dollar per arrest. Yet the marshals seemingly had little difficulty in recruiting posses of citizens, eager to abandon their families and their vocations for the more exciting occupation of chasing cattle rustlers and train robbers. The great American tradition of lawlessness sometimes made the posses little better than legitimized assassins. In Bloody Kansas, the pro-slavery territorial government deputized armies of ruffians to burn, waylay, and murder those settlers who voted Free Soil. In the violent labor disputes of the Robber Baron era, strikebreakers were given badges entitling them to shoot and kill union men.

The deputy marshals received the same reward for the apprehen-

sion of an unarmed culprit, who lodged across the street, as for the pursuit and capture of quick-triggered desperadoes who had to be tracked for months across sierra and desert and could be brought to trial only after a gun battle. As former Attorney General Cummings put it:

"They might travel for weeks, following trails and pointers, but if they came back without making an arrest they were out all expenses and time. Should the fugitive from justice be killed resisting arrest, then not only did the deputy not receive the dollar fee but was required to bury the deceased at his own expense! If the deputy were killed or crippled in the service of the United States, the government paid no attention to him or to his family." ¹⁷

As might have been expected, when the Civil War broke out there was no nucleus, anywhere in the government, around which an organization could be built to suppress disloyalty. While the Army had long since recovered from "the most contemptible state" to which it had sunk in the Jeffersonian era, it lacked any counter-intelligence organization.

When a secret service had to be built in wartime, private organizations were the source of the key personnel and directors. A major reason was that, during the first half of the nineteenth century, businessmen relied on private detective agencies rather than on the primitive and often corrupt local police forces. Allan Pinkerton, a Scottish immigrant with an iconographic eye established the first reputable private detective agency in America. A barrelmaker by trade, he was persuaded by the well-to-do citizens of Dundee, Illinois, to turn his energies to the apprehension of a gang of counterfeiters who were saturating the merchants' tills with bogus bank notes. After this exploit, Pinkerton continued as a "plain clothesman" and established a nationwide organization. His main clients were the railroads, which were afflicted with incessant robberies and swindles and which placed no reliance on official law-enforcement agencies. It is of interest that Pinkerton trained himself in undercover work through his activities as a militant Abolitionist and Underground Railroad operator.

Immediately after Lincoln's election, the Army of the Potomac turned to Pinkerton for the organization of a military counter-

intelligence system, by-passing police department officials and United States attorneys. Pinkerton's successor, General LaFayette Curry Baker, the adroit, sinister, and unscrupulous head of the military Secret Service during the Civil War, was also trained for his task in a completely extralegal organization—the California vigilantes.

Chapter Five

SMASHING THE NORTHWEST CONSPIRACY

THE STRUGGLE for the Middle West was one of the great unrecorded campaigns of the Civil War. It came to a head in 1864—a year of desperate expedients for the Confederacy. The Emancipation Proclamation had dashed Southern hopes for a favorable negotiated peace. The overpowering mass of Northern infantry, engaged on a line from the Atlantic to the Mississippi, was pressing the Southern armies back over their montane defenses. Lee's defeat at Gettysburg had shown that the war could not be won by military decision. The perspective was continued attrition of the exhausted Confederate forces, followed by breakthroughs which would cut the slave republic into isolated enclaves.

With these bleak prospects before him, President Jefferson Davis decided on a last, desperate venture—the Northwest Conspiracy. The plan was to organize uprisings throughout the Middle West, liberate the tens of thousands of Confederate prisoners of war confined there, and use them as the kernels of new armies. The main cities were to be seized and used as anchors of further rebellion. If the Middle West could be wrenched from the Union, the whole theater of war and balance of military potential would decisively shift. This plan contained the last strong hope of Confederate victory.

After it collapsed, the Confederate leaders destroyed those papers which linked their cause to arson, terrorism, and conspiracy. Jacob Thompson, the chief political leader of the Northwest Conspiracy, went to his grave in silence. Three carefully expurgated memoirs by

Confederate participants in the operation shed a certain amount of light. However, Thomas Henry Hines, the operational genius of the plot, left voluminous diaries, letters, and papers—a source which, strangely enough, historians have neglected. Although names are camouflaged, incriminating entries are cryptic, and whole pages are in cipher, the Hines papers are rewarding.

As distinct from the Confederacy itself, the Copperhead movement in the North, which antedated the Northwest Conspiracy, was treason by every yardstick and this fact explains the secrecy which surrounds it. The Southern revolutionary agents in the North were in rebellion both against the federal government and against their own states. The dilemma of divided loyalties, which perplexed the noble Robert E. Lee, did not apply to them. Their disloyalty was complete and unambiguous.

As early as the fall of 1862, a Captain Longuemare proposed to Jefferson Davis that the Midwestern Copperheads be organized militarily to cooperate with General John Hunt Morgan's raiders in order to overthrow the state governments, liberate the Confederate war prisoners, and burn Chicago. Davis' reaction was: "It is a great plan. In the west, you have men. In the east only mannikins."¹

A year later—in July, 1863—Morgan's cavalry raided deep into Indiana and Ohio. Although this was pro-Southern territory, the expected sympathetic Copperhead uprising did not occur. When massive Northern pursuit forces closed around Morgan's straggling and battered Confederate column, they found themselves riding "through six hundred miles of fried chicken and civilians singing 'Rally Round the Flag, Boys.'"²

Morgan and his officers were captured and confined in the penitentiary at Columbus, Ohio, where they were treated more like convicts than soldiers, on the War Department theory that the raid had been merely "thieving and arson on a grand scale." Among the men incarcerated with Morgan was the 25-year-old Captain Thomas Henry Hines, the future genius of the Northwest Conspiracy. At the outbreak of war, Hines had resigned his position as a college professor and enlisted. He was tall and spindly, with an incongruous walrus mustache and an air of chronic melancholia. His eyes were cold, deep, and intelligent; his curly hair was brushed over his fore-

head, concealing its great breadth and height. Hines seemed like a hybrid between a scholar and a pirate. In personal appearance, an associate wrote, he "was effeminate."³

The historian Swiggett appraised Hines as "one of the two or three most dangerous men in the Confederacy."⁴ During most of his long military career, he was a guerrilla or spy and, if captured, would have been instantly hanged. This choice of role marked a man of a special sort—an individual of exceptional courage, initiative, and self-reliance, distrustful of others, recalcitrant toward authority, loath to serve as part of a vast, impersonal machine. Like most born secret agents, Hines enjoyed concealment and duplicity and found the almost unbearable tension of living constantly under the shadow of the gallows a source of exhilaration without which life might have seemed insipid.

At Columbus, Hines organized one of the most daring and brilliant prison breaks in history. Tunneling through brick and masonry with table knives, he brought General Morgan and five other officers to freedom. He conducted his commanding general into Confederate territory, narrowly escaping a hanging in the process. While they were bivouacked in the open one night during their flight to the South, General Morgan outlined the plan for the Northwest Conspiracy and told Hines that he was the man to organize it.⁵

In January, 1864, Hines reported to President Davis at Richmond. Despite his youth, his low rank and his sleepy, lackadaisical and somewhat effete appearance, Hines was put in command and, on March 16, was ordered to proceed through Northern territory to Canada and there organize "such of our soldiers as you may collect in any hostile operation" consistent with Canadian neutrality.⁶

The plan was strategically sound, but the time was late. The Midwest had a larger proportion of Confederate sympathizers than any other region in the North. Some two-fifths of the inhabitants of Ohio, Indiana, Michigan, Illinois, and Wisconsin were of Southern origin. Often illiterate and uncouth, these hard-drinking, trigger-quick settlers boiled with resentment toward the more successful farmers who had pioneered westward from the Northern states and occupied the more fertile soil of the glacial moraine. Owning no slaves themselves, they hated the Negro and fed their self-esteem

with the illusion that they were "cavaliers of Dixie." In the Midwestern cities their allies were the staunchly pro-Confederate foreign-born workers—for the most part Irish and German.

This was the human raw material on which Hines and the other Canadian conspirators had to rely for their projected revolution. Unfortunately for the Confederates, these Copperheads had vacillated from the outset between two political strategies. The first was peaceful: the election of Democratic governments in the Midwestern states, the stultification of the war effort and, if possible, secession from the United States and creation of a third "neutral" confederation. The alternative was to build powerful military departments within the Copperhead societies, coordinate them under Confederate Army leaders, and deliver swift, hard, and massive military blows.

Much could be said for either program, but the two were incompatible; they could not be combined. If the Democrats were to win at the polls, they had to appear patriotic and be untainted with the charge of treason. If they were to resort to armed uprising, belief in the possibility of peaceful change had to be shattered within their ranks.

The first of the great Copperhead conspirative societies was the Knights of the Golden Circle, originally organized in 1854 by George W. L. Bickley, a Virginia quack who had migrated to Ohio to become a leading figure in the Eclectic Medical Institute. A filibustering society, initially formed for "the entire and speedy conquest of Mexico," it was transformed into a secret military organization, which pledged "our services to any Southern State to repel a Northern Army." The Knights had secret handclasps, mysterious oaths, clandestine rituals, and the usual hocus-pocus which has appealed irresistibly for over a century to some peculiar quirk in the American mind. Dr. Bickley energetically organized "castles" of the Knights throughout the Midwest and created an inner military apparatus which seemed to Northern officials awe-inspiring and formidable. It was described as "the very heart, the brain, the breath, the soul" of the secessionist movement in the North. Hines, who worked with its leaders, made a far more jaundiced appraisal. He thought the Knights "as harmless and as impotent for any prac-

tical purpose as an association of children would have been.”⁷ His unpublished opinion was that its leaders were cowards, braggarts, and buffoons.⁸

Meanwhile, Abraham Lincoln was showing consummate skill in splitting the roots of the pro-Southern movement. Until the logic of action and the passions of combat ripened, he avoided raising the issue of Negro emancipation and stood on the simple ground that the Union must be preserved.

While resorting to the broadest possible propaganda, Lincoln also used wholesale repression to snap the spinal column of the subversive movement in the North. Within three months of the firing on Fort Sumter and without Congressional endorsement, he assumed war powers. By executive order, he asserted the right to suspend habeas corpus and institute martial law anywhere in the land—acts the Supreme Court was later to brand as unconstitutional.⁹ Twenty-one newspapers were suppressed for printing “disloyal and incendiary statements” and possibly as many as 38,000 persons were confined by the military without trial.

A remarkably able group of state governors prevented the appeasement forces from taking power in the Middle West. Among the best of them was Governor Oliver Perry Morton of Indiana, an implacable leader, a brilliant manipulator, a believer in war “instant and terrible.” This self-taught mathematician and lawyer was elected governor for the four-year term 1860–1864. In 1862, however, the Democrats swept the state and peace party men controlled both the legislature and Morton’s cabinet. The southern counties seethed with sedition; armed bands of deserters waged guerrilla war; the Copperheads armed and drilled for rebellion.

In this situation, Morton ruled Indiana as absolute dictator. As he refused to call the legislature into session, his treasury had no funds. Resorting to an ingenious bit of trickery, Morton declared the state arsenal to be his personal property, made large profits by selling guns and powder to the Army, deposited the money in his private safe, and used it to pay salaries and keep the Republican administration running. When this device was played out, he made a desperate trip to Washington for money. Lincoln refused to help on grounds of constitutionality, but the iron War Secretary Stanton

handed him a quarter of a million dollars without a moment's hesitation. If the North should be defeated, Morton observed, they would both be prosecuted for fraud.

"If the cause fails," Stanton retorted dryly, "I do not wish to live."¹⁰

Dictatorial measures such as these blocked the Copperheads' legal road to power and accentuated the drift toward military conspiracy. Moreover, strong military departments were set up throughout the Middle West and adequate garrisons were stationed in the more disloyal areas. State governors, adjutant generals, and provost marshals cooperated in building counterintelligence systems to penetrate and destroy the Copperhead secret societies.

In 1862 Governor Morton had leaves of absence granted to reliable Northern soldiers. These men returned home, talked sedition, joined the Knights of the Golden Circle, and did everything within their power to penetrate the "strong band"—or secret military organization. The results of this wholesale infiltration exceeded expectations. A grand jury was summoned and witnesses were brought from every part of the state. They testified that the Knights were importing large quantities of arms from New York, that they were urging the troops to mutiny, that they aided the guerrilla bands of deserters which harried Army supply depots. "A secret oath-bound organization exists," the grand jury reported, "numbering some 15,000 in Indiana." Sixty indictments were returned for treason and lesser offenses.

The Knights of the Golden Circle disappeared under a rain of prosecutions and exposés. Their place was taken by the Order of American Knights—a more centralized and serious body. In Indiana alone, Northern counterespionage agents reported, six thousand guns and sixty thousand revolvers had been imported. The Order had a military department; its members drilled and prepared; its purpose was insurrection.

In January, 1864, Phineas C. Wright, Grand Commander of the Order, acquired control over the New York *Daily News* as "our especial organ." The *News* had been dominated and partly owned by Fernando Wood, one of the most corrupt mayors in the history of New York.

Chicago, not New York, however, was the main target of the conspiracy. Moreover, Phineas Wright was alarmingly deficient in executive ability. Accordingly, the Midwestern Copperheads and the Confederate conspirators in Canada ordered the organization dissolved. The Copperheads reincarnated as the Sons of Liberty—a name that recalled the passions and struggles of the Revolutionary War. The new supreme commander of the secessionist movement in the North was Clement Laird Vallandigham, an Ohio spellbinder and intransigent with a national reputation.

Vallandigham had been arrested for seditious talk and this had churned up a hornet's nest of popular anger. With uncanny political acumen, Lincoln ordered the firebrand deported to Confederate lines, thus covering him with both ridicule and the tar of treason. Since he was supposed to be a dove of peace and not an agent of Jefferson Davis, Vallandigham departed from Dixie as quickly as possible and proceeded to Canada. Here he entered into *sub rosa* negotiations with the Confederate agents to plan an uprising to be financed with Richmond funds.

Hines had been in Canada scarcely a month when he was made subordinate to Jacob Thompson, a conservative politician from Jefferson Davis' Cabinet. Thompson shared authority with Clement C. Clay, a brilliant Alabama Senator who, however, had no flair for conspirative work. Thompson and Clay soon quarreled, separated, divided the funds allotted them for fifth-column work, and operated independently of each other.

On June 9, 1864, Hines and Vallandigham met and plans for insurrection were laid. The Ohio Copperhead made inflated claims for the Sons of Liberty, alleging it had 300,000 members, of which 85,000 were in Illinois, 50,000 in Indiana and 40,000 in Ohio. He claimed that the organization could be rapidly put on a war footing and that, in a crisis, the rank and file would fight. As he saw it, there was universal opposition to Lincoln's draft call for half a million men and a growing conviction that "Lincoln had the power and would certainly re-elect himself, and there was no hope but in force." ¹¹

The operational plan was to liberate the prisoners at Rock Island and Fort Douglas by a sudden blow. Six prisons in the Middle West

housed some fifteen thousand Confederate veterans and these men, once freed, were to form the hard, battle-trained core of the Copperhead host.

The date of the rising was set for July 20, 1864. The plan was that "by a bold, vigorous, and concerted movement the three great Northwestern States of Illinois, Indiana and Ohio could be seized and held. This being done, the States of Kentucky and Missouri could easily be lifted from their prostrate condition and placed on their feet, and this in sixty days would end the war."¹²

The military departments of the Sons of Liberty were alerted and drilling proceeded at a fevered pace. The Confederate commissioners began doling out the \$910,000, which they had received through cotton sales, to enable Sons of Liberty leaders to buy arms. Some \$200,000 went to the Indiana Copperheads alone.

The essential condition of success was to strike at the earliest possible moment. Again and again Hines emphasized the dangers of delay. First, the conspiracy was on such a vast scale that eventual exposure seemed certain. Second, the military position of the Confederacy was rapidly disintegrating; Richmond was threatened and Sherman was plunging into Georgia. Further defeats would dampen Copperhead morale; they would free Northern troops from combat to reinforce the guards at Midwestern prisoner-of-war stockades; they would further add to the difficulties of synchronizing the uprising with a Confederate offensive in the border states.

Dominated by spellbinders and politicians, the Sons of Liberty was merely a caricature of an army. Its leaders insisted on postponement, urging that a major Southern offensive—and not merely the raiding operations of General Nathan Bedford Forrest—was a precondition of success. They wrote the Confederate commissioners that "time is too short," adding: "We leave for Chicago to-night to do our best, but with heavy hearts and drooping hope for the cause in which we have thrown our very souls and existence."¹³ This was a measure of their courage and capacity. Reluctantly, Thompson and Hines agreed to postpone the uprising until August 29, 1864. At that time, the Democratic National Convention would be meeting in Chicago and tens of thousands of armed, drilled,

and organized Copperheads could enter the city without arousing suspicion.

Meanwhile, Northern counterespionage agents had penetrated into the inner circles of the conspiracy. This aspect of the narrative is complex, twisted, composed of many strands. Although the proper agency for counterespionage was the Army Secret Service under General La Fayette Curry Baker, most of the serious counterintelligence work was done by the war governors in the Middle West and their military opposite numbers, by the office of the Secretary of War, and by the autonomous sleuths of Secretary of State Seward. All these groups seemingly worked at cross purposes and, as a rule, intelligence information was jealously guarded by whatever official had bought it.

The backbone of the Copperhead conspiracy was broken by a young corporal named Felix Grundy Stidger. In May, 1864, General Carrington, the Indiana adjutant general, requested the provost marshal of Kentucky to place a man inside the Sons of Liberty. That night young Stidger was relieved of his assignment as an army clerk, given civilian clothes, and ordered to discover the secret military plans of the Copperhead movement.

An ex-farmer of rather rudimentary education, Stidger had no political influence, knew nobody of any importance, and had no experience in intelligence work. Yet he proved to be one of the most spectacularly successful undercover agents of the Civil War.

Being a Kentuckian, he had the foresight to proceed at once to Indiana on the theory that he would be honored where he was unknown. Within less than a week after leaving the Army, he visited "General" William Bowles, the military commander of the Indiana Sons of Liberty, introduced himself as a Kentucky Copperhead who had taken the "vestibule" degree, and promptly won Bowles' confidence. The trust was not mutual. Stidger thought General Bowles possessed "one of the worst countenances I near ever saw a man have, he cannot look anyone in the face one minute."¹⁴

By June, Stidger was able to report with mingled pride and alarm: "Captain, I am to be Secretary of the Grand Council of this State" (Kentucky). Having won the confidence of the Indiana conspirators

as a Kentucky Copperhead, Stidger next vaulted into the leadership in Kentucky because he was trusted in Indiana!

Stidger added interesting bits of information. General Bowles had tried out a phosphorus and brimstone mixture on a river steamboat, but the vessel had refused to burn. Now he was working with a chemist to develop new types of Greek fire, hand grenades, and incendiary time bombs. At another time Stidger purloined the cipher of the organization and had the names of the chief officers in both Kentucky and Indiana. He also discovered that eighty thousand men were armed and ready in Indiana and this was to be part of a general rising throughout the Middle West.

To his consternation, Stidger discovered that the Sons of Liberty had its own intelligence organization within the enemy camp. This apparatus revealed its existence when the finger was put on another Northern spy and Stidger was detailed to execute him. "In caucus, it is decided we cannot organize a Grand Council for the State until Mr. Coffin is killed," Stidger reported. "He is a detective for General Carrington. I go tomorrow to Dr. Bowles to have the work carried into execution, of hunting him up and having him killed."¹⁵

This warning saved Coffin's life. Carrington had him transferred to Canada, where he wormed his way into the headquarters of the Northwest Conspiracy and contributed substantially to its final debacle.

Soon Stidger knew that he was suspected. Miserably paid for the risks he was running, he announced to Carrington that he wished to quit work as a secret agent in September for romantic reasons: "I form an alliance with one whose happiness I deem it my duty to do all in my power to protect."¹⁶

Toward the close of July, Stidger had met Judge Bullitt, the Kentucky grand commander, at Indianapolis. When he realized that Bullitt had the detailed plans for the uprising and was about to send them to the Kentucky organization, he had him arrested.

Returning to Kentucky, Stidger was immediately sent back to Indiana to get duplicate instructions for the armed rising. Back in Indianapolis, he learned that the organization was to come into the open forthwith, to hold mass meetings and transform the membership into military columns.

When Grand Secretary Stidger returned to Kentucky with these orders, the sands had almost run out. His colleagues had learned that he was a traitor. With death imminent, Stidger made an urgent appeal to the authorities and the entire leadership of the conspiracy was smashed by wholesale arrests, to be followed by treason trials and death sentences. In Illinois, where the organization was still strong and intact, the news from Indiana and Kentucky acted like a rainstorm on powder.

Nevertheless, on August 27 and 28, a picked band of sixty Confederate soldiers entered Chicago in small groups and in disguise under the leadership of Hines. The Democratic National Convention was to meet the following day and the city was swarming with about a hundred thousand Copperheads—some of them conspirators, but the vast majority a brawling, turbulent mass with no fixed purpose.

The commandant at Camp Douglas was Colonel Benjamin J. Sweet, a brilliant officer with the gift of foresight. As a result of the disclosures of the federal detective, S. P. Coffin, who had gained the confidence of the Canadian conspirative organization, Sweet reinforced the guard at Douglas, bringing it up to a strength of three thousand men. Alert to the likelihood of a rescue attempt, he put his detective apparatus to work. The operatives of Colonel I. Winslow Ayer, a greedy patent medicine vendor turned counter-espionage agent, struck up conversations in the liquor shops and soon saw that armed action was imminent.

"It was doubtful," Ayer wrote of the Copperhead stalwarts who had swarmed into the city, "whether half the members could write their own names, or had ever washed themselves in their lives." They were, Ayer thought, as "shaggy-haired, red-faced, blear-eyed, blasphemous wretches" as "ever congregated at the gallows at Newgate."¹⁷ The detectives reported that the conspirators would wear red and white badges and that friendly families would show Confederate colors in their windows to avoid having their homes burned down.

Hines and his comrades registered under false names at the Richmond House as the Missouri delegation to the Democratic convention. They had already established a secret organization among the

seven thousand prisoners at Camp Douglas and now they conferred with the Copperheads and requested the promised striking force of twelve hundred men.

Camp Douglas was surrounded by a large wooden stockade. Hines' plan was to break through it and attack the three thousand guards, with the Confederate prisoners joining in the assault. The prisoners, the Missouri butternuts, and the Chicago military organization of the Sons of Liberty were to provide an armed force of twenty thousand men. During the next fortnight, similar strikes were to be made at Rock Island, Springfield, and elsewhere, the calculation being that a hundred thousand men would be marshaled and thrown into military formations by mid-September. There was no Union army in the Middle West capable of withstanding such a host. As a contemporary Union observer saw it: ". . . the whole character of the war would be changed; its theater would be shifted from the border to the heart of the free States; and Southern independence . . . would have followed."¹⁸

The respectable leaders of the Democratic Party—Dean Richmond, Seymour, and Tilden—soon got wind of the conspiracy and panicked. They caucused all day and announced that if the rising took place the Democratic Party, already smeared as traitorous by the arrests of conspirators in Kentucky, Indiana, and Missouri, would be lost.¹⁹

If they communicated these views to Hines, he did not think the matter worth recording. The decisive obstacle to the plot was not the squeamishness of the politicians, but the fact that the Copperhead assault force never materialized. The leaders of the Sons of Liberty broke their pledge to furnish men. The butternut heroes of the backwoods countries were always ready to brawl in grog shops and rain abuse on the Negroes, but they lacked the guts for war.

In disgust and desperation, Hines pleaded for a skeleton force of five hundred men with which he proposed to liberate the Rock Island prisoners and seize Springfield—"an easy conquest," he thought. When even this was not forthcoming, he returned to Canada. "No one experienced in army life," he later observed

dryly, "will be surprised to observe the difference between the soldier and the citizen . . ." ²⁰

There was one final spasm. In his December, 1864, report to Confederate Secretary of State Judah P. Benjamin, Thompson stated that, after the August debacle, all projects to rescue prisoners were abandoned "except that at Camp Douglas where Captain Hines still believed he could effect their release. We yielded to his firmness, zeal and persistence . . ." ²¹

The new attempt was scheduled for Election Night of 1864—a time of confusion and milling crowds. Again a picked group of men under the command of Confederate officers was to attack the stockade at a prearranged signal. Simultaneously, the nine thousand Confederate prisoners would fall upon their guards and plunge into the streets. Hines planned to cut telegraph wires, tear up railroad tracks, rob the banks, and burn the city to the ground. With his improvised army, he would try to fight his way south and join the dwindling ranks of the Confederate Army.

On the fifth of November, Copperheads from the southern counties of Illinois began to stream into Chicago. The next day Colonel Sweet knew that "the city was filling up with suspicious characters, some of whom were escaped prisoners of war and soldiers of the rebel army; that Captain Hines, Colonel Grenfell and Colonel Marmaduke were here to lead; and that Brigadier General Walsh of the Sons of Liberty had ordered large numbers of the members of that order from the southern portions of Illinois to cooperate with them." ²²

A detective attended one of the minor meetings of the conspirators and penned an unflattering picture of Hines: "His face tells of dissipation and his dress shows the dandy; but his deep, clear eye and pale, wrinkled forehead denote a cool, crafty intellect. This is the notorious Captain Hines, the right-hand man of Morgan." ²³

Ayer arranged to have a Texas Confederate soldier and renegade, named J. T. Shanks, turn up at Richmond House and gain the confidence of the conspirators. Shanks fell in with one of the Canadian Confederates and got him drunk. In the silent presence of Colonel Grenfell, the inebriate boasted to Shanks that they had

fifteen hundred men ready to strike, revealed where the arms were cached, and identified the Chicago leaders of the plot.

Meanwhile, Major General Joseph Hooker was receiving last-minute, telegraphed warnings of a midnight plot to "seize telegraph and rail at Chicago, release prisoners there, arm them, sack the city, shoot down all Federal soldiers, and urge concert of action with Southern sympathizers."²⁴ The picturesque Confederate general, Nathan Bedford Forrest, was supposedly to swoop down in a synchronized action with fourteen thousand men.

A few hours before Hines was to strike, Hooker replied complacently: "... the wires have seldom been put to worse use than that of transmitting that part of his telegram of today relating to Forrest and his 14,000 men. It is all stuff. No attack is apprehended at Chicago . . ." ²⁵

This left Colonel Sweet on his own. On Sunday night he struck, rounded up Grenfell and Marmaduke, pounced on General Walsh, and found 491 loaded shotguns and revolvers in the latter's house. Throughout the week, suspects were arrested and hidden arms dumps raided.

The only leader to escape was Hines. When the military detectives acted, he had the presence of mind to call on a Copperhead lady friend. Hines told her to feign illness and then concealed himself in the box springs of her bed. Soon the house was under surveillance and Hines was seemingly trapped. The Kentucky conspirator waited patiently until a female caller appeared with flowers, then left the house openly as her escort, passed through the secret service cordon, and proceeded to Canada.

The Chicago conspirators were tried by a military commission. Only one was sentenced to death. This was Colonel George St. Leger Grenfell, a rather incredible soldier of fortune who "was always cheerful and contented when he could shoot and be shot at." English by birth and of a wealthy family, he had fought in the French Army as a private, then settled down in Algiers as a Muslim. He campaigned for four years with the Moors against the French, then accepted a commission to clean out the Riff pirates, whom he exterminated. After that he fought with Garibaldi's legions and served

with the British Army against the Sepoy Rebellion and in the Crimean War. Peace bored Grenfell and soon he was in America as Chief of Staff to General Morgan, back at his old amusements of singing Moorish songs and slitting throats.

Weary of the Civil War, he proceeded to Washington, captivated Lincoln, Seward, and Stanton, and proceeded to Canada on his word of honor "to give no further aid to the Confederate cause."

Grenfell was skeptical of the chances of the Northwest Conspiracy, but it intrigued him. "I see that in this lives will be sacrificed," he told Hines. "I can not take part in it, but I will go along and witness the executions."²⁶ He may have been at Chicago merely as a spectator, but renegade members of the conspiracy testified that he had been designated to lead the assault forces against Camp Douglas.

With the war finally over, Judge Advocate General Joseph Holt sent a carefully worded communication to President Johnson, suggesting clemency for Grenfell. It was for the President to decide whether he "will feel justified in sparing even so unworthy and dishonored a life . . . If the death sentence is commuted, it is believed that the punishment substituted should be severe and ignominious."²⁷

He was given life imprisonment on the Dry Tortugas—bare, island outcrops of rock beyond the Florida Keys, fever-infested and dismal. After a year's confinement, Grenfell, by then well over sixty, was broken in health. Nonetheless, he made a daring escape alone in a rowboat, choosing the virtual certainty of death by drowning to the monotony of prison. His fate, like that of Ambrose Bierce, is a mystery.

The Northwest Conspiracy failed largely because it necessarily involved thousands of people. Even the decentralized and highly competitive counterintelligence organizations of the North succeeded in penetrating the secessionist societies and their military arms. The conspirative genius of Captain Hines was thwarted more by the nature of the problem than by accident or bad fortune. Thus, John Wilkes Booth, although a far less capable organizer, was able to succeed because his organization was small and his objective was limited.

The parallel with the contemporary pro-Soviet conspiracy is evident. FBI agents and informants succeeded in penetrating the American Communist Party and exposing its plans, whereas the far more serious espionage apparatus have remained intact unless betrayed from within.

Chapter Six

STANTON'S SECRET POLICE

VICTOR SERGE's brilliant novel *The Case of Comrade Tulayev* begins with the murder of a member of Stalin's immediate entourage by an obscure government employee acting on his own. The assassin escapes undetected; the NKVD searches for a vast underground conspiracy; a heterogeneous assortment of high Soviet officials and old Bolsheviks are made to confess to a crime they had nothing to do with.

In the Civil War and Reconstruction eras, the United States War Department bore some traces of resemblance to the Soviet secret police. Its leaders were zealots who believed that, if the end didn't justify the means, nothing else could. Wherever possible, they operated in secrecy through military, rather than civilian, courts. Guilt by association became a fundamental axiom; perjury was richly rewarded; when political exigencies dictated it, even the President of the United States was arraigned on spectral evidence.

Lord Acton's observation that all power corrupts and absolute power corrupts absolutely has become a cliché. In surveying the record of War Secretary Stanton's political police apparatus, one may add that absolute power stupefies those who wield it.

During the war years, General La Fayette Curry Baker was chief of the military Secret Service. He was a curious choice for this highly responsible post. An itinerant mechanic of Vermont stock, Baker had gone to California in the 1850's and there distinguished himself as a vigilante, using lawless methods to rid the country of gamblers

and ballot-box stuffers. In the spring of 1861 he was part of the vast horde which descended on Washington to find employment from the new Republican administration.

Unlike the run-of-the-mill patronage seekers, La Fayette Baker looked for dangerous work. "Old Fuss and Feathers" Winfield Scott, the 75-year-old commander-in-chief of the American Army, told Baker that he had already sent five spies to Richmond. Two, he believed, had been hanged and the others were presumably in prison awaiting the same fate. Would the ex-vigilante care to try his luck as the sixth?

Baker accepted. "I went to a daguerrean establishment," he wrote later, "and purchased for four dollars an old box which had once contained photographic apparatus, slung it across my back, after the fashion of an itinerant artist, and started for Alexandria."¹

Photography was in its infancy and the Southern leaders were better versed in the campaigns of Alexander of Macedon than in such bizarre mechanical contraptions as the camera. Baker's plan was to tour the rebel camps, posing Confederate generals against backdrops of parapets, gun emplacements, and bivouacs. Apparently, it never occurred to him that he would have to explain why none of his pictures was ever developed. A man with greater reasoning power might have bought a real camera rather than a box which had once contained one.

However, the gods were with La Fayette Baker and his camera box was lost or destroyed. He now claimed to be a Southern businessman—Sam Munson of Knoxville—who had lately returned from California. Baker was promptly arrested as a spy and haled before Jefferson Davis, who devoted three hours of his valuable time to playing detective.

The spy possessed two invaluable qualities—poise and effrontery. When Davis brought a Knoxville Confederate recruit into the office to question him, Baker showed such superb self-confidence that he soon had the impressionable soldier telling the President that he knew him "very well."²

Set at liberty, Baker returned in triumph to Northern lines and gave his report to General Scott. His bureaucratic rise after this exploit was meteoric. In February, 1862, Baker's Detective Bureau

was transferred from Secretary of State Seward to War Secretary Edwin M. Stanton. Promoted to the rank of brigadier general, Baker was clothed with almost limitless powers as special provost marshal of the War Department. In Washington he used the methods that had proved so successful in his vigilante days, disregarding due process of law, habeas corpus, or any of the other constitutional frills that normally prevent the imprisonment of Americans at the whim of the military. For the next three years, Baker led a life of frenzied activity, pouncing on spies, bounty jumpers, conspirators, counterfeiters, and speculators, making the arrests personally where possible and in the process accumulating a small fortune.

Referring to himself in the third person, the great detective wrote modestly in his memoirs:

"In General Baker's personal appearance, there is nothing, to a casual observer, remarkable. However, physically he is an extraordinary man . . . His frame is of the firmest texture and its powers of endurance very great . . .

"He is of medium height, lithe, and sinewy, and his movements are quick, yet having the air of deliberateness natural to a profession in which circumspection and habitual self-control are among the first conditions of success. Around his forehead of intelligent outline lies a profusion of brown hair, and his face is partially covered with a heavy brown beard. His gray eye, in repose, wears a cold expression; in his naturally cheerful mood, and in the unguarded enjoyment of social life, it is changeful and playful; and engaged in his special duty of detecting crime, it becomes sharply piercing, often making the victim of its vigilance to quail before its steady gaze. Indeed, he was evidently the man for the place he filled during the national struggle. The personal peril to which he exposed himself, and the untiring service performed, at the head of a division, or even a regiment, would have sounded his name over the land as a daring, untiring and heroic leader. He is probably the best 'shot' in the country, and also a fine horseman . . .

"For nearly twenty years he has not tasted intoxicating drinks, but has been enrolled among the Sons of Temperance; and what seems still more remarkable . . . he has never been addicted to the shameless profanity so common in the army . . . His fidelity and kindness

of heart in his domestic relations, and toward kindred less fortunate than himself, are well known.

"Such are the general characteristics of the first national chief of a Detective Bureau in the war record of this country." ³

His great admirer, Congressman Albert Gallatin Riddle, thought Baker "a man of little culture, dark, taciturn, square-shouldered, and of powerful frame . . ." He added that "having almost irresponsible power, the limit of which was his relentless will," Baker committed "many acts of oppression . . ." ⁴

An enormously vain and unscrupulous person, Baker was also a congenital liar, intriguer, and twister. A talented counterspy, he was a wretched administrator. Instead of concentrating on smashing the Copperhead plots, he allowed his energies to spill over into such inconsequential matters as arresting smugglers and petty thieves, unraveling military frauds, and warring on grog shops and brothels. He enjoyed shadowing suspects personally and spent much of his time wandering around the country in disguise. Whenever a beautiful Confederate spy was thrown into Old Capitol Prison, General Baker would spend long hours interrogating her and doubtless making the most of his opportunities.

Baker was part of the powerful personal machine that War Secretary Edwin M. Stanton had created. As soon as Booth's bullet struck down Lincoln, Stanton became the controlling power of government. He took command at the bedside. When Mrs. Lincoln gave way to uncontrollable grief, the War Secretary remarked loudly: "Take that woman out and do not let her in again." Colonel A. F. Rockford, who was present, remembered:

"When the death of the President was announced [by the surgeons], Mr. Stanton slowly and with apparent deliberation straightened out his right arm, placed his hat for an instant on his head and then as deliberately returned it to its original position." ⁵

Sandburg describes the gesture as "baffling." The image that leaps to mind is that of Napoleon taking the crown from the hands of the Pope and placing it on his own head.

The man who was supposed to take over the reins of government was Vice President Andrew Johnson. When informed that his chief had been shot, Johnson remained in his hotel bedroom for approxi-

imately three hours doing nothing. He went to the dying Lincoln's bedside only when summoned by an emissary of Stanton. Senator Stewart of Nevada claimed that Johnson met this crisis in his affairs by drinking himself into a stupor, but this is probably a canard.⁶

At ten the following morning, Andrew Johnson delivered a singularly inappropriate Inaugural Address which neither mentioned nor praised Abraham Lincoln. The new Chief Executive dilated at length on his own sterling qualities as a man and statesman, then blurted out: "I feel incompetent to perform the duties . . . which have so unexpectedly been thrown upon me."

The War Secretary, who now emerged as the granite figure in a nation rent by schism, was a man of shadow and paradox. From an early age, his mind and emotions had been dominated by the thought of death. Shy, soft voiced, and habitually secretive, he would alternate swiftly between brusque command and humble acceptance of rebuke.

He had been a Democrat and a deferential member of Buchanan's cabinet. He had flayed the Abolitionists and had once said of Lincoln: "Why should Paul du Chaillu have to go to Africa for an ape? He has a better specimen in Washington."⁷ When the political tide turned, however, Stanton not only entered Lincoln's cabinet, but became the unchallenged leader of the radical Republicans.

He has been described as "a rude, rough, vigorous Oliver Cromwell sort of man," as "incapable of generosity to a prostrate foe," as "arbitrary, bad tempered and impulsive," and as "double-faced, tyrannical, with an inordinate desire for office."⁸ Riddle, a more sympathetic observer, remarked: "His eyes were very striking—large and liquid like some women's, they were mysterious, to me seeming to have a message, and looking reproach that I did not understand it."⁹

This soft-spoken man was an organizing genius of war. "The grasp of his nervous hand on the limitless power of his department . . . sent a thrill through the land."¹⁰ In wartime, Stanton became a leader with two inflexible purposes: the extirpation of the rebellion and the destruction of the slaveholding class which had launched it.

Now that Lincoln was dead, the War Secretary concentrated vast

powers in his hands. The Army was the one authority capable of bridling the defeated South. Stanton censored the press and the wire services. Wherever martial law was in force, the tribunals were composed of men subordinate to him. He had, finally, a Secret Service controlled by men who were utterly loyal to him personally.

The obvious political gambit of Stanton and the radicals was to prove that Booth and his shabby band of sycophants, adventurers, and ruffians had been agents of Jefferson Davis and of the Confederate government. If this could be done, the public would believe that the Richmond administration had been a mere gang of assassins and that a policy of the utmost ruthlessness toward the South was necessary. The instrument for any such program of repression would inevitably be the War Department, which Stanton directed. The trial of the Lincoln assassins, in short, served as an opening move in deeply calculated positional play for something akin to a military dictatorship.

The Attorney General of the United States was James Speed, described by Bates, whom he replaced, as "my imbecile successor." Stanton wanted Booth's accomplices tried by court martial and Speed promptly obliged with the shortest, and perhaps the most incompetent, opinion ever rendered by an American Attorney General. Its full text was:

"I am of the opinion that the persons charged with the murder of the President of the United States can be rightfully tried by a military court." ¹¹

Nine high military officers formed the commission which sat in Washington in May, 1865, among them General Lew Wallace—later to write the historical best-seller, *Ben Hur*. This singularly partisan body browbeat the lawyers for the defense and insulted them. The latter were given no assistance in producing their witnesses, some of whom were in military custody. They were not even furnished the charges and specifications or the court record in time to prepare their cases.¹²

The somber mind of Stanton prepared a strange torture. He ordered that "the prisoners on board iron-clads . . . for better security against conversation shall have a canvas bag put over the head of each and tied around the neck, with a hole for proper breathing

and eating, but not for seeing . . ." ¹³ Sam Arnold, one of the conspirators who was sentenced to hard labor at the Dry Tortugas, wrote afterward:

"The covering for the head was made of canvas, which covered the entire head and face, dropping down to the lower portion of the chest . . . daylight never lit upon the eye, they not even permitting the cap to be withdrawn for the purpose of washing the swollen, bloated and soiled visage." ¹⁴

Later, a new hood was devised for the prisoners, which was considerably more painful. Pads pressed the eyeballs into their sockets and, in the stifling heat of a Washington summer, the men were kept in total darkness with only one small hole to breathe through and another to admit food. The prison surgeon attempted vainly to have these hoods removed on the grounds that the pressure on their heads and eyes might drive the prisoners to insanity. ¹⁵

During the period between arrest and sentence, the prisoners were kept in solitary confinement; they were isolated from the outside world, shackled and hooded. Moreover, when the comedy of the trial was over, four of the eight defendants would not be executed but, at Stanton's direction, would be sent to the most distant and desolate fortress in the United States—the Dry Tortugas. Nor was this enough. General La Fayette Baker was conveniently to discover (or invent) a plot to release them. Orders were then issued to place them under continuous armed guard and prevent their communicating with anyone in the prison. ¹⁶

What was the purpose of all this? As Eisenschiml points out, here was the extraordinary spectacle of torture being used, not to extort confessions, but to impose silence. As a rule, criminals are encouraged to talk, provided they do not have accomplices whom the state has decided to protect.

The inference which Eisenschiml draws from this and a whole series of related facts is that War Secretary Stanton not only knew of the murder plans and allowed them to mature, but may have been in guilty communication with Booth. ¹⁷ This is a tempting theory. Certainly, as far as the radicals were concerned, Lincoln's political usefulness ceased the moment the war was won. His clashes with Stanton on policy matters were becoming more and

more frequent. Since he had the support of the people, there was no legal means of removing him.

The fatal weakness in Eisenschiml's hypothesis is that it presupposes two defects in Stanton's character which were not there—stupidity and loquacity. If the War Secretary had had advance knowledge of the plot against Lincoln, all that he would have had to do was fold his hands. It would have been folly for him to have communicated with Booth and, unless he had done so, he would have had no reason to fear his prisoners.

He probably had them silenced for a very different reason. Stanton was determined to prove that the murder plot was hatched in Richmond. The two possible links were Booth, who had been shot dead, and Surratt, who had escaped to Canada. The minor figures manacled on warships would have been ignorant of any such conspirative connections and, had they been allowed to talk freely, would have denied their existence. It was therefore essential to the grand political design that they be silenced—by torture, if necessary.

To prove the great conspiracy, Stanton relied on his crony, Judge Advocate General Holt, and on his creature, General La Fayette Baker. The latter hustled off to Canada where he collected the most preposterous herd of witnesses ever assembled for a political trial since the days of Titus Oakes and west of the Iron Curtain. Meanwhile, Judge Holt ran a school for perjury in Washington.

In Canada, Baker discovered Sandford Conover, a roving New York *Tribune* reporter, an amateur spy, and a consummate scoundrel. Conover brought a retinue of witnesses to support his story. At the trial this plausible adventurer put his hand on the Bible and swore that he had been in Canada since October, 1864, and knew all the Confederate leaders there intimately.

Conover said that in February, 1865, Jacob Thompson had told him that "some of our boys are going to play a grand joke on Abe and Andy."¹⁸ Then he added that on the sixth or seventh of April, 1865, he had seen John Surratt, Booth's second in command, in Jacob Thompson's room in Montreal. Surratt handed over a letter from Judah P. Benjamin "and there was also a letter, I think in cipher, from Mr. Davis." Jacob Thompson read the dispatches, then said to Conover: "This makes the thing all right."¹⁹

This was exactly the sort of story that a man of Baker's animal cunning would invent. What was needed was to link Jefferson Davis with the actual Lincoln murder and not merely with some vague plan to commit murder in the indefinite future. Baker knew that Surratt had gone to Richmond as a courier and had received dispatches and gold from Benjamin. He had stopped off in Washington for a few hours on April 3, then proceeded to Canada.

Conover's testimony provided the needed connecting links. One was to believe that Surratt had received authority from President Davis to murder Lincoln, that he had seen Booth on April 3 and told him to go ahead, that he had then taken the good news to Canada.

Conover's witnesses were all eager to tighten the noose around the necks of the Confederate leaders. A shady physician named Merritt testified to an incriminating conversation with Clement C. Clay in Canada in February, 1865. Unfortunately for the government, Clay had left by blockade runner for the South two months previously—a fact which another Northern secret agent truthfully supported. The War Department, however, worked on the theory that, once accused, a man must be proved guilty. Every effort was made to place Clay in Canada. Although three Canadian justices of the peace characterized Merritt as a quack and a liar, Judge Advocate General Holt continued to use him as a key witness.²⁰

Henry Finegas, a prize fighter and gambler from Boston, told of overhearing a conversation in February between Cleary and Sanders, two of the Confederate leaders in Canada. "Yes, if the boys only have luck," Sanders allegedly said, "Lincoln won't trouble them much longer . . . Booth is bossing the job."²¹ It seemed considerate of the Confederate leaders to have discussed such dangerous matters in a hotel corridor where strangers could eavesdrop.

The downfall of Sandford Conover was slow, but cumulative and remorseless. He had been operating in Canada under the name of James W. Wallace and posing there as a Confederate zealot. Believing that his testimony at the trial would be kept secret, Conover hustled back to Canada to get either newspaper material or more gallows information. When his testimony was unexpectedly pub-

lished, a group of irate young Confederates cornered him and threatened mutilation or death. Explaining that it was all a case of mistaken identity, the miserable Conover offered a five-hundred-dollar reward for the arrest of "the infamous and perjured scoundrel who recently personated me under the name of Sandford Conover, and deposed to a tissue of falsehoods before the military commander at Washington."²² This is probably the only occasion in history in which a man offered a reward for his own arrest!

The worst was yet to come. The Confederates in Canada proved that Conover was an *agent provocateur* who proposed such wild schemes as blowing up Croton Dam and smuggling smallpox-infected clothing into Northern cities. They produced a letter from the scoundrel to Jacob Thompson, dated March 20, 1865, which began with the phrase: "Although I have not had the pleasure of your acquaintance." The American consul general at Montreal examined this note and stated that he had "no hesitation" in identifying the handwriting as Conover's.

Since the star witness had not met Thompson a month prior to Lincoln's murder, all his testimony about what Thompson had told him was unadulterated perjury.

In July, 1866, more than a year after the trial, a brilliant and courageous Congressman exposed the whole Conover swindle. His name was A. J. Rogers and he was the one Democrat on the House committee to investigate the assassination of Lincoln. As such, he was treated like a leper. Until the last moment, Rogers was not even allowed to see the documents given the committee by the War Department. They were "put away from me, locked in boxes, hidden; and when I asked to see them, I was told day after day and week after week that I could not."²³

In the "interest of the government," the only committee member allowed to see the evidence was George S. Boutwell, a crony of Stanton and the author of the majority report of the committee. In his memoirs, Boutwell made the intriguing comment that he was the only living person who knew the contents of these papers and he believed "they should have been destroyed . . ."²⁴ In the Stantonian era, the theory of the dominant radical group was that only the elite should be trusted with the facts of government.

In his minority report, Congressman Rogers complained of the clandestine atmosphere which characterized the proceedings: "I seemed to be acting with a sort of secret council of inquisition itself directed by an absent vice-inquisitor and grand inquisitor too. How such an un-American mode of procedure for the discovery and prosecution of crimes cognizable by the civil tribunals of the country could ever exist in it, I find it impossible to fully understand or explain." ²⁵

He next spoke of the way the prisoners had been hooded and manacled and said: "The House will remember that, since the trial of Cranbourne in 1696, tried for conspiring against the life of the King of England, for raising a rebellion in aid of a foreign enemy, no prisoner has ever been tried in irons before a legitimate court anywhere that English is spoken. The chief justice of England said:

"'Look you, keeper, you should take off the prisoners' irons when they are at the bar, for they should stand at their ease when they are tried.'"

"But the parties alleged to have been incited by Mr. Davis did not so stand, but stood in constraint and in pain, with their heads buried in a sort of sack, devised to prevent their seeing! In this plight, from dark cells, they were brought to be charged with having been incited by Mr. Davis and to it they pleaded not guilty." ²⁶

Rogers next discussed the troupe of witnesses recruited by Conover. As to the slippery Dr. Merritt: "I cross-examined him under oath and in that cross-examination he contradicted all the foregoing and admitted that he had received in actual pay from the government of the United States through the War Department the sum of six thousand dollars in the aggregate." ²⁷

A man called Campbell also broke down under Rogers' interrogation: "I never saw Jefferson Davis," he admitted. "The evidence was prepared by Conover. I saw him prepare a portion of it. I never was in the confederate service. I never saw Benjamin. Conover said I should be well compensated for my evidence. My proper name is not Campbell, but Joseph Hoome. My evidence was taken in Judge Holt's office." ²⁸ The miserable Campbell had been paid one hundred dollars by Conover and five hundred dollars by Judge Advocate General Holt.

The next man to be brought before the committee was the witness Snelvel. He also broke down:

"Conover wrote out the evidence and I learned it by heart. I made it to make money. I received \$375 from Judge Holt." ²⁹

Snelvel rehearsed his evidence before Conover and Judge Holt: "When I got it wrong, Conover would nod his head."

Four of the students in the school for perjury testified under false names; one of them was Conover's wife and another his sister-in-law.

In the face of these appalling revelations, the committee majority decided to send Conover to New York to get more evidence! Conover took advantage of this opportunity to vanish, but was later arrested and sentenced to ten years' imprisonment for perjury.

The majority report of the committee handled the episode with considerably less than candor, claiming that the perjurers "failed, however, to state to the committee any inducement or consideration which seemed to the committee a reasonable explanation for the course they had pursued . . ." ³⁰

Congressman Rogers' conclusion is worth quoting:

"The discoveries of the doings of the Bureau of Military Justice render it a duty that whatever be done in this matter hereafter, be done in a less suspicious locality and freed from secrecy. Evil motives alone fear the light. The government of this country should have in this matter nothing to hide or fabricate in darkness." ³¹

The last great crisis between the radical Republicans and those who believed in American constitutional traditions was the impeachment proceedings against President Andrew Johnson. There was a "regular understanding" among the Republican members of the House committee that the President must be impeached, with manufactured evidence if necessary." ³²

This was a field in which the egregious La Fayette Baker shone. The general's first act was to place two of his spies inside the White House to find evidence against the Chief Executive! The officious detective discovered to his great delight that a Mrs. Lucy L. Cobb, by profession a prostitute, was a frequent caller at the Executive Mansion. She had become a pardon broker: in other words, she capitalized on her supposed influence over the President to get

Confederates amnestied, charging as much as three thousand dollars for the service.

Baker set the usual trap. One of his detectives, posing as an ex-Confederate, approached Mrs. Cobb for a pardon, paid her, and took a receipt. The prostitute went to the President on the matter and the pardon was issued. Snatching it from her hand, Baker said: "You have got no business here; you are not a proper character to be here."³³ The detective was now taking it upon himself to decide whom the President of the United States was to see.

Not content with this, he stationed one of his guards at the White House door to tell Mrs. Cobb that she was not to enter by order of General Baker.

However, Mrs. Cobb had professional experience in getting into houses at night undetected. She slipped around past the conservatory, entered the kitchen, and was soon in President Johnson's room.

In a fury, the President summoned Baker. What happened was reported by the *New York News* of February 1, 1866, as follows:

"The notorious Government detective, General L. C. Baker, ceases to be a brigadier-general with this day . . .

"The 'great detective' made an utter failure of his espionage upon the Executive mansion, for it was somehow discovered by Mr. Johnson . . . The latter most unceremoniously charged Baker with his villainous espionage, and informed him if he again heard of his presence in, or prowling about, the White House, or if he permitted any of his creatures to sneak around the premises, the 'great detective' should himself lodge in some one of the dingy cells in the Old Capitol, where so many had been incarcerated upon the simple order of Baker himself, without warrant or the semblance of law and justice . . ."

The President finished his lecture and said: "Go, sir." Baker went meekly to the door. Mr. Johnson added: "Hold one moment, sir. I desire that you now go to the Secretary of War, and tell him every word I have said to you and [shaking his finger at him] don't let me ever see you here again."³⁴

Strangely enough, Baker reproduced this newspaper account in full in his memoirs. The one correction he had to make was that the Old Capitol prison had been closed six months previously!

When the House of Representatives considered the impeachment of the President, Baker was one of the main witnesses. He told the Lucy Cobb story with great gusto, describing her as "a woman of the streets" and one of the females who "were going there at all times—day and night."³⁵ By implication, he made three charges against Johnson's moral character: that he was a drunkard, that he was personally involved in the pardon-broker racket, and that he was in the habit of entertaining whores in the White House at night.

All of these accusations were lies. Mrs. Cobb had frequented the Executive Mansion, but not for the reason that Baker implied. Johnson believed it was his duty as President to see anyone who came to him with a request. The White House was crowded with petitioners, many of them dishonest. Finally, the Chief Executive had shown Lucy Cobb no favoritism; he had merely referred her requests for pardons to the proper channels.

The impeachment case did not rest on moral turpitude; its main burden was the charge of treason. Here again Baker was the key witness. He claimed that, while war governor of Tennessee, Andrew Johnson had written to Jefferson Davis, offering to shift to the Confederacy and betray his allegiance. Johnson had stupidly left this incriminating letter on his desk; somebody had employed a Negro to steal it; it had fallen into the hands of a certain John W. Adamson; this Adamson had shown it to Baker and offered to sell it, but they had been unable to agree on a price.

Like so much of Baker's evidence, this letter, which was to uncrown Caesar, proved to be impalpable. After diligent inquiry, it was established that John W. Adamson of Nashville was a figment of the detective's imagination. The House report stated that Baker's incriminating documents "eternally eluded the grasp of their pursuers, and the chase ever resulted only in aiding the depletion of the public treasury."

The committee had this to say concerning Baker's character and integrity:

"It is doubtful whether he has in any one thing told the truth, even by accident. In every important statement he is contradicted by witnesses of unquestioned credibility. And there can be no doubt that to his many previous outrages, entitling him to an unenviable

immortality, he has added that of willful and deliberate perjury, and we are glad to know that no one member of the committee deems any one statement made by him as worthy of the slightest credit." ³⁶

This was the first chief of an American Secret Service. It appears shocking that a scoundrel of this stamp could have wielded, during three critical years of the nation's history, such vast and arbitrary powers. Baker was an excrescence of an era of postwar intolerance. He held power in his hands as long as the people were prepared to justify destruction of their liberties on grounds of expediency. When that attitude changed, he went down—as did his principal, Stanton—in disgrace and ignominy.

The United States thus passed through a crisis in which a sinister group of bureaucrats sought to destroy due process of law. The ultimate plans of Stanton cannot be fathomed, but the trend he represented was totalitarian. The compact, strongly disciplined, radical Republican caucus sought to reduce the Executive Branch to a shadow. Military rule was extended; constitutional rights were jettisoned; the secret police fattened on power.

Men such as Congressman Rogers stemmed this tide. There were many of them and, in a country where the exercise of arbitrary power has always been anathema, they were bound in the long run to prevail.

Chapter Seven

RISE OF THE SECRET SERVICE AND THE FBI

DURING THE FIFTY-YEAR INTERVAL of peace between Appomattox and Sarajevo, both the Secret Service and the Federal Bureau of Investigation were born. This was an era of quiet national expansion in which the United States was little concerned with European tumults. The age of the totalitarian wars had not yet arrived; there were no serious internal or external threats to national security; the nation attended to its domestic problems without worrying about world responsibilities.

Facing the crisis of World War I, the United States government scattered the task of protecting its internal security among some twenty federal law enforcement agencies. The result was chaos and incompetence. Volunteer sleuths went off on a three-year prowl for German spies and saboteurs. Vigilantes and patrioteers searched for sedition in every village. The end result was that German sabotage was not thwarted and American liberties were not protected.

The Secret Service and the Federal Bureau of Investigation were not created to suppress disloyalty. They came into being to cope with common crimes against the United States. The paramount sovereignty of the nation, as against that of the states, had been established through civil war. As the nation became more complex in its structure and organization, the problems of federal law enforcement proliferated.

The Secret Service of the Treasury was the first national detective agency in the peacetime history of the United States. By contrast,

the "secret service" that General La Fayette Curry Baker directed with such singular unscrupulousness was a branch of the War Department, combining military counterintelligence with provost marshal work.

William P. Wood was sworn in as the first chief of the Treasury's Secret Service on July 5, 1865, only a few months after Lee's surrender. By profession, Wood was a patternmaker. He was one of War Secretary Stanton's cronies and he owed his rapid rise in public life to the fact that he had perpetrated one of the most skillful frauds in American courtroom history.

The fraud occurred in 1854 in the Manny-McCormick case. Manny claimed that he was the original inventor of the curved blade which was the distinctive feature of the McCormick reaper. His two principal attorneys were Edwin M. Stanton and Abraham Lincoln. However, as soon as Stanton caught sight of his lanky colleague, he announced that he would have nothing to do with "such a damned, gawky, long-armed ape as that," froze him out of the case, and sent him off with two thousand dollars and bruised feelings.¹ To the amazement of McCormick's lawyers, Stanton produced an 1840 model of the reaper with a straight blade. Expert examination indicated that this machine was an original and that it had not been tampered with. The conclusion was irresistible that McCormick had originally produced machines with straight blades and then, on seeing the Manny improvement, had stolen it. McCormick lost his case and a fortune with it.

The truth came out almost half a century later. When he was eighty-two years old and almost blind, Wood made a voluntary statement that he had changed the blade on the 1840 McCormick reaper, using vinegar, rust, and dirt to hide the traces of his handiwork.² He added generously that Stanton had been kept in ignorance of the fraud, but it is difficult to credit this.

In any event, when Stanton became Lincoln's Secretary of War, he gave Wood the plump sinecure of warden of the Old Capitol Prison, in which Confederate spies and Copperheads were confined. Despite his rapsallion behavior in the Manny-McCormick case, Wood was a decent man with a conscience. He became the humane keeper of a filthy prison and did his utmost to save the life of Mrs.

Surratt, an innocent woman hanged for conspiracy to assassinate Lincoln.

As head of the Treasury Secret Service, Wood did an outstanding job in suppressing "hoodlers," as counterfeiters were then called.³ At a time when about a third of the money in circulation was spurious, this work was of major importance in curbing inflation and restoring confidence in the currency.

The Department of Justice, on the other hand, had no permanent detective force until Theodore Roosevelt's administration. In 1871 Congress appropriated fifty thousand dollars to investigate violations of federal law and, in that year, Attorney General Akerman applied to the Treasury Secret Service for "capable and trusty persons" to investigate violations of the Reconstruction laws in the South. Although four "special detectives" were put on the Justice Department payroll in 1875, the practice was to draw on outside groups. Attorney General Brewster declared in 1884: "I have always been averse to appointing and paying detectives." Yet he employed operatives from the Pinkerton Agency—a thoroughly undesirable practice which Congress finally prohibited⁴ in 1892.

During the Spanish-American War, the Justice Department borrowed Secret Service agents from the Treasury and sent them off to Canada to penetrate the enemy's intelligence apparatus. These operatives discovered the secret headquarters of the Spanish espionage ring and established that Lieutenant Ramon Carranza, the naval attaché of the Spanish legation, was the directing brain of the organization. Carranza was exposed and ousted as a result of American representations to the Dominion government.⁵

After the assassination of President McKinley in 1901, the task of protecting the President of the United States fell to the Secret Service as a permanent assignment. This became increasingly arduous after Theodore Roosevelt broke precedent by traveling to Panama. The Secret Service guarded Franklin D. Roosevelt in South America, Europe, Asia, and Africa and protected President Truman at Potsdam. In recent years, the agency's responsibilities have been extended to cover the President's family, the President-elect, the Cabinet, and visiting royalty.

After World War I, the Secret Service had no responsibilities for

the suppression of disloyalty. This extraordinarily compact and efficient organization today has two major duties: preventing attacks on the Chief Executive and suppressing counterfeiting. Both offenses have traditionally been high treason by English law, but not by American.

When Puerto Rican Nationalists attempted to murder President Truman in 1950, there was close cooperation between Secret Service Chief U. E. Baughman and FBI Director J. Edgar Hoover. The responsibility for preparing the evidence for murder indictments fell to the Secret Service, that of investigating the broader issue of conspiracy to overthrow the United States government devolved on the FBI.

The logical place for a central investigating bureau was in the Justice Department, which enforced federal law. The battle for a permanent intelligence force was waged by Attorney General Charles J. Bonaparte, a grandson of the brother of Napoleon I, a giant with a "vast, round, rugged head," and a wealthy lawyer whose passions were good government and civil service reform.⁶

In his annual report for 1907, Bonaparte stated: "A Department of Justice with no force of permanent police in any form under its control is assuredly not fully equipped for its work."⁷

This proposal was greeted with stormy opposition in Congress. Congressman Walter I. Smith of Iowa of the House Appropriations Committee declared: "Nothing is more opposed to our race than a belief that a general system of espionage is being conducted by the General Government." The press compared the proposed investigations bureau with the "hated black cabinet of St. Petersburg" and alluded obliquely to the saturnine Joseph Fouché who had conducted a general system of espionage and persecution under Attorney General Bonaparte's distinguished great-uncle.

What irked Congress was that Attorney General Bonaparte had borrowed thirty-two operatives from the Secret Service and assigned them as special agents. These men were singularly successful in uncovering vast frauds and thefts of public property in which Congressmen were involved either as tools or criminal accomplices.

Accordingly, instead of granting Bonaparte's request for a permanent detective force in the Justice Department, Congress de-

prived the Attorney General "of the use of *any* secret service operatives borrowed from the Treasury." ⁸ Henry L. Stimson, then United States attorney in New York, later to become Secretary of War under President Franklin D. Roosevelt, complained that the "fighting power" of his office had been shattered. *The New York Times* of May 6, 1908, commented:

"The Secret Service detectives have recently been employed by the Department of Justice and the Department of the Interior and their investigations have borne fruit in the conviction of the late Senator Mitchell, the indictment of two members of the House, and the restoration of more than a million acres of the public domain fraudulently obtained by a powerful 'ring' of land thieves."

The President smashed opposition with a stinging annual message to Congress. He stated that the emasculation of the Justice Department which Congress had just perpetrated "could be of benefit only to the criminal classes." Admitting that Secret Service agents had been partially responsible for the prosecution of Congressmen and the conviction of a Senator for land frauds in Oregon, Theodore Roosevelt added:

"I do not believe that it is in the public interest to protect criminals in any branch of the public service, and exactly as we have again and again during the past seven years prosecuted and convicted such criminals who were in the executive branch of the Government, so in my belief we should be given ample means to prosecute them if found in the legislative branch. But if this is not considered desirable a special exception could be made in the law prohibiting the use of the Secret Service force in investigating members of Congress." ⁹

The House resolved that this message was disrespectful, even though the President had explained that his allusion to the protectors of the criminal classes was not meant to cover Congress as a whole, but merely certain members of the House Appropriations Committee. The Senate investigated and soon discovered that sordid forces had been at work in the campaign to deprive the Justice Department of its investigative arm. A special fund was voted in 1909 for the probing of frauds on the United States and, on March 16 of that year, the Bureau of Investigation was established.

Attorney General Bonaparte had three reasons for fighting for the establishment of the Bureau of Investigation. He disapproved of using private detectives because many were "generally believed to be former law breakers" and were prone "to manufacture evidence." He thought that if the bureau paid high enough salaries, it could "render the service attractive to intelligent and courageous men of good character and adequate education and they should be subject to an extremely strict discipline." Finally, he considered that any federal detective force should be administratively under a Cabinet member so that, if ground for reasonable complaint existed, "he shall be the person justly to be called to account."¹⁰

The new bureau spread its small staff over the broad area of all federal law enforcement, including both criminal and civil statutes. It worked on violations of the national banking laws, on trust breaking, peonage cases, Chinese smuggling, crimes on Indian reservations, and dozens of other matters.

Public idolatry of the bureau directors soon began. Stanley W. Finch, the first head of the Bureau of Investigation, was hailed by the *Boston Post* as "a king detective"—a genius "direct as a stroke of lightning and as clear in his ideas as a mathematician while working out a problem."¹¹

When war broke out in Europe in the summer of 1914, the bureau had just finished a two-year campaign to suppress prostitution—then known under the dramatic title of the white slave traffic. The organization now turned toward the more serious work of probing Mexican border raids, investigating the activities of German agents in America, and preparing lists of dangerous enemy aliens for internment.

In 1914 the United States had neither an army nor a military counterintelligence system. The Department of Justice had always been responsible for enforcing American neutrality laws upon request of the State Department. In Jefferson's administration, the Attorney General had reluctantly intervened to halt the departure from Staten Island of a military expedition, under the Venezuelan patriot, Francisco de Miranda, to raise revolt in Spain's South American colonies. In 1857, William Walker, the filibuster who had conquered Nicaragua two years previously and established slavery

there, was branded by President Buchanan as guilty of "robbery and murder" and indicted for violation of American neutrality.

Checkmating filibusters was far simpler than dealing with an organized fifth column. In 1917, the Justice Department had only about three hundred investigators as compared with some five thousand FBI special agents in World War II. Moreover, the Treasury Secret Service had its own detective apparatus and there was incessant bureaucratic rivalry.

Instead of increasing the Bureau of Investigation staff, Attorney General Thomas W. Gregory sponsored the American Protective League, a superpatriotic organization of volunteer propagandists and vigilantes. There were a hundred thousand of these amateur spy-chasers by mid-1917 and about a quarter of a million of them the following year.

"Complaints of even the most informal or confidential nature are always welcome," Gregory told the American Protective League. Soon a thousand letters a day were reaching the Justice Department and "at least ninety-five per cent of them turned out to be of no importance."¹² This vast, bustling organization never succeeded in tracking down a single German spy or saboteur.

Secretary of the Treasury William G. McAdoo resented the fact that members of the American Protective League were entitled to wear a badge with the legend "Secret Service Division." This brought the Secret Service of the Treasury into public disrepute. On June 2, 1917, McAdoo wrote the Attorney General:

"For 75 cents or \$1.00, membership may be obtained in this volunteer organization and authority conferred, with the approval of the Department of Justice, to make investigations under the title of 'Secret Service' . . . You will recall that during the American Revolution a voluntary organization similar in character, I imagine, to the one in question was formed under the title of 'Sons of Liberty.' It committed grave abuses and injustices. This 'Secret Service' division of the American Protective League contains the same evil potentialities, especially since it is operating under the sanction of the Department of Justice. I am, of course, not advised as to whether or not there is authority of law for such sanction on your part."¹³

Thus, in a time of popular fear, when the thought that democracy could best be preserved by suppressing critics of the administration was becoming contagious, the Attorney General poured kerosene on the flames. A blackout of civil liberties occurred on a vast scale. Yet this was not justified by any substantive danger to the nation. German invasion of the United States was impossible. Once America entered the War, Allied victory was assured. There was no copper-head movement of any strength or political significance in the United States and "no anti-draft propaganda had the slightest chance of success."¹⁴

"No other one cause contributed so much to the oppression of innocent men," John Lord O'Brian, chief of the war-work unit of the Justice Department, wrote, "as the systematic and indiscriminate agitation against what was claimed to be an all-pervasive system of German espionage. One unpleasant fact continually impressed on my associates and myself was the insistent desire of a very large number of highly intelligent men and women to become arms of the Secret Service and devote their entire time to the patriotic purpose of pursuing spies."¹⁵

Munchausen fables swept the country. O'Brian commented ironically: "A phantom ship sailed into our harbors with gold from the Bolsheviki with which to corrupt the country; another phantom ship was found carrying ammunition from one of our harbors to Germany; submarine captains landed on our coasts, went to the theater and spread influenza germs; a new species of pigeon, thought to be German, was shot down in Michigan . . ." ¹⁶

There was Spoermann, the master spy, who landed by submarine and toured Army camps to persuade American troops to mutiny. Apprehended, he turned out to be a Baltimore plumber.

Throughout the country, mobs and nightriders did their bit to win the war. Out in Wisconsin, John Derul, a farmer, was mobbed at night and told to buy Liberty Bonds or else. Derul had already done so and, not liking intimidation, said: "I will not sign up at this time of night." A noose was slipped around his neck, but Derul remained stubborn. Fortunately for the farmer, a sober member of the mob said: "Boys, you are going too far."¹⁷

Fritz Kreisler was not allowed to play at a concert because he had once been a lieutenant in the Austrian Army. Nobody thought to ask how Kreisler could undermine the war effort with his violin.

By March, 1917, the Justice Department had screened 1,768 cases of supposedly dangerous enemy aliens. A decision was reached to imprison 98 of them immediately upon American entry into the conflict. During the entire course of the war, only 6,300 enemy aliens were arrested and of these 4,000 were released on bond. Since there were 480,000 German and 3,500,000 Austro-Hungarian nationals in the United States at the time, this was impressive evidence of the loyalty of the overwhelming majority.

The outbreak of war brought a host of new problems. On April 6, 1917, the President issued a proclamation prohibiting enemy aliens from carrying firearms or approaching forts and other military installations. This had to be enforced. Another problem was presented by the German merchant ships that had sought refuge in United States harbors. Would they make a dash for ocean waters rather than be seized and used as American troop transports? In the tense spring of 1917, Justice Department agents were on guard at the great ports, watching the crews of the enemy vessels. Actually, the German captains had had no intention of sailing into blue water where their vessels would have been sunk by the British fleet. The plan was different. In New York, the great North German Lloyd and Hamburg-American liners were ordered to move to the harbor mouth under their own steam as soon as Germany declared unrestricted submarine warfare. Unarmed, they were to run the gantlet of fire from American naval vessels and shore installations, then open their sea cocks and blast holes in the steel skin of the vessels. The scuttled ships were to form a solid metal wall, barring entrance into the port of New York and thus strangling the economic life of the city.

This scheme was thwarted, not by the Justice Department, but by rust and the humble barnacle. The great liners were no longer seaworthy. Refitting engines and hulls for the suicide dash would merely have tipped off American authorities to the plan.¹⁸

Now that the United States was at war, the department concentrated on suppressing disloyal and seditious opinions. In June, 1917,

an Espionage Act was passed which made it a crime, punishable by twenty years' imprisonment, to "willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military . . ." or to "willfully obstruct the recruiting or enlistment service of the United States." Conspiracy to do these things was to be similarly punished.

Juries would have to decide whether a man's opinions were true or false and what intentions were in his mind. These juries were composed of ordinary Americans who had been exposed for two years to highly intelligent and inflammatory propaganda, originated by the British government and disseminated chiefly by Anglophile Americans. At least as late as the fall of 1916, probably the majority of the country had wanted to stay out of the war. Six months later, the United States was in it. Suddenly the public had become extraordinarily intolerant of pro-German, pacifist, socialist—even anti-British—propaganda.

Woodrow Wilson approved the Espionage Act with the proviso that: "I shall not permit . . . any part of this law to apply to me . . . to be used as a shield against criticism."¹⁹ Although a Jeffersonian liberal, he was in the habit of referring to those who disagreed with him as "blind and little provincial people." While he said that he could not afford "to lose the benefit of patriotic and intelligent criticism," he, himself, would be the judge of patriotism and intelligence.²⁰ He considered that the Socialist Party was "almost treasonable" and urged Attorney General Gregory to prosecute the editors of an obscure sheet called *The People's Counsellor* as traitors, arguing that "one conviction would probably scotch a great many snakes."²¹ Gregory believed that any such action would be unconstitutional and flatly refused.

Others wished to go further. Assistant Attorney General Charles Warren prepared a bill subjecting subversive civilians to court martial trials. Gregory denounced this project as unconstitutional and "subversive of fundamental principles of justice" and managed to get it killed.

Nonetheless, Gregory supported the drastic Espionage Act of 1918, which punished "saying or doing anything with intent to obstruct the sale of United States bonds, except by way of bona fide

and not disloyal advice"; writing or saying anything "intended to cause contempt, scorn, contumely or disrepute" toward the government, the flag, or the uniform; and making statements "favoring the cause of any country at war with us . . ." ²² The maximum penalty for violating this law was twenty years' imprisonment.

Prosecution of Espionage Act cases was placed under the direction of two brilliant assistants to the Attorney General—John Lord O'Brian and Alfred Bettman. These men were thoroughly devoted to American traditions of liberalism and fair play and they had the rare quality of keeping their heads in time of crisis. As O'Brian saw it, the Espionage Act of 1918 "gave the dignity of treason to what were often neighborhood quarrels or barroom brawls." He added: "Protection of loyal persons from unjust suspicion and prosecution is quite as important as the suppression of actual disloyalty." ²³

Soon the torrent of denunciations for trivial reasons reached such proportions that the Justice Department was deeply concerned. In October, 1918, the Attorney General ordered that there be no further Espionage Act indictments without specific authorization from Washington. But by then most of the damage had been done.

Courts and juries were caught in the contagion of patriotic fervor. When the smoke cleared, some 1,532 persons had been arrested for disloyal utterances as against only 10 arrests for sabotage. "More than 99 per cent of the advertised and reported pro-German plots never existed," Judge G. W. Anderson believed. ²⁴

D. H. Wallace, an embittered veteran of the British Army, ran afoul of the Espionage Act. He said "that when a soldier went away he was a hero and that when he came back flirting with a hand organ he was a bum, and that the asylums will be filled with them." ²⁵ For this, he was sentenced to twenty years' imprisonment and died insane in jail.

The Espionage Act caught motion-picture producer Robert Goldstein in its mesh. Before America entered the war, Goldstein had produced a picture entitled *The Spirit of '76*—a biased film which showed Patrick Henry defying British power and Jefferson signing the Declaration of Independence. An attack on America's Allies, the trial judge thought, was first cousin to treason. Goldstein was sentenced to ten years' imprisonment. However, Zechariah Chafee

observes, "his punishment for depicting the origin of this nation was commuted to three years." ²⁶

Out in Windsor, Vermont, the Reverend Clarence H. Waldron decided to explain his attitude toward the war to his parishioners. He handed a piece of paper to five of them, which contained the sentence: "Surely if Christians were forbidden to preserve the Person of their Lord and Master, they may not fight to preserve themselves, or any city they should happen to dwell in." For these words the minister was sentenced to fifteen years in prison, along with the motley crew of Irish nationalists, IWW's, Socialists, Anglo-phobes, and imperfectly assimilated German-Americans who had been winged by the buckshot of the espionage laws.

Against radicals and revolutionaries the courts bore down with exuberant vigor, even though few of them were pro-German. The Socialist leader, Rose Pastor Stokes, was indicted under the Espionage Act for writing in a letter: "I am for the people and the government is for the profiteers." Judge Van Valkenburgh, making no distinction between misstatements of fact and half-baked opinions, assured the jury that these words were false. He also argued that speaking to women against the war was incitation to mutiny because these women would in turn influence men of military age.

Federal judges generally showed bias and intemperance in their charges. They differed from their predecessors who had convicted Jeffersonians under the Sedition Act principally in that they lacked their scholarship, brilliance, or command over the English language. Thus Judge Albert B. Anderson charged a jury as follows:

"I think that about the least commendable sort of folks I know are these Russians, who have fled to this country, and are not anything like satisfied with what they have here . . . The trouble with Mary Antin is that she wanted the Jews to have everything that we have got; and that is the way with this gentleman . . . I do not like the word 'Socialist' or these Socialists . . . If I had time, I would like to have somebody explain to me what it means except for the 'have-nots' to take it away from the 'haves.' That is all there is to it; so I have not much patience with that sort of thing or soap-box orators. Why don't they go hire a hall." ²⁷

The harshest blows rained on the radicals. On September 5, 1917,

the national headquarters of the Socialist Party was raided and a year later scarcely a single prominent leader was outside prison. At President Wilson's insistence, the chief leaders of the IWW were prosecuted and given stiff sentences. The fact was that the IWW had uncomfortably close connections with the German underground in America. To give one example: James Larkin—the Irish fire-brand and IWW leader, later to become a member of the executive committee of the Communist International—attended secret meetings of German saboteurs at which the decision to blow up Black Tom was taken.²⁸ Larkin, however, finally went to jail for revolutionary agitation, not as an accomplice in a murder conspiracy.

The goal of the Socialist Party was to stop the war by mass action and utilize the crisis to obtain power in the United States. The St. Louis platform of the party, enacted shortly after American entry into the war, said: "We demand that the capitalist class, which is responsible for the war, pay its cost. Let those who kindled the fire furnish the fuel." The party pledged itself to "continuous, active and public opposition to the war, through demonstrations, mass petitions *and all other means within our power.*"²⁹

The most celebrated trial under the Espionage Act was that of the Socialist leader, Eugene Victor Debs. If any of the government's efforts to suppress antiwar opinion were justified, then the conviction of Debs cannot be condemned. Debs declared truthfully: "I have never advocated violence in any form. I always believed in education, in intelligence, in enlightenment, and I have always made my appeal to the reason and the conscience of the people."³⁰ The party that Debs led, however, had a powerful insurrectionary wing. As the leader of the strongest antiwar movement in the United States, Debs may well have constituted a clear and present danger.

In June, 1918, Debs had gone to the Socialist Party state convention at Canton, Ohio, to get himself arrested. His comrades had been jailed and Debs' attitude was: "while there is a lower class, I am in it; while there is a criminal element, I am of it; while there is a soul in prison, I am not free."³¹

This rangy Alsatian railroad worker had been left at large because

his influence over American organized labor was enormous. Debs was utterly honest and he also had a sort of radiant love for humanity in the concrete, which was, however, sometimes tarnished by sentimentality. In many ways he was like John Brown. Both men had the same unflinching moral force, the same majestic natural eloquence, the same ability to rise without study or preparation to the great heights required of leadership in a crisis. While Brown had been imbued with the passionate Old Testament ferocity toward injustice, Debs lived the New Testament.

Like John Brown, Debs was not a subtle man. His mind was quite ordinary. It could grasp only simple ideas and its hold over these was weakened by romanticism. What Debs had was the power to make the masses follow him and believe in his integrity.

The speech for which Debs was indicted dealt with considerable wit and acerbity with the past of Theodore Roosevelt, who had been vociferously in favor of crushing the Hun since the beginning of the conflict. Among other things, Debs characterized the Rough Rider's African game-hunting exploits as making "war on some of his ancestors."

Unlike Communists of the present day, when he was indicted in the summer of 1918 for violation of the Espionage Act, Debs used the court as a forum for his ideas, conceding proudly that he was a Socialist, a revolutionary, and an admirer of Russian bolshevism.

"The revolutionary forefathers were opposed to the form of government of their day," Debs said. "They were opposed to the social system of their time. They were denounced, they were condemned. But they had the moral courage to stand erect and defy all the storms of detraction; and that is why they are in history, and that is why the great respectable majority of their day sleep in forgotten graves." ³²

Eugene Victor Debs was convicted of having violated the Espionage Act. At the age of sixty-two, he was sentenced to serve ten years' imprisonment at Atlanta. The Supreme Court affirmed the conviction on appeal, Mr. Justice Holmes writing the majority decision.

Debs' address at Canton, Ohio, had not been specifically directed

at soldiers, nor had he urged insubordination and mutiny. When he said that he opposed bringing about social change by violence, Debs was voicing a deeply felt conviction.

Woodrow Wilson's attitude toward Debs was implacable. "I will never consent to the pardon of this man," he told Tumulty. ". . . While the flower of American youth was pouring out its blood to vindicate civilization, this man, Debs, stood behind the lines, sniping, attacking and denouncing them . . . This man was a traitor to his country, and he will never be pardoned during my administration."³³ He obviously was not a traitor, as the Constitution understands the crime, but Wilson habitually used these and other epithets loosely against those who stood in his way.

The American political prisoners stayed in jail as long as Woodrow Wilson remained in the White House. After the personal and political tragedy of Wilson reached its climax, one of the most unworthy Presidents in American history pardoned them. Fortunately for Debs, Harding did not believe in anything strongly enough to hate those who opposed him.

Now that the war was over, thoughtful Americans looked back on this period as one of disgraceful and unwarranted suppression of minority opinion. They felt that the United States had turned its back on its most cherished traditions and succumbed to an epidemic of persecution.

This verdict can scarcely be challenged. Most judges in sedition cases showed an unseemly zeal to prove their patriotism by the rigor of their sentences. The bench indulged in the sort of partisan bombast that must sooner or later bring any judiciary into general discredit. The public showed itself credulous and the prey of infantile fears. Too many Americans believed they were winning the war by smashing Beethoven records and demanding the dismissal of German governesses. The Justice Department was partly culpable. It attempted to enforce patriotism through an unofficial mass organization which was little better than a league of vigilantes.

When all this is said, there is still the basic question of where to draw the line between liberty and security in time of war. The war powers granted the government under the Constitution are ill-defined but nonetheless vast. Suppression of American liberties may

be justified where the nation is threatened by an invading enemy or by a powerful, lurking organization of traitors.

The criticism of the Wilsonian solution is twofold. The nation's existence was not jeopardized; military victory was assured; the American Army was immune to seditious propaganda. By the standard of clear and present danger, the arrest of the leaders of the Socialist Party and of the IWW may possibly have been justified, but the persecution of pacifists and maverick agitators clearly was not.

The second point is that the line between sedition and legitimate criticism was badly drawn. The tendency of the Espionage Acts was to suppress all dissent and all strictures on the war effort as a whole, on the assumption that disagreement with officialdom was proof of both falsity and evil intent. This attitude involved the possible destruction of the Bill of Rights, not merely its temporary abridgment. By contrast, in the two great international crises of the present generation, the government and the courts have been careful to differentiate between radical propaganda, which is tolerated, and conspiracy to overthrow the republic by violence, which is not.

Chapter Eight

THE KAISER'S DESTROYING AGENTS

WITHIN A FEW MONTHS after the outbreak of World War I, German diplomats in the United States were hard at work improvising a broadly ramified sabotage net. The purpose of this secret organization of terrorists and conspirators was to break up American munitions production for the Allies and to cut the arteries of ocean traffic. Key plants and munitions dumps were blown up. Wholesale arson was organized from United States ports against ships carrying war matériel. German agents organized insurrectionary Hindu groups and sent arms to caches in the Indian Ocean. They engaged in short-sighted intrigues and conspiracies with Mexican *caudillos*. They mobilized a large and influential group of Irish-Americans, drawing them into the sabotage apparatus. In order to short-circuit the torrent of American munitions to the war fronts, they created sham labor organizations to strike the docks and the steel mills which constituted the vital organs of the American arsenal.

At first the small band of German saboteurs and plotters in the United States had one central objective. That was to stop the flow of munitions from the United States to the Allies until the German Army could deliver a fatal blow. It was inevitable that they should have failed in this venture, since the task of paralyzing the military-economic effort of the greatest industrial nation in the world was beyond the power of any handful of arsonists, dynamiters, and economic wreckers. The main practical importance of German sabotage lay in its massive repercussions on the American mind.

As new German plots were discovered, moods of fear and hatred swept over the American public. The wildest accusations of British atrocity propagandists seemed to be proved and made visible to all by the activities of German destroying agents in this country. This helped sweep the United States toward war. The saboteurs thus contributed to the one result they wished at all costs to avoid—the military defeat of their Fatherland and its downfall as a world power. At most, the German undercover agents may have blown up or burned \$200,000,000 of American property, a major achievement for a small band of intrepid men, but really an insignificant one when weighed against the consequences of American belligerency.

Prior to the outbreak of war, the German government employed one lone espionage agent in the United States on a part-time basis. He was Dr. Walter T. Scheele and he had been engaged for the preceding twenty years in supplying his government with able reports on developments of military significance in the American chemical industry. For this service he was paid fifteen hundred dollars. Dr. Scheele was an exceptionally intelligent, mercenary, and crooked individual, but he was alone.

The reason for this curious neglect of the United States by the German secret service—or rather Section IIIb of the German Great General Staff—was that the Schlieffen Plan called for knocking France out of the war in the first four months of hostilities. This was to be followed by peace with England and the gradual grinding down of the Russian armies. America would play no significant role in the war.

The problem of organizing a sabotage and intelligence net in the United States assumed urgent shape only after the stalemate on the Marne in September, 1914. Since an independent apparatus had not been created, the work of sabotage agents was directed by the German embassy in Washington and by the various German consulates. The Kaiser's ambassador, Count Johann von Bernstorff, an intellectual career diplomat of an aristocratic Saxon family, had had the foresight to return to Berlin immediately after the assassination of Archduke Ferdinand at Sarajevo. There he received instructions and \$150,000,000 in German treasury notes to be used

for "buying munitions for Germany, stopping munitions for the Allies . . . and other things."

The decision to use criminal methods against the United States was reached shortly after the standstill on the Marne. As early as November 18, 1914, German naval headquarters issued coded secret instructions "to all destroying agents in ports where vessels carrying war material are located in England, France, Canada, the United States and Russia." Operatives were "to organize explosions on ships sailing to enemy countries." This work was to be handled by personnel having "no relation with the official representatives of Germany." Four days later, naval headquarters instructed the sabotage net in the United States to recruit "destroying agents among the anarchist labor organizations."¹

Now Germany had two major policy objectives in the United States. The first was to prevent this country from entering the war as an outright and open belligerent. The second was to smash the flow of supplies from the American arsenal to the Allied fronts. These goals would not have been incompatible had Germany relied exclusively on such legal measures as corrupting American public opinion, building phony peace organizations, penetrating the trade unions of stevedores, seamen, and munitions workers, and engaging in preclusive purchasing operations.

All these steps were taken. Simultaneously, however, the Kaiser's agents engaged in a campaign of arson, destruction, and other illegal work which further speeded the United States into the war. Probably the main reason for this palpable blunder was the ascendancy of the Army and Navy over the German Foreign Office. The chief saboteurs in the United States, who arrived after the war had started, were German combat officers who had seen their men killed with American munitions and felt hard anger. They were directed by Colonel Walter Nicolai and Captain Rudolf Nadolny of Section IIIb—both military men impressed with tangible results, not psychological imponderables.

The first undercover problem the Justice Department faced was that of breaking up a German passport forging ring. The Imperial government had decided to return some eight hundred to a thousand reserve officers, resident in America, to the Fatherland. These

men could not travel on German, Austrian, Bulgarian, or Turkish passports because the ships on which they sailed were subject to inspection and search by the British fleet.

Offices were set up in New York, and American passports were purchased for ten dollars to twenty-five dollars each from bums and Bowery floaters. By substituting photographs of the German officers for the originals and tracing the Great Seal of the United States over them with a bone knitting needle, serviceable documents were produced. Toward the end of 1914, Bureau of Investigation men posing as derelicts managed to work their way into the ring. The Germans were arrested and the head of the organization sentenced to three years' imprisonment.

The Justice Department was merely scratching the surface of German undercover activities. American smuggling craft were being chartered with the proceeds of Ambassador von Bernstorff's secret fund and sent off to sea to meet German submarines and fuel them. Raids against Canada were being organized on American soil. Horst Van der Goltz, a German spy and soldier of fortune, came to the United States from Mexico and was detailed to blow up the Welland Canal between Lake Erie and Lake Ontario. He reconnoitered the area by plane, recruited two veterans of the Irish rebellion, and brought three hundred pounds of dynamite to the site. With the explosives cached and the stage set, the Welland saboteurs got cold feet and abandoned the project.

On orders from Germany, plans were laid to blow up tunnels on the Canadian Pacific line, and Hindu workers in Canada were organized for sabotage purposes.

The evil genius of German illegal work in the United States was the military attaché, Franz von Papen. Wealthy, arrogant, reckless, a man with little discretion but a flair for intrigue, von Papen had had special prewar training in dynamiting and guerrilla warfare in Mexico. His grasp of political realities was so poor that he concentrated his energies on an invasion of Canada to be spearheaded by picked Irish-American and German-American volunteers. What he lacked in tact and subtlety, he compensated for with overbearing ambition and force of character. Despite the egregious way in which he bungled his American assignment, von Papen was to rise to the

position of chancellor of the German Reich, become one of Hitler's chief subordinates, and be sentenced to imprisonment as an international war criminal by the Nuremberg Tribunal.

In April, 1915, a mysterious epidemic of fires at sea began. All the vessels involved had sailed from American east coast ports. Since New York was the center of German sabotage operations and since the Department of Justice was uncertain of its authority to proceed in the matter, the problem was assigned to Inspector Thomas J. Tunney, head of the Bomb Squad of the New York Police Department.

In May, undischarged bombs were found in a cargo of sugar unloaded from the S.S. *Kirk Oswald* at Marseilles. The French authorities sent them back to the United States for examination and soon Inspector Tunney had in his hands one of the "cigar bombs" which were to constitute the basic tool of German sabotage during the first years of the war.

The bomb casing was a lead tube about ten inches long, containing two compartments separated by discs of copper or aluminum. One compartment would be filled with sulphuric acid, which would eat through the metal discs. The other compartment would be packed with picric acid or potassium chlorate. When the acid had destroyed the discs, the two chemicals would come into contact and react. A white-hot flame would result. This flame would immediately melt the wax plugs at each tip of the cigar bomb and emerge as a jet, capable of igniting any inflammable material within range.

The fuse was the metal discs and the hour of detonation could be set by adjusting either their number or their thickness. In addition to simplicity of construction and reliability of the fuse element, the bomb had the further advantage that the lead would melt in the fire, destroying all evidence of arson. This device had grave disadvantages. The bomb was not sufficiently compact. It was not a natural object, such as a cigarette or an oil rag, which a workman could carry about with him without exciting suspicion. When unexploded bombs were found in cargo holds, they attracted attention.

The man behind the cigar bombs was an impressive figure. He arrived in the United States on April 3, 1915, and departed in early August. During these brief four months, naval Captain-Lieutenant

Franz von Rintelen created one of the most diversified and effective sabotage organizations in history.

Rintelen was superbly equipped for his work. He had lived in New York before the war, spoke English fluently, and was the only German not of royal blood admitted to membership in the New York Yacht Club. As an independent sabotage director operating under direct authority of the German War Minister, it was essential that he have detailed knowledge of industry and finance. Rintelen had been associated with a Wall Street investment house in prewar days and had been a director of the Deutscher Bank. He combined intellectual brilliance with superlative organizing ability, resourcefulness, and daring. Rintelen moved with the same unobtrusive sureness among diplomats, businessmen, radical stevedores, and dynamiters. In appearance more Italian than German, he later claimed to have successfully impersonated an English naval commander before Captain Guy Gaunt, chief of British naval intelligence in the United States.²

This outstanding technician of sabotage and conspiracy was sent to the United States with a fraudulent Swiss passport and a \$500,000 expense account. The reason for his mission was mounting German concern over the impact of American munitions. At a Berlin conference, Rintelen later recalled: "Men of action . . . could not help smiling when I concluded one speech with, 'I'll buy up what I can, and blow up what I can't.' One and all they resolutely agreed with me that sabotage was the only alternative."³

On arrival in America, Rintelen set up a sabotage organization on the New York water front and a subsidiary group in Baltimore. He immediately made contact with Dr. Scheele, the chemist and half-pay German spy, and requested him to design a simple, effective incendiary which could be dropped into munitions holds by longshoremen. After some pondering, Scheele evolved the cigar bomb.

The next problem Rintelen faced was to find a site for his bomb factory. He had set up the dummy firm, E. V. Gibbons, Inc., to disorganize Allied war purchases. This concern now served as the purchasing agent for the necessary lead, copper, aluminum, and metal-cutting machines. He established his factory on the interned German liner, *Friederich der Grosse*, which was lying idle in New York har-

bor. Here the German crew turned out fifty cigar bombs a day while Inspector Tunney's bomb squad chased will-o'-the-wisps. This was a minor stroke of genius. Since the interned ships were German soil, Rintelen could not be convicted of criminal charges incident to bomb manufacture.

Rintelen paid dock workers—most of them recruited through the German-American and Irish-American organizations—to drop the bombs in cargo holds while loading. About three-quarters of the incendiaries were thrown aboard by cowardly agents anxious to take German money but unwilling to run needless risks. Those bombs that were properly placed started fires on thirty-six ships and destroyed ten million dollars' worth of cargo.

Rintelen's strategy was to set the bombs for explosion when the vessels were about to reach Allied ports, thus ensuring that both the cargoes and the entire turnabout time would be lost.

No lives were sacrificed. At this stage in the game, the Germans were not prepared to stow incendiaries in holds containing high explosives. To have done so would have destroyed both ships and crews, added to steel shortages, and made seamen reluctant to sail the Atlantic run. But the effect on American public opinion would have been bad and Rintelen's organization would have faced murder charges.

The versatile Rintelen devoted his attention briefly to infecting cattle with germs. Captain Erich von Steinmetz of the German Navy appeared mysteriously in New York, having escaped through Russia and across the Pacific disguised as a woman. He brought with him glanders germs to be used in inoculating horses and mules destined for the Allies. Discouraged by his results, Steinmetz had the effrontery to send his germ cultures to the Rockefeller Institute for assay. On learning that they were dead, he turned to more prosaic activities.

This was not the end of the story. In 1915, Anton Dilger, a German-American, returned from the Fatherland with a new supply of anthrax and glanders germs and set up a laboratory in Chevy Chase, Maryland, within a few miles of the White House. His Negro assistant, J. Edward Felton, organized a band of about a dozen colored men who traveled to the yards where livestock were held

for shipment to the Allied war fronts. These men would walk along the fences and jab the cattle with glass ampules filled with germ cultures. Presumably this was effective since new supplies of bacteria were sent to the United States by courier in December, 1916. Meanwhile, German agent Arnold reported from Argentina wholesale inoculation of horses. On February 18, 1918, the German military attaché in Madrid advised Berlin that, owing to Arnold's work, the export of horses to France and Italy had ceased and that four ships had sailed recently for Mesopotamia with 5,400 mules—all of which had been "thoroughly treated." A final enigmatic item is that the account books of a German embassy official in the United States, Wolf von Igel, showed an expenditure of \$82,109.08 for a consignment of tetanus germs on November 30, 1915.⁴ The embassy's need for tetanus germs was never satisfactorily explained.

Meanwhile, Rintelen was engaged in intriguing with the ousted, dope-addict dictator of Mexico, General Victoriano Huerta, to create trouble for the United States south of the border. While these conversations were emphatically the concern of the United States, the record does not show that the Department of Justice was aware of them. Another organization was, however. This was the remarkable counterspy apparatus created by the man known as Victor.

Victor—or Emanuel Voska—had come to the United States fifteen years before with the Austro-Hungarian police hot on his heels because of his activities as a Czechoslovak nationalist. In America, Voska joined Daniel de Leon's ultraradical Socialist Labor Party, but later abandoned it. By the time war broke out, this immigrant stonecutter was a wealthy man, the owner of several marble quarries, and the president of the American Sokol, or Czechoslovak nationalist athletic association.

During the three years of American neutrality, Voska spent his entire fortune in frustrating German sabotage and conspiracy. When peace came, he was practically penniless. At any time, Voska could have had the financial support of British intelligence, but he believed that this would jeopardize the cause of Czechoslovak independence.

On a purely voluntary basis, Voska built up one of the most effective counterintelligence organizations in modern history. He had 84

full-time operatives who sacrificed their time and risked their lives without remuneration. The 84 drew on the 320,000 members of nationalist Czech and Slovak societies in the United States. Centuries of oppressive domination by Austria had taught these Slavs the habits of conspiracy and clandestine work; and, despite its unwieldy character, the Voska organization was never successfully penetrated by German intelligence.

Voska had two political aims. Proud of his American citizenship, he did outstanding work in protecting his adopted country against German intrigue and sabotage. He was also a devoted follower of Dr. Thomas G. Masaryk, who was to become the father of the democratic Czechoslovak state. Since a free Czechoslovakia presupposed the military defeat of Austria, Voska wanted to bring the United States into the war.

It is probably chiefly for this reason (and not, as he states in his memoirs, because of fear of pro-German influence in Washington) that Voska cooperated almost exclusively with British intelligence.⁵ In fact, his contacts with the Bureau of Investigation were so slight that Justice Department agents actually raided his organization in the belief that it was pro-German!

Voska supplied data to Captain Guy Gaunt of British naval intelligence and both worked closely with John R. Rathom, the Australian-born editor of the *Providence Journal*. Since the United States had no counterintelligence apparatus worthy of the name, it was forced to rely on good samaritans. The chief disadvantage of this was that both Voska and Gaunt placed a higher value on anti-German publicity as against American internal security than would have been expected from a government investigating agency.

The cold war on American soil was fought by two contestants, each of which had powerful secret allies. The Germans relied heavily on the Irish Nationalists for sabotage and strikes. They used Hindus to disrupt railroad tracks; they manipulated politically unsophisticated pacifists, and they had excellent organizational contacts within the IWW. At all times, they were able to utilize the corrupt and treasonable elements within the Imperial Russian government.

Correspondingly, the soft area of the Central Alliance in America was the Slavic minorities chained to the Dual Monarchy. Voska

found it absurdly easy to penetrate the diplomatic offices directing sabotage. "Zeno," his chief agent, was the office manager of the Austrian consulate in New York. Eventually, even the Austrian consul discovered something was amiss. One day, he called a staff meeting, put his revolver on the table and announced that there was an informer among them. This was an understatement—there were actually four informers. Through a brilliant ruse, Voska turned this minor crisis to his own advantage, putting the finger on a South Slav who happened to be loyal to Vienna.

The Voska organization placed Bohemian waiters in the cafés and hotels frequented by the Germans; it supplied volunteer guards for the wharves and great munitions dumps; it sent couriers from America into Austro-Hungarian territory.

Thus, when Victoriano Huerta came to New York for his conferences with Rintelen, every employee serving the floor that contained his suite was a member of the Voska apparatus. Agents occupied the adjoining room and a dictaphone was planted in Huerta's conference room. Since the negotiations broke down, the counter-espionage people preserved silence. From their standpoint, this was an extremely wise decision, for, two years later, the Germans picked up the threads of Mexican intrigue. The result was the Zimmermann note—one of the proximate causes of American entry into the war.

In 1915 Rintelen was smuggling oil into Germany and spoiling oil shipments to the Allies by impregnating them with methylene blue capsules. In his spare moments the German agent struck up a delightful friendship with one of the principal wheels in the Russian purchasing organization. He accepted a large order for horses, saddles, and leather goods for the Russian front. After causing the Russian military mission continuous heartaches by stalling on delivery, Rintelen finally produced the order and had it loaded on vessels marked for cargo destruction by his incendiary squads. The funds received from the Russians were then plowed back into German sabotage operations.

In the summer of 1915 Rintelen became a labor organizer—a most improbable role for a person of his aristocratic background and conservative views. His chief agent was David Lamar, the so-called

Wolf of Wall Street, a man who had been convicted of impersonation and swindling and was momentarily out on bail. The organization that he set up was filled out with a handful of isolationist Congressmen and lame-duck politicians, with the politically reliable German and Irish element in the labor movement, and with a group of shiftless, wildcat organizers who would work for any organization that paid them.

Labor's National Peace Council, as it was called, issued propaganda blasts against the war. It claimed to represent 4½ million farmers and a million workers—all of them peace loving. Ex-Secretary of State William Jennings Bryan addressed mass meetings of the council, and various other innocents were dragged in to give the proceedings a respectable appearance. Thus far, the pattern is familiar.

The serious business of the council was to tie up the port of New York for eight weeks. It was believed that this would be "long enough for the Germans to administer a knockout on the Western Front." ⁶ There were 23,000 stevedores in New York working for an average wage of about \$14 a week. These dockers could be expected to stay off the job as long as they were paid strike wages. The total outlay would run to approximately \$2,750,000, allowing for overhead.

Rintelen called the strike for midsummer of 1915. William P. Dempsey, secretary-treasurer of the powerful International Longshoremen's Association, smelled German money behind the Irish-American figureheads who were supposedly backing the strike. He took the matter up with English-born Samuel Gompers, president of the American Federation of Labor, and the two worked vigorously to checkmate the walkout. The strike fizzled after costing Rintelen several hundred thousand dollars.

Allied cargoes were still going up in flames in mid-Atlantic. Special guards at the wharfs searched the longshoremen for cigar bombs, causing anger and strike threats. The Germans now gave their stevedore agents lozenge bombs, which could be inserted behind their teeth. The American authorities believed that, if they started inspecting the mouths of the longshoremen, they would be faced with a port-wide protest strike. Voska again entered the picture and

placed special Czechoslovak guards on the docks. He later claimed that he discovered that an "eminent and respected" American citizen was deeply involved, that he threatened this individual with public exposure, and that shortly thereafter the bomb factory on the *Friederich der Grosse* ceased operations.⁷

Meanwhile, Rintelen was having his troubles with Dr. Scheele. This aged hellion had the effrontery to blackmail his superior. Rintelen paid up cheerfully, then had Scheele waylaid by his strong-arm squad, deprived of his wages of treachery, and scared half to death.

The chemist took a quiet revenge. When Rintelen gave him twenty thousand dollars to smuggle munitions into Germany, Scheele substituted a cheaper cargo and pocketed the difference. After Rintelen's sabotage and labor organizations had been broken up by arrests, Scheele stole eighteen hundred dollars from his government and fled to Havana. As he had a vast store of information concerning German formulas for poison gas, high explosives, and other matters, he was held as a prisoner on the estate of a Cuban smuggler who worked closely with German espionage. In March, 1918, the German spy ring in Cuba was broken up and Scheele was caught in the dragnet. He was extradited to the United States and convicted.⁸

The elusive Rintelen was also caught—but earlier. When secret orders recalled him to Germany, he took passage on a Dutch ship, using his Swiss passport. At the first British port, Rintelen was immediately identified and arrested. Shortly thereafter, he found himself in the presence of Admiral Sir Reginald Hall, chief of British naval intelligence, and, in the opinion of American Ambassador Walter Hines Page, "one genius that the war has developed." Hall told Rintelen that von Papen had "wired and wirelessly your name so often to Berlin in good, honest, straightforward German that he just placed you into our hands. It seemed almost deliberate . . ." ⁹

Rintelen believed that he had been betrayed by a bureaucratic rival. However, he would have been caught regardless of whether the German messages had been sent in cipher or in clear.

A few hours after war was declared in 1914, British trawlers put to sea toward the German naval base at Emden. The men on these vessels were scientists and cable technicians disguised as fishermen.

Under cover of darkness, they located the German deep-sea cables, hauled them up by winch, and slashed them. The Germans were never able to locate and repair the breaks and from then on relied on wireless and letter for their transatlantic communications. Admiral Hall's next problem was to break the enemy's diplomatic codes for radio interception purposes. These were book codes which could not be deciphered by the cryptographic methods then available, since the letter-frequency principle was not involved.

Hall's organization discovered that there were four code clerks in German counterintelligence headquarters at Brussels and that one of them had a sister in England. Armed with a letter from the sister, H-523, a British agent of great reliability and daring, obtained a copy of the code book and took it across the heavily guarded, high-tension electric fence into neutral Holland. The disloyal German code clerk, who accompanied H-523, died under mysterious circumstances.

The Germans stupidly continued to use the broken code and thus, from the spring of 1915 to the Armistice, Sir Reginald Hall's black-chamber group was able to pick up and decipher all wireless messages between the Kaiser's government and its agents in neutral countries. The British had advance information on the movement of enemy warships, the timing of Zeppelin raids, and the position of U-boats at sea. Through falsified orders prepared by Hall, Admiral von Spee's squadron was lured to its destruction off the Falkland Islands. The incredibly garrulous enemy transmitted about two thousand coded messages daily in 1916, all of which were intercepted and decoded.

The broken German code, the Czech agents in German and Austrian diplomatic missions, and the Voska army of spies provided three sources of information concerning German intrigues in America. One lurid scandal after another erupted in the United States press. It is safe to assume that the British were more interested in publicizing proof of German violations of American neutrality than in preventing ship bombings and sabotage. They were playing for far larger stakes than Rintelen and took a longer-range view: United States entry into the war would be decisive; the loss of a few dozen cargoes would not be.

One of the great exploits of the propaganda war was the capture of Captain Archibald. The hero of the affair was Voska.

James J. Archibald, a romantic foreign correspondent who posed as a man of mystery and had picked up his military title somewhere in Latin America, gave a lecture in the Middle West early in 1915. Voska's agents soon reported he was pro-German. Next Voska discovered that Archibald was planning to sail for Europe on August 21 and that key German organizers of sabotage, including von Papen, had begun to clear their most secret papers from office safes. Voska inferred that the American foreign correspondent had agreed to act as courier. One curious bit of information was that Archibald was to take a sword cane, an odd and obsolete weapon, with him to Europe.

Franz von Papen gave a farewell dinner for Archibald the night before the latter sailed. Voska's waiters heard bantering remarks about the cane and Voska surmised that its hollow portion would be lined with highly secret dispatches.

Early next morning, important documents were packed at the Austrian consulate and delivered by one of Voska's agents in that organization to Archibald in his cabin. The Czechoslovak counter-espionage director immediately gave Captain Gaunt the dimensions of the package and a list of its contents. A coded message was sent to Admiral Hall. For two days, the S.S. *Rotterdam* was held in British waters while a vain search went on. Finally, British intelligence men broke into the ship captain's safe and found the parcel. The sword cane was never discovered.

The documents were exceptionally rewarding. A lengthy report of operations by Austro-Hungarian Ambassador Dumba detailed plans for bribing American labor leaders, paralyzing production of munitions by strikes and wholesale sabotage. The jewel, however, was a letter from von Papen to his wife stating: "I always say to these idiotic Yankees that they should shut their mouths . . ." The private opinion of a Junker boor was regarded, not as an indicator of von Papen's own limitations, but as a national insult. The words "idiotic Yankees" were more telling Allied propaganda than volumes of detailed plans for sabotage and arson.

An even more spectacular coup was carried out by the Secret Service of the Treasury. Privy Councilor Dr. Heinrich Albert was

a mild, quiet, polite economist, who had a vast knowledge of American industry, an orderly and brilliant mind and, what was rarest among the German agents, the capacity to keep still. In addition to handling all German economic warfare in the United States, Albert had paid out at least \$30,000,000 for sabotage, propaganda, and secret service work. A discreet, calculating individual, adept at covering his tracks, Dr. Albert was an ideal organizer and paymaster. He was described by Senator Nelson as "the mildest mannered man that ever scuttled ship or cut a throat." ¹⁰

With the limited funds at his disposal, he concentrated on buying key links in the armaments industry, cornering strategic materials, and creating bottlenecks. At one time, he monopolized the acid-proof container market and, on another occasion, tried to tie up American benzol supplies—an essential ingredient in picric acid production.

In the spring of 1915, Albert created the Bridgeport Projectile Company, working so skillfully that the trade believed that British capital was behind the firm. The new concern started a frantic construction program, ostensibly to meet Allied demand for shells, actually to tie up lathes, milling machines, and other scarce machine tools, thus clogging the order books of bona fide producers and slowing down plant expansion elsewhere.

Albert lured skilled labor away from rival arms plants. The cream of the joke was that Bridgeport went into the market for Allied orders on a huge scale. The contracts were drawn up with elegant escape clauses which would protect Bridgeport against the financial penalties for deferred delivery. The plan, thus, was to disorganize the supply of machine tools, steel, and labor; to tie up Allied orders and fail to fill them; and to accomplish all this at the expense of the other side.

Albert's records of the Bridgeport deal were finally purloined by an operative and published in the press. For many years there has been current a highly romanticized version of this exploit, attributing it to two volunteer counterespionage organizations—the Voska apparatus and the largely fictitious network of John R. Rathom, the editor of the *Providence Journal*.

The Rathom-Voska story of what happened is in the best tradi-

tions of espionage romance. Voska's statements of what he saw and did must be accepted as fact; his integrity is not subject to question. The same cannot be said concerning Rathom.

Voska's daughter, Villa, who was employed as a stenographer in one of the cover organizations of the German cloak-and-dagger apparatus, discovered that the taciturn, extraordinarily cautious Dr. Albert kept all the incriminating records of his expenditures of a secret \$50,000,000 German economic warfare fund in his briefcase. Albert trusted nobody and never let the briefcase out of his sight. It was obviously a Pandora's box of conspiracy.

When Villa lost her job in May, 1915, the Voska organization dropped out of the case and turned over its information to Rathom. The latter claimed that his agents trailed Dr. Albert into a luggage shop and stood next to him while he ordered a brand-new, monogrammed briefcase. One of the operatives had a replica made and stuffed it with old newspapers. The next step was for the Rathom agents to follow Albert into a Sixth Avenue elevated train. One of them distracted the privy councilor's attention by brawling with a guard while the other quietly switched briefcases. Dr. Albert remained totally ignorant of what had happened until two days later.

The Saturday Evening Post published this story as part of Voska's memoirs. The Secret Service considered writing the editor and requesting a retraction but decided against it. The *Post* evidently made an independent check and announced that the Voska account was in error. In his book, *Spy and Counterspy*, published in 1940, Voska admits bewilderment.

The truth of the matter is that the theft of the Albert briefcase was not planned. It was the result of a split-second decision by Secret Service operative Frank Burke. At the time, the United States was neutral and Dr. Albert enjoyed diplomatic status. In stealing the briefcase, Burke risked disgrace, dismissal, and conceivably prosecution.

On July 24, 1915, two Secret Service men followed Dr. Albert and George Sylvester Viereck, a German agent in both world wars who has graced an American penitentiary with his presence. The two conspirators separated and Burke followed Albert into an elevated train. Due to heat or weariness, Albert dozed off with his briefcase

on the seat beside him. Agent Burke snatched it and, as the train came to a noisy stop at the Fiftieth Street station, made for the car door. The slumbering Albert awakened, saw that the precious briefcase was gone, searched frantically for it and ordered the guard to hold the door open for him. Catching a glimpse of Burke disappearing through the back door, he rushed after him onto the platform and down the stairs into the street.

With Dr. Albert close on his heels, Agent Burke boarded a street-car. The German was running toward him, gesticulating and shouting wildly. Burke told the conductor that Albert was dangerously insane and that he would not be responsible for the consequences if he was allowed in the car. The conductor closed the door in Albert's face and proceeded. When he was sure that the privy councilor had been hopelessly outdistanced, Burke got out, found a drugstore, and phoned William J. Flynn, chief of the Secret Service, who was then in New York.

Examination of the contents of the briefcase revealed a whole nest of plots, ranging from purchasing American newspapers and cornering liquid chlorine supplies to fomenting munitions plant tie-ups and acquiring the Wright Aeroplane Company patents.

Secretary of the Treasury William Gibbs McAdoo cut short his vacation in order to examine this treasure. The Secretary gave the documents to the *New York World* for publication on the strict understanding that the paper would never reveal how they had been obtained.

Publication of the Albert documents created a shock reaction throughout America and brought public opinion far closer to a pro-war attitude. Propagandist Viereck thought the morale defeat as bad as a second Marne and the unhappy privy councilor was soon dubbed the German Minister without Portfolio.

In an entirely separate cloak-and-dagger operation, American intelligence agents sawed through a closet in a neutral consular office and extracted incriminating documents on Central Powers operations in America, which had been left there for safekeeping. Since this coup was strictly illegal, it was alleged that the papers had been found in Dr. Albert's briefcase. If Dr. Albert had actually carried about with him all the papers allegedly extracted from his

portfolio, he would have been not only a somewhat sleepy genius of economic warfare, but a Hercules as well.

Except for Rintelen's ship bombs, the first stage of German secret operations in the United States ended in failure. By early 1916, the Kaiser's central organization had been thoroughly broken up by exposures and arrests. A few insignificant men had escaped the dragnet. These unobtrusive people of comparatively little education or eminence had survived the weeding-out process and proved their competence. In addition, a small group of individuals had been personally recruited into sabotage by Colonel Walter Nikolai and Captain Rudolf Nadolny in Berlin.

These elements worked in small groups, contacted a minimum number of channels, and relied on courier work rather than radio. The breaking up of the unwieldy German sabotage nets into independent units was thus of great advantage to Berlin. The small groups were harder to trace and arrests at best exposed only a handful of operatives.

The struggle of American counterintelligence against these saboteurs required two decades of investigation. While the men who blew up Black Tom and Kingsland were in every respect the intellectual inferiors of Rintelen, they covered their tracks magnificently.

The first great coup of German sabotage after Rintelen's arrest was the explosion of two million pounds of munitions, stored on Black Tom Island in New York harbor. The main blast occurred at 2:08 on the morning of July 31, 1916, and was heard as far away as Philadelphia. Stunned New Yorkers awoke, believing themselves to be in the grip of an earthquake. Milling into the streets, they were exposed to a rain of glass shards from the shattered windows. For three hours the sky in the New York area was red with fire and bursting shells.

Black Tom is a mile-long island which had been connected with the New Jersey shore by 150 feet of fill. It was a vast munitions dump and rail yard on which cars were left standing and barges tied up preparatory to the arrival of ocean-going vessels. There was no gate or fence blocking the causeway and the open munitions dump was easily accessible by rowboat or launch from either Jersey City or New York. This highly inflammable terminal was guarded by six

watchmen from the Lehigh Valley Railroad Company and four private detectives from the Dougherty Detective Agency. The Black Tom depot was not covered by floodlights. In short, the security precautions were ridiculously inadequate.

When the smoke cleared on the Monday morning after the catastrophe, there was overwhelming evidence that this was sabotage, not accident. Two separate fires had been observed by the guards—one inside a munitions boxcar, the other on a barge 325 feet from the pier. These fires had burned for about 20 minutes before the high explosives went off. The delay factor ruled out spontaneous combustion of the smokeless powder, and the two separate fires pointed to a deliberate act of destruction. The blasts destroyed fourteen million dollars' worth of munitions, comprising thirty-four carloads of high explosives, shells, and fuses. Four people—one of them a child—perished.

There was a sensational development almost immediately. A Mrs. Chapman of Bayonne, New Jersey, reported that her cousin, Michael Kristoff, had returned to his lodgings at four o'clock on the morning of the explosion and had paced the floor of his room, repeating the words: "What I do! What I do!" She told the Bayonne police that Kristoff took mysterious trips to other cities and wherever he went something blew up. Although he was a laborer in an oil refinery, he always had plenty of money. Moreover, she had seen charts and maps in his room.

The local police picked up Kristoff. He was twenty-three years old, of Hungarian birth, gangly, physically underdeveloped, with pale, watery eyes and a weak chin. He was not only uneducated, but abysmally stupid. Under interrogation, he told a wild and fishy tale. One day, Kristoff had been sitting in the Pennsylvania terminal when a stranger accosted him and offered him a job at twenty dollars a week. The stranger's name was Graentnor and the duties he assigned his new aide were to carry two suitcases, containing money, books, and blueprints of factories and bridges, on a tour of the United States. Kristoff said he had supposed Graentnor was some sort of engineer and that, after their junket, he had never set eyes on him again. He gave several alibis for the night of the Black Tom explosion—all of which proved to be lies. The police called in an

alienist who decided that Kristoff was on the borderline of insanity. After this, they made the strange decision to release him.

The Lehigh Railroad was not so easily satisfied. It was being sued for negligence by the Imperial Russian government, which had owned most of the munitions and had millions of dollars at stake.

Private detectives, in the employ of Lehigh, soon discovered from the loquacious Mrs. Chapman that she had read an unmailed letter from Kristoff in which he demanded money from Graentnor. The inquisitive Mrs. Chapman was typical of many of the volunteer FBI informants of a later generation. Had the police taken her information more seriously, they might have solved the Black Tom crime.

A Burns private detective got a job at the place where Kristoff worked, took him to anarchist meetings, and became his bosom drinking companion. Kristoff boasted to the sleuth that he had blown up Black Tom.

The rest of the Kristoff story is a comedy of police incompetence. The young Hungarian vanished by the simple expedient of enlisting in the United States Army, was demobilized, imprisoned in 1921 for larceny under a false name, served his sentence, and again disappeared.

By this time, the government knew that Kristoff had been employed by a German sabotage agent, that he had privately confessed to blowing up Black Tom, and that the arrested German espionage agent, Madame de Victorica, had attributed the outrage to an Austrian. In 1922, the international Mixed Claims Commission began a nationwide search for Kristoff in connection with its investigation into German responsibility for the Black Tom and Kingsland disasters. Six years later, the German representatives helpfully furnished the whereabouts of the delinquent Hungarian. The reason for their cooperation was that Kristoff had just died.

It was self-evident that Michael Kristoff had been a tool and not a principal behind the greatest explosion in the history of New York. The really dangerous, directing brains of German sabotage had migrated to Mexico—a turbulent, chaotic country whose leading politicians were pro-German—the minute America entered the war.

By now American military intelligence was rapidly emerging from

its cocoon. Directed by the exceptionally able Colonel Ralph H. Van Deman, the organization had contained exactly one major and one clerk in 1916 and had operated on an \$11,000-a-year budget. When the United States went to war, the British sent over experienced officers to help reorganize the service and it expanded rapidly. Mexico became one of its fields of special interest.

Among the German agents in Mexico were Kurt Jahnke and Lothar Witzke, "one of the most deadly teams of saboteurs in history."¹¹ In January, 1918, Witzke—a 23-year-old German naval cadet, handsome, athletic, a heavy drinker, and a frequenter of brothels—left for the United States on a special mission. His two associates were the Austrian Pole, Paul Bernardo Altendorf, and the Negro, William Gleaves. Altendorf was a secret agent of American military intelligence, while Gleaves was a British naval intelligence service operative.

Over a bottle of wine, Witzke told Altendorf that he was the man who had blown up a quarter of a million pounds of ammunition at Mare Island, killing ten adults and six children. He added, according to Altendorf's report:

"I also did the work in New Jersey with Yenky (Jahnke), when the munition barges were blown up and piers wrecked. We were out in a small boat and the waves nearly swamped us and we came near drowning. The hardships on this piece of work were many, but it was all for 'The Fatherland.'

"I have many lives on my conscience and I have killed many people and will now kill more."¹²

Witzke was proceeding north to meet delegates of the IWW and work out plans "for an uprising of the Negroes, strikes, the blowing up of mines, industrial plants, railroads, bridges, and telegraph and telephone systems."¹³ Whatever the details of this grandiloquent program were, the young German agent believed: "If I get the job done well, I will have saved Germany."

Witzke was arrested on United States soil and held in a military prison on a charge of espionage. The evidence that Witzke was a spy was overwhelming and he was convicted and sentenced to hang. President Wilson commuted this to life imprisonment at hard labor and in 1923 Lothar Witzke was pardoned.

Witzke's story helped clear up one of the two incendiary acts at Black Tom. He and Jahnke had rowed out, started a fire on a munitions barge, and then headed for shore. Witzke's confession, however, remained buried in his court martial record until it was disinterred years later by Amos J. Peaslee, the lawyer who headed the American fight before the Mixed Claims Commission.

By 1930, the Black Tom story could be reconstructed. A former German agent mentioned that Captain Friederich Hinsch had once used the alias of Graentnor. Hinsch, a burly, florid man with hard eyes and a fanatical face, had been captain of the German liner *Neckar* until forced to intern his vessel in Baltimore. He then became the local leader of Rintelen's bomb squad and also worked in the Chevy Chase germ-warfare organization. Afterward Hinsch met Karl Hermann, a young spy just returned from Berlin with a new and vastly superior type of bomb—the incendiary pencil. Enthusiastically the two agents agreed that the destruction of the Kingsland plant in New Jersey would be handled by Hermann and that of Black Tom by Hinsch. Hinsch hired the miserable Kristoff and presumably bribed two guards so Kristoff could get through the cordon and place an incendiary in a boxcar. Meanwhile Jahnke and Witzke reached the island by rowboat and threw a pencil bomb into a barge loaded with high explosives. The payoff for this operation of murder and destruction was two thousand dollars.

On January 11, 1917, an explosion, engineered by Hermann, totally destroyed the Canadian Car and Foundry shell-assembly plant at Kingsland, New Jersey. The fourteen hundred workers succeeded in stampeding to safety before the plant went up in flames. No lives were lost, but seventeen million dollars' worth of property was destroyed.

The fire had started in Building No. 30 where crews of workmen cleaned the insides of shells, first with a brush, then with a gasoline rag, and finally with a dry cloth. There was a pail of gasoline by each man. The workers of Building No. 30 remembered that Fiodore Wozniak, a shell cleaner, had had a large pile of rags on his bench and that the fire had started there.

Wozniak had been a wood cutter in Austrian Galicia. He was a firebug and slightly mad. At first his guilt seemed self-evident, par-

ticularly since he had been sponsored by one of the many German agents who infested the diplomatic service of the Imperial Russian government in the United States. Then it was discovered that the bench adjoining Wozniak's had been normally occupied by a Puerto Rican and that the latter's place had been taken by an unidentified man on the day of the explosion.

By 1933 Hermann and Wozniak had made more or less candid confessions. A certain Karl Thummel, alias Charles E. Thorne, had imported the incendiary pencils while serving as a ship's steward on a transatlantic liner. He had then gotten a job in the hiring department of the Kingsland plant and had given jobs to two German saboteurs—Wozniak and the Puerto Rican. With Herrmann himself taking the place of the absent Puerto Rican, Wozniak had been able to start a fire in broad daylight before witnesses, using rags impregnated with carbon disulphide.

None of these miscreants was ever indicted. After the Kingsland blast, Thorne set up an employment bureau and found jobs in other war plants for the Kaiser's agents. Wozniak continued to enjoy the hospitality of the United States until World War II, when he was arrested and interned for trying to blow up more American factories.

Our detailed knowledge of the Black Tom and Kingsland plots is due, not to the perspicacity of federal counterintelligence agencies, but to the untiring postwar research of a brilliant group of corporation lawyers who protected American interests before the Mixed Claims Commission. The incredibly ramified stories of Black Tom and Kingsland are given in Captain Henry Landau's *The Enemy Within*, the classic account of the German secret war against America in 1914-1917.

From an internal-security standpoint, the United States was virtually helpless in World War I. The Bureau of Investigation was puny and inexperienced. Jurisdiction was scattered among more than a dozen federal agencies. Such brilliant volunteer groups as Voska's, British intelligence, and local police authorities with limited jurisdiction—these in aggregate prevented a holocaust. Murder, arson, and wholesale destruction of war facilities occurred because the United States was not equipped to defend itself against its internal enemies.

Chapter Nine

THE FIRST BOUT AGAINST COMMUNISM

IN 1919 two Communist parties were organized in the United States. After four years of war and atrocity propaganda, the national mood was fraught with fear. The dangers from this puny movement, largely immigrant in composition, were consequently exaggerated. The Department of Justice resorted to lawless measures of repression; thousands of bewildered immigrants were caught in police dragnets; a deportations delirium, reminiscent of the dancing manias of the Middle Ages, swept the country.

The arbitrary actions of this era were a travesty on American traditions and they left a bad stench. The practical effect of the great Red raids was to drive the Communist movement underground, sever its connecting links with the trade unions, and prevent it from developing into a significant political force. American Communism emerged from its ordeal the warped and exhausted minority wing of a small radical movement. It took more than a decade for it to recover from its psychic wounds and become an effective force for evil.

The United States declared war on Germany in April, 1917, and seven months later Lenin seized power in Russia.

At first, American propaganda and intelligence agencies entirely misgauged this turning point in world history. Every effort was made to thrust the new phenomenon into old procrustean beds, thus dispensing with the necessity for analysis. In October, 1918, George Creel, Director of President Wilson's Committee on Public Informa-

tion, released a pamphlet entitled *The German-Bolshevik Conspiracy*, which stated that “. . . the present Bolshevik Government is not a Russian government at all, but a German government acting solely in the interests of Germany and betraying the Russian people.”¹

The facts which the Creel Committee presented were largely right, but the appraisal was wholly wrong. The German Great General Staff had sent Lenin to Russia in a sealed train for the same reason that it dabbled in germ warfare—because, as Ludendorff put it, “it was imperative that Russia should fall.”² Although the Bolsheviks were financed by the German government both before and after the October Revolution, this did not make them German agents.³ Lenin was “supporting” Ludendorff in the way a rope supports a man on the gallows.

After Germany's defeat, it became clear that the Bolsheviks were an independent force—the carriers of a new messianic faith. During the raging fever of the deportations delirium of 1919-1920, it was this faith, rather than the puny power of Lenin's state, that was feared in America. Ravaged by civil war, Russia seemed, economically speaking, at her last gasp. The boundaries of the Soviet republic at one time shrank to those of the ancient Duchy of Moscow. When the civil wars finally subsided, there came an aftermath of famine in which twenty million Russians faced death.

While this exhausted nation—held together by an iron band of armed prophets—had ceased to be a world power, the religion of communism, which radiated from it, seemed to threaten the stability of all nations. This religion burst upon a world spent by war and eagerly searching for some new and better way of organizing social life. No man could gauge the power of the new creed, the velocity with which it would spread or the geographical barriers it might surmount. Being a faith, it was intangible and not subject to measurement. Being novel, it was first despised and caricatured, then magnified by fear.

Bolshevik uprisings in Germany, Austria, Hungary, and Italy failed or were put down. At one time, the Polish Army seemed on the verge of strangling the Soviet Republic in its cradle, but British

longshoremen, under the leadership of Ernest Bevin, refused to load munitions consigned to Warsaw. The fabric of European civilization was held together by accidents and expedients.

Whatever the danger to Western Europe, it seemed scarcely credible that responsible Americans could fear revolution conducted by the small, largely immigrant radical organizations. Yet many did. They accepted Communist self-delusions of imminent world revolution as sober prophecy. They acted as if the United States were on the verge of collapse.

The suppression of Communists in 1919-1920 was far more ruthless than that of pro-Germans in 1917-1918. This was not the result of "capitalist conspiracy," but rather of popular recognition of the Bolshevik challenge as entirely unprecedented. After all, the Kaiser's allies in America had accepted the rules of the game. They believed in private property, in nationalism, to a certain extent in freedom of speech and due process of law. By contrast, the Marxists proposed a "transvaluation of all values": the establishment of a world class dictatorship and a revolutionizing of all phases of social life in which the liberal democratic system would be extinguished.

The Bolshevik Revolution in Russia had an immediate impact on the American Socialist Party—a powerful minority organization with over 100,000 members. By 1918 its antiwar leaders were jailed; its elected Congressmen ousted from office; its newspapers denied mailing privileges. The logic of suppression drove it toward increasingly revolutionary attitudes and its most popular organ, *The Appeal to Reason*, was soon dubbed "The Squeal of Treason."

Before their return to Russia in the summer of 1917, Leon Trotsky and Nikolai Bukharin edited an emigré newspaper in New York and planted the seeds of American Communism. With a historic myopia that was general at the time, the Socialist leader, Louis Waldman, characterized Trotsky as "just another café seer and pundit."⁴

Once Lenin and Trotsky seized power in Russia, all perspective changed. Even the mild Debs proclaimed: "I am a Bolshevik from the crown of my head to the tips of my toes."⁵ By 1920 Debs was to realize his error and "protest with all civilized people in the name of our common humanity" against Lenin's executions of his former revolutionary colleagues.

Despite Debs's heroic efforts to build an indigenous American Socialist organization, perhaps seventy thousand out of a hundred thousand members of the party were in foreign-language federations, of which the Russian was the most important. These foreign-language federations dominated the Socialist organization because their mutual insurance programs gave them large financial resources.⁶

Coming from the one country where the Socialist revolution had triumphed, the leaders of the Russian federation now considered themselves the elite and predestined to leadership. They told immigrant workers that a membership card in the Russian federation was "the only passport Bolshevik Russia would honor."⁷ A left wing of the American Socialist Party emerged and called for the immediate "organization of Workmen's Councils as the instruments for the seizure of power and the basis for the proletarian dictatorship."⁸

Throughout 1918 and 1919, the Socialist Party was rent by sultry intrigue and bitter schism. After a year of agitation and frenzied debate on the central issue of bullets as against ballots, the party called an emergency convention at Chicago in August-September, 1919. Here it split three ways into the democratic Socialist Party, the Communist Party, and the Communist Labor Party.

The membership strength of the movement shrank from a hundred thousand to about fifty thousand—the majority remaining with the Socialist Party. In politics, it is unsafe to apply what Lewis Carroll once called the rules of "uglification and distraction." In this sordid atmosphere of factional war, the bulk of the Socialist organization simply forsook the cause.⁹

The Communist leaders believed that their tiny, wrangling organization would soon storm the barricades in America's great cities. Among them was John Reed, a Harvard poet and brilliant foreign correspondent, who had been with Lenin and Trotsky during the October Revolution in Russia and had written the classic account of the Bolshevik seizure of power, *Ten Days That Shook the World*.

Reed told Louis Waldman to stop wasting his time studying law: "By the time you finish your course, there'll be no more lawyers. Do you know what we did to your high and mighty members of the

bar in Russia? We set them cleaning the cesspools for the proletariat!"¹⁰

Yet Reed was neither an infant in politics nor a man walled off from reality by preposterous doctrines. He was a man of outstanding leadership gifts, of spontaneity, force, independence, and candor. One of the chief organizers of the American Communist movement, he was to return to Russia as a member of Lenin's general staff of world revolution, become heartsick by the latter's resort to deception and terrorism, withdraw from the Communist International leadership, and die, without hope or faith, on Russian soil.

Clarence Darrow had the hard task of defending Communist Labor Party leader, William Bross Lloyd. This wealthy Chicago socialite drove his limousine down State Street flying the Red flag and later told a mass meeting: "What we want is preparedness. You want to get rifles, machine guns, field artillery, and the ammunition for it; you want to get dynamite. Dynamite the doors of the banks to get the money for the revolution."¹¹ This proved to be a tough case—even for Darrow.

The campaign against Bolshevism got under way shortly after the organization of the two American Communist parties. The volunteer spy hunters of the American Protective League faced the doldrums of peacetime with something less than equanimity, and the Cleveland branch of that organization urged that there be "no relaxation of the policy of the Government against seditious acts or words."¹²

On March 3, 1919, Attorney General Gregory resigned and was succeeded by A. Mitchell Palmer, who had been Wilson's Alien Property Custodian. A florid, handsome person, devoid of both humor and judicial balance, Palmer suffered from a morbid fear of social change. He indulged in inflammatory speeches which seemed inappropriate from the chief law officer of the United States government.

"Like a prairie fire, the blaze of revolution is sweeping over every American institution of law and order," Palmer once declared. "It is eating its way into the homes of American workmen; its sharp tongues of revolutionary heat are licking the altars of the churches, leaping into the belfry of the school bell, crawling into the sacred corners of American homes, seeking to replace marriage vows with

libertine laws, burning up the foundations of society. . . . The government is in jeopardy." ¹³

This flamboyant personage had scarcely been sworn in when an epidemic of bomb outrages swept the nation. Over two dozen handmade bombs were posted by an unknown hand in New York on April 30, 1919. They were scheduled to explode on May Day, adding zest to the traditional socialist and anarchist festivities by consigning J. P. Morgan, John D. Rockefeller, and other bêtes noires of radicalism to the other world.

Although these bombs had been manufactured "with deadly and malicious skill," their anonymous sender had forgotten to weigh them. They were held in the New York post office for insufficient stamps, where they would doubtless have exploded had it not been for the vigilance of a mail clerk.

This was only the beginning. Six bombs went off in Pittsburgh alone and an infernal machine, designed to send a lame-duck Georgia Senator heavenward, blew off the hands of his Negro maid instead. The most sensational attempt was directed at Attorney General Palmer. The bomb exploded while being carried up the steps of the Fighting Quaker's Washington home, shattered all windows in the neighborhood, and destroyed the man who had delivered it so effectively that he could not be identified. The young Assistant Secretary of the Navy, Franklin D. Roosevelt, who lived across the street from Palmer, rushed out of his house and found bits of blood and flesh on his doorstep.

The mystery of the bombs was never solved. Palmer blamed anarchists, Communists, and radicals—groups which he lumped together in a single anathema. Since both the Communists and the Socialists explicitly repudiated individual terrorism, the most probable culprits were the anarchists.

The bomb outrages gave impetus to the incipient anti-Red crusade. Palmer had enough wit to see that the real danger was not from homemade explosives, but from what he termed the "menace of evil-thinking which is the foundation of the Red movement." Seventy sedition bills were in the congressional hopper during 1919-1920 and the House Judiciary Committee recommended the death penalty in peacetime. Senator McKellar of Tennessee proposed that

a concentration camp be established at Guam for native-born Americans who uttered revolutionary thoughts.¹⁴

When the sedition bills failed to become law, it became evident that the way to strike against the Communist movement was through the deportation statute. Originally directed against anarchists of the deed, the law was amended to provide for mandatory ejection of all "aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States . . ." ¹⁵

This law gave the government no right to inquire into a man's motives. He might have joined a Communist organization for cheap insurance, classes in English, or simply in order to find a girl. All the government had to do was discover whether or not he was a member and, if the answer was affirmative, deport him.

Under the Constitution, the United States has power to deport any alien for any reason whatsoever. No foreigner has a constitutional right to enter the country or, being in it, to stay there. Admission of aliens, in short, is an act of largess by the sovereign. However unjust it may appear to uproot a man suddenly, separate him from wife and children, and dump him in a dimly remembered fatherland whose language he may have forgotten, the alien has no redress against this under the Bill of Rights. He may hope that Congress will pass reasonable laws and that public opinion will decry injustice, but in time of excitement these may be slender reeds.

The decision to deport Communist aliens, however, was not arbitrary. The two parties had been organized and existed for the sole purpose of overthrowing constitutional government in the United States. No nation is compelled to harbor foreigners who are actively engaged in seeking to destroy it. The concept of sovereignty carries with it the right of self-protection.

While the government had an unquestioned right to deport all Communists, it may have been unwise in exercising it. In 1919 and 1920, the two Communist parties were in no sense a clear and present danger. Their membership was insignificant and composed largely of people unable to communicate their ideas in intelligible English. Their propaganda had no chance of success because, in

essentials, it was honest. The Communists, in other words, had not yet learned to camouflage their revolutionary doctrines under such rubrics as democracy, progress, and liberalism. Their motto was Marx's defiant statement: "The Communists disdain to conceal their views and aims."¹⁶ Lenin had not yet taught them to abandon this tack and "be prepared to make every sacrifice, and, if necessary, even resort to all sorts of cunning, schemes, and stratagems to employ illegal methods, to evade and conceal the truth . . ." ¹⁷

Swarms of Department of Justice agents were placed within the Communist organizations. Some of these undercover men operated, according to *The New York Times*, "as agitators of the wildest type."¹⁸ Their task was to discover the names of alien members of the Communist Party and Communist Labor Party and to obtain evidence of such membership.

The first raids were scheduled for November 7, 1919—the second anniversary of the Bolshevik Revolution in Russia. "If possible," a Justice Department circular stated, "you should arrange with your undercover informants to have meetings of the Communist Party and the Communist Labor Party on the night set (for the raid). . . . This, of course, will facilitate in making arrests."

Bureau of Investigation men and municipal police struck simultaneously at radical workers clubs in several large cities. All people found there were arrested, whether aliens or citizens, and whether or not warrants had been issued. Although the Justice Department had issued strict orders against violence, *The New York Times* reported that many of those arrested were "badly beaten by the police during the raid, their heads wrapped in bandages testifying to the rough manner in which they had been handled."

The majority of the aliens rounded up were released by the Labor Department for want of evidence. A decision was made to deport 249 of them just before Christmas 1919 on the S.S. *Buford*, a vessel of Spanish-American War vintage soon to be known as the "Soviet Ark." Notice of deportation was given only a few hours before the Ark sailed and hence families were separated. Many of the wives of the deportees "sold their household goods, expecting to go along with their husbands. Some had small children to care for. Most of them were in abject want."¹⁹

The aliens were taken to Hango, Finland, turned over to the Finnish authorities, marched to the Russian border, and there delivered to the Soviet authorities. This ended the first act of the so-called deportations delirium.

The involuntary passengers on the Soviet Ark were described by the press as "blasphemous creatures who not only rejected America's hospitality and assailed her institutions, but also sought by a campaign of assassination and terrorism to ruin her as a nation of free men." 20

The facts were that 184 of the 249 were deported merely for membership in the Russian federation. Organized in 1911 to promote the overthrow of czarism, the federation had a bombastic program which urged the laboring classes to "take possession by forcible social revolution of all the wealth of the world." For two years it had been the main spawning ground for both American Communist parties. Nonetheless, many of its members had joined either to learn English or to benefit from the mutual insurance system. They were not obliged either to read the windy, revolutionary program or to sign any document subscribing to it. On the whole, the federation's membership comprised underprivileged and fairly ignorant people to whom refined legal standards of rational conduct scarcely applied. One man, whose sole connection with the federation was that he was studying mathematics there at the time of the raid, escaped deportation by a hair's breadth.

The raids were carried out by William J. Flynn, the director of the Bureau of Investigation. The public was psychologically readied for them by the lurid speeches of A. Mitchell Palmer. There was a conspiracy, Palmer warned in June, 1919, to "rise up and destroy the Government at one fell swoop."

In simultaneous, nationwide raids in January, 1920, the Justice Department arrested approximately 2500 persons. The Justice agents were instructed to "arrest all active members [of the Communist Party and Communist Labor Party] where found." These instructions did not mention warrants and it was evident that American citizens were to be swooped up illegally together with foreigners. The men and women arrested were searched and their property was impounded—also without warrants.

According to Judge George W. Anderson, the arrested aliens were "handcuffed and chained" and paraded through the streets of Boston. At the Deer Island internment area, conditions were "unfit and chaotic." Judge Anderson spoke of burst pipes, overcrowding, inadequate heat in freezing weather, an atmosphere of "lawless disregard of the rights and feelings of these aliens as human beings . . ." One inmate "committed suicide by throwing himself from the fifth floor and dashing his brains out in the corridor below in the presence of other horrified aliens." Prisoners were driven to "the verge of insanity . . ." ²¹

Boston was not exceptional. At Detroit, over a hundred prisoners were confined in a bull pen twenty-four by thirty feet.²² The mayor described these conditions as "intolerable in a civilized city."

The evidence on which the arrests were based was often flimsy or nonexistent. In one flagrant case, an alien was scooped up in a dragnet raid and imprisoned for ten days without an arrest warrant. After seven more weeks of incarceration, the Justice Department requested that the man be held upon his own recognizance while the department searched for evidence against him.²³

The methods of investigation in deportation cases had long been criticized as repugnant to American traditions. "The whole proceeding is usually in the control of one of the inspectors," Judge Holt observed, "who acts in it as informer, arresting officer, inquisitor and judge."²⁴ For a period in 1919-1920, prisoners were denied counsel during preliminary interrogations, the government arguing that, when the aliens had legal advice, the probes "got us nowhere."²⁵

The Palmer crusade was brought to a standstill in the spring of 1920 by an entirely unforeseen event. Louis F. Post, a 71-year-old official with an agile mind and an inflexible belief in Jeffersonian liberalism, became Acting Secretary of Labor. Post applied his skeptical intelligence to reviewing the evidence in the deportation cases. The final upshot was, according to Post, that, of about four thousand arrest warrants served, some three thousand "were cancelled after hearings, nearly if not quite all by myself . . ." ²⁶

Mere membership in a revolutionary organization "is mandatory reason for deportation," Post declared. Given proof of this, the alien

would be ousted "with as little compunction as we would attack an invading enemy."

Post freed all aliens who had automatically become members of the Communist Party because their branches had transferred from the Socialist Party en masse. He freed men who had applied for Communist membership, but had not actually joined. He released former members who had resigned. He refused to deport anyone to a country where he faced torture or death. He rejected all self-incriminatory admissions wrung from aliens at hearings where they were denied counsel.

The five hundred or so he ordered deported had all signed Communist Party application cards, pledging their "adherence to the principles and tactics of the Communist International."

The most bizarre decision of the Labor Department was that the Communist Labor Party, as distinct from the Communist Party, "occupied middle ground" between revolutionary and democratic tactics and that its alien members were therefore not deportable.

The facts of the matter were otherwise. Two separate Communist parties had been organized in 1919 simply because of a struggle for power between the English-speaking and the Russian-speaking revolutionaries. John Reed and Benjamin Gitlow, the leaders of the Communist Labor Party, were contemptuous of the *tactics* of the Communist Party, which included such asinine steps as calling on striking Brooklyn streetcar workers to organize Soviets, but had no disagreement as to purpose. Desperately anxious to get official recognition from Moscow, Reed and Gitlow "were very careful to hew close to what we believed to be Bolshevism."²⁷ In addition to forging documents and attempting to organize jail breaks, the Communist Labor Party leaders "called for the violent overthrow of the United States Government" by "revolutionary mass action."²⁸

The Labor Department at least knew that the Communist Party was dedicated to armed revolution. Zechariah Chafee, who played a leading role in the fight against the deportation raids, even doubted that. Writing as late as 1941, the Harvard Law School professor declared: "This is certainly a delicate task of interpretation, more befitting a theologian or a Shakespearean scholar than a practical office-holder. We are a long way from the man against

whom the Deportation Act was supposed to protect us—the alien who urges his hearers to blow up the Capitol this afternoon, kidnap the President tonight and elect Commissars on the Mall tomorrow.”²⁹

The “practical office-holders” in the departments of Justice and Labor reasoned differently. They refused to believe that revolutionists who counsel delay until the time is ripe are not revolutionary. They considered that the Deportation Act was designed to protect the United States against Communist strategists of the Lenin stamp and not merely against crackpots. Although not Shakespearean scholars, they deported proved members of the Communist Party.

A. Mitchell Palmer lashed out at Acting Secretary Post, accusing him of “wholesale jail deliveries” and “release of even self-confessed anarchists of the worst type . . .”³⁰ Impeachment proceedings were instituted against Post, but the latter took the offensive and proved that the Attorney General had violated the laws of the land.

In May, 1920 a committee of twelve eminent lawyers and judges—among them Felix Frankfurter and Dean Roscoe Pound of Harvard Law School—charged Attorney General Palmer with four major violations of the Constitution:

Cruel and unusual punishments contrary to the Eighth Amendment.

Unreasonable searches and seizures contrary to the Fourth Amendment.

Compelling persons to testify against themselves contrary to the Fifth Amendment.

Arrests without warrant contrary to the Fourth Amendment.

Their report concluded: “Here is no question of a vague and threatened menace, but a present assault upon the most sacred principles of our constitutional liberty.”³¹ Charles Evans Hughes, later to become Chief Justice of the United States, joined the attack. “Very recently information has been laid by responsible citizens at the bar of public opinion,” he told the Harvard Law School, “of violations of personal rights which savor of the worst practices of tyranny.”

Palmer’s defense was characteristic. In “trying to protect the community against moral rats,” he declared, “you sometimes get to

thinking more of your trap's effectiveness than of its lawful construction." ³² To this Secretary of Labor Wilson retorted: "Even if some aliens are anarchists and lawless, I see no justification in that for making the Department of Labor so." ³³

The deportations epidemic had now run its course. Palmer had ridden the crest of a temporary wave of fear, perhaps hoping it would carry him to the White House. But the wave subsided and the ensuing recoil toward common sense destroyed him. Palmer was thrust from public life, a tarnished figure whose chief claim to renown was that few Attorney Generals had ever brought federal justice into such low repute.

What role did J. Edgar Hoover play in these abuses of American justice? Various writers have sought to depict him as a principal accomplice. If this were true, it would be a disquieting fact at a time of national crisis when the power of the FBI is steadily expanding.

Hoover came from a Washington family so poor that he had to refuse a college scholarship in order to contribute to his family's support. After leaving high school, he worked as a Congressional Library clerk by day and studied law at George Washington University by night. On graduating, he joined the Justice Department and, at the age of twenty-five, was made chief of the General Intelligence Division, one of the most important units in the organization. From 1919 on, Hoover was "in charge of counter-radical activities as Special Assistant to the Attorney General."³⁴

Under Hoover's energetic leadership, the General Intelligence Division built up dossiers on 200,000 radicals and suspected radicals of all sorts. Forty translators scoured over five hundred American foreign-language papers for symptoms of sedition. Hoover marshaled the evidence on the basis of which arrest warrants for deportation were issued, and he later prosecuted these cases.

Nobody criticized him at the time of the raids. Post's brilliant and angry little book, *The Deportations Delirium*, does not mention him. Although the Senate Judiciary Committee made a searching investigation of the Red raids, none of the reports of the committee members rebuked Hoover. Queried in 1948 on his role in the affair, the FBI Director stated:

"The facts are a matter of record. I deplored the manner in which

the raids were executed then, and my position has remained unchanged.

"... The so-called Red Raids were carried out by the then Bureau of Investigation under the direction of William J. Flynn. . . . My specific assignment was to collate the evidence for presentation to the immigration authorities. . . .

"The late Chief Justice of the United States, Harlan Fiske Stone, raised his voice in vigorous protest of the manner in which the raids were carried out long prior to his appointment as Attorney General in 1924 to reorganize the Department of Justice. He had investigated the raids in detail, and I am sure he would never have appointed me Director of the Bureau in May of 1924 had I been responsible for the manner in which the raids were carried out." ³⁵

Years after the deportation raids, there was independent confirmation of the fact that J. Edgar Hoover was one of the few Justice Department officials who had opposed their lawlessness at the time. The vindication came from Morris Katzeff, a lawyer who, together with Felix Frankfurter and Zechariah Chafee, defended the New England deportees through five months of administrative hearings and court battles. This correspondence is here quoted for the first time.

In the summer of 1940, the FBI was under joint attack by pro-Nazis and pro-Communists. After listening to a radio broadcast, in which Hoover was blamed for the excesses incident to the 1920 deportation raids in New England, Katzeff wrote the FBI Director, recalling a conference in Washington "at which you deplored as sincerely as we did . . . the circumstances connected with arrests of aliens in New England. . . ." Adding that he had been "impressed by your sincerity," Katzeff explained that he had written because he felt it his duty to "say a word in defense of a man unjustly accused." ³⁶

In a letter to Representative Emanuel Celler, Katzeff added: "I spoke to Mr. Hoover once or twice in Washington in 1920 about the manner in which the raids were carried out, the utter lawlessness of the entire transactions, and I recall distinctly that he deplored these conditions as much as did counsel for the defense." ³⁷

Hoover replied on July 24, 1940: "Everything that you have out-

lined in your letter is exactly the way in which the matter happened and is in accord with my own recollection. . . . These cases were, of course, hard fought and we were on opposite sides, nevertheless there is no reason why the truth should not prevail as it has in your narration of the proceedings." ³⁸

When Palmer retired to oblivion, his place was taken by Harry Micajah Daugherty, the admitted leader of the Ohio gang that boosted Warren G. Harding into the White House. "I wouldn't have given thirty cents for the office of Attorney General," Daugherty once said, "but I wouldn't surrender it for a million dollars." ³⁹ The new Attorney General was closely associated with the Teapot Dome scandal and other unsavory matters. He was indicted for conspiracy to defraud the government, refused to testify on grounds of self-incrimination, and escaped prison with a hung jury. When finally dismissed from office, Daugherty blamed it all on a Communist plot.

At the head of the Bureau of Investigation, Daugherty placed William J. Burns, an elderly private detective who wore colored, checked frock coats and crammed the organization with agency sleuths. The campaign against radicalism was transformed into a silent war on trade unions, conducted in part by former labor spies. It was, former Attorney General Cummings comments mildly, "a sordid period." ⁴⁰

In 1924 Harlan Fiske Stone became Attorney General and began to clean house with a giant broom. The private eyes were eliminated, together with underworld figures, grafters, and confidence men of the stamp of Gaston B. Means. Hoover was named director of the Bureau of Investigation and directed to concentrate on the suppression of crime.

"The Bureau of Investigation is not concerned with political or other opinions of individuals," Stone announced caustically. "It is concerned only with such conduct as is forbidden by the laws of the United States. When a police system goes beyond these limits it is dangerous to the proper administration of justice and to human liberty . . ." ⁴¹

J. Edgar Hoover accepted this policy, but formulated the issue far more cautiously: "It is, of course, to be remembered that the activities of Communists and other ultra-radicals have not *up to the*

present time constituted a violation of the federal statutes, and, consequently, the Department of Justice, *theoretically*, had no right to investigate such activities . . . [My emphasis—N.W.]”⁴²

The deportation raids, together with wholesale arrests under state laws, had driven both Communist parties underground. The impact of this on the revolutionary movement may shed some light on the 1951 situation.

Thousands of members dropped out of the now-united Communist Party and “for all practical purposes the movement in the smaller towns and cities was almost completely wiped out.”⁴³ Once underground contacts in a community were lost, it became virtually impossible to build a party nucleus there. The membership held strictly secret unit meetings of ten to fifteen. Mastering the techniques of conspiracy became a time-absorbing task; the clandestine atmosphere had a glamorous attraction for the politically immature and frivolous; fantastic plans took the place of solid organizing work.⁴⁴ The comrades, in short, became divorced from the labor movement and from the realities of the American political scene. They withdrew into an unreal, schizoid world.

Membership losses were least among the foreign-born, who could still function, more or less openly, through their language federations. By 1922, over 80 per cent of the party membership was in these foreign-language groups, of which the Finnish had become the most important. These people already lived in more or less separate language and cultural enclaves. Life in the illegal party came naturally to them and, in later years, they were to prove a drag on the development of a powerful American Communist movement.

By 1922, the Communist Party was still illegal, but it operated through the Workers Party, an aboveboard organization. The underground organization was torn by warring, factional caucuses—the Geese, the Liquidators, and the Conciliators. Energies were absorbed in the internecine struggle for power. Despite the conspirative precautions taken, the super-secret Communist Party Convention at Bridgeman, Michigan, was attended by the undercover Bureau of Investigation operative, Francis A. Morrow; a large part of the leadership was arrested, and the party records and communications with Moscow were seized.

During this period of illegality, the Communist Party developed a leadership element which was to prove a dead albatross. The men who flourished in this stifling atmosphere of conspiracy were quite unable to build a mass movement with roots in American soil. When American communism finally came up for air under the leadership of Earl Browder, one of its most difficult tasks was to eliminate the old guard of the underground from posts of responsibility. In 1945, when Moscow repudiated Browder, the survivors of the era of conspiracy joyously turned on him.

During the deepest period of illegality, disorganization reached such a pitch that the leaders did not know what the actual membership was. In 1923 the Communist Party reported 6862 card-carrying comrades. Ten years later, Stalin was to ask caustically at a Moscow conference whether there was some natural law that prevented the American Communist Party from ever reaching ten thousand members.

One lesson that was learned in the period of illegality was that in a nation of articulated technological development, where men's minds are reached primarily by mass media of communication, no underground party can ever become a serious *political* influence. During the twenty years between the deportation raids and World War II, the American Communist movement built the foundations for its espionage work. As the period came to a close, a new threat to the internal security of the United States—the Nazi movement—assumed major proportions.

Chapter Ten

COUNTERFEITING FOR THE KREMLIN

FEAR of the puny Communist Party finally subsided in the early 1920's. It became clear that the nation was not on the brink of revolution and that the Red hordes of insurrection were largely creatures of the imagination. The deportations delirium had been followed by the Harding era of flagrant corruption in which the Justice Department spied on administration critics in the Senate and House.

"When Harlan F. Stone took charge of the Department of Justice," William Allen White wrote, "he immediately ordered the spying, telephone snooping, and undercover work of the Department of Justice to cease. A new regime began in that office that day."¹

Although J. Edgar Hoover had been the leading figure in the department's investigations of Communist activity over the past seven years, Attorney General Stone appointed him director of the Bureau of Investigation. The new chief swiftly reorganized the intelligence department to concentrate on investigating specific violations of federal law. For the next fifteen years, the FBI was to display only a peripheral interest in disloyalty. It built its reputation by smashing the gangs which flourished during the Prohibition era. The tracking down of Dillinger, the Brady Gang, the Barker-Karpis outfit, and many others gave the FBI nationwide prestige. The widely publicized G-man was soon the idol of American boyhood. In the pleasant, humdrum era between two European cataclysms, the hunt for successive public enemies provided the public with a needed fillip of adventure and bloodshed. Under Hoover's leader-

ship, the Federal Bureau sloughed off its shaded past to become one of the few government agencies in which the public had confidence.

During this fifteen-year interval, two rival totalitarian movements were slowly gathering strength and building the foundations for espionage work against America. Whereas the German spy organization was born in 1933 when Hitler took power in the Reich, the Communist illegal apparatus was as old as the party itself. The roots of this pervasive and singularly effective espionage system thus lie deep in the past.

When Lenin organized the Third International in 1919, spying was not regarded as one of its more important activities. The Bolsheviks believed that the war-ravaged nations of Europe were ripe for revolutionary assault and that the task of the Communist parties was to rally the working class and seize power by armed risings.

In the Stalinist era of building socialism in one country, economic and industrial espionage became important. Strategically placed undercover Communists stole blueprints so that Russia would be able to apply the most up-to-date industrial methods without paying patent royalties or engineering fees to foreign companies.

This emphasis was to change when Hitler's Third Reich turned toward aggressive expansion in Europe. The major espionage effort then became political and military. Brilliant and idealistic men, holding high positions in government and industry, were brought into the apparatus in the belief that they were contributing to the destruction of nazism or foiling an international capitalist plot against socialist Russia.

Unlike rival intelligence systems, the Soviets had from the outset the tools and building blocks for an extraordinarily effective world organization.

The first asset was a faith, complete with its own system of ethics. Lenin said:

"We repudiate all such morality that is taken outside of human class concepts. We say that this is a deception, a fraud, which clogs the brains of the workers and peasants in the interests of the landlords and capitalists . . .

"We say: 'Morality is that which serves to destroy the old exploit-

ing society and to unite all the toilers around the proletariat, which is creating a new Communist society.' ”²

For a Bolshevik, there could be no scruple or ethical quandary about betraying either his official trust or the country to which he owed allegiance. His one duty was to serve as a soldier in the international class war. Whether he was to wage the battle openly or to cheat, lie, betray, and steal were mere matters of tactics and expediency.

The second asset was the tradition of conspirative and illegal organization of the Russian Bolsheviks. This was an absolute necessity in the struggle against czarism. Stalin organized bank robberies and armed assaults on gold convoys—notably at Tiflis in 1907. Although he found it personally distasteful, Lenin allowed gigolos to seduce wealthy women and obtain control over their fortunes for the revolutionary cause.³

To guard against police spies within the party, the Bolsheviks had a control organization which smoked out disloyalty, purged the unreliable, and executed the traitors. When the Third International was founded, each Communist Party was directed to establish its own Central Control Commission—a counterintelligence organization of almost plenary powers which searched for police agents and heretics within the party. The control commissions built up extensive dossiers on the membership, handled the devious financial transactions of the Communist parties, and selected espionage and underground cadres for Soviet intelligence. It is no accident that Jacob Golos, who headed the Control Commission of the American Communist Party until his death during World War II, was also one of the chief directors of the Russian spy rings in Washington and in the atomic energy field.

All Communist parties are primarily underground and illegal organizations, drilled in conspirative methods. The original reason for this was that they existed to organize armed insurrection. In the industrialized West where mass uprising was not in the cards, illegal methods of work were to prove valuable for espionage purposes. During most of its history, the American Communist Party has operated on an underground basis within the Army and the government, among certain trade unions, and throughout the South.

Virtually all Soviet consulates in the United States soon became mired in espionage. Amtorg, the official trading organization of the U.S.S.R. in America, was deeply implicated. In addition, individual agents were sent to America to operate independently of the official Soviet missions, often under false passports and through dummy business concerns. The creation of parallel, competing spy rings made it possible to verify the data obtained.

American agents were recruited by appealing to their political convictions. Once brought into the net, every effort was made to corrupt them morally, to thrust money into their hands, to shower them with presents and thus subtly to relegate their status from that of "idealistic helpers" to paid agents of a foreign power.⁴ Even where the information furnished by the agents was of slight value, they were encouraged to persevere in order to cement their loyalty and in the hopes that at some future date they might prove useful.

Probably the most fantastic venture the Kremlin ever carried out in the United States was the forgery of American hundred-dollar bills and their distribution throughout the world. In this wild story of crime, intrigue, and double crosses, the cast included Soviet agents, a suspected Nazi, and the gentry of the underworld. The plot would be unbelievable if three separate sources had not testified to the facts under oath, if the bogus currency had not been circulated in four continents, and if an American participant had not been caught and sentenced to fifteen years' imprisonment.

In 1927, Alfred Tilton was in charge of Soviet military intelligence operations in the United States. He owed this powerful position to the fact that he was a member of the inner clique of Latvians which then dominated the international espionage apparatus of the Red Army. Intellectually mediocre and seriously deficient in common sense, Tilton had the good fortune to be aided by Baroness Lydia Stahl, one of the most brilliant of the Kremlin's agents. She was eventually to serve a five-year prison sentence in France for her work with the Gordon Switz espionage group.

Tilton decided to bring Nicholas Dozenberg into his underground network. "Tall, heavily built, with a massive head," Dozenberg looked like a successful American businessman. Actually, he was a Latvian by birth and a revolutionary by profession. He had been one

of the founders of the American Communist Party and, in 1927, was its national organization secretary and in charge of its major financial operations.

When he joined the Tilton espionage apparatus, Dozenberg's contacts with the party were abruptly severed. His work consisted largely of building legal "covers" for Soviet operatives—acquiring fake citizenship papers, founding travel agencies, and setting up fake export firms. Communication with Moscow and with Western European headquarters of Soviet military intelligence was handled by Communist seamen, who served as volunteer couriers and met the Russian agents secretly in the office of a New York dentist.

For this dangerous work, Dozenberg was paid thirty-five dollars a week—the so-called "party maximum." Following Lenin's theory that the Communists were an elite group pledged to a Spartan life, this was the top salary paid by the world organization to its functionaries.

Tilton's most brilliant coup was to intercept the plans for the British warship *Royal Oak* before they reached Washington. Taking them to Lydia Stahl's studio, he worked all night making photostats which were then sent to General Berzin, Chief of Soviet military intelligence in Moscow.⁵ How these blueprints were obtained and whether or not the originals reached their destination in Washington in time to avert suspicion are questions which have never been answered.

In 1929 Tilton was sent to Europe and Nicholas Dozenberg was summoned to Moscow, presented to General Berzin, and assigned the job of setting up "covers" for espionage nets in France and Rumania. Tilton and Dozenberg, however, were not only still deeply involved in American operations, they were to become key figures in the reckless counterfeiting plot which the Kremlin was hatching. In 1929 a German bank forwarded a batch of hundred-dollar notes to the New York Federal Reserve Bank. These aroused a great deal of interest because they were oversized currency of a sort no longer issued. Microscopic examination revealed that they were probably the most expert counterfeits ever produced. Realizing that millions of dollars of these bogus notes were probably being circulated, the

United States Treasury sounded the alarm to governments and central banks all over the world. Leading foreign financial institutions were alerted and advised of minute, telltale differences between the counterfeit product and the original.

The trail led to a conservative and long-established German private bank—Sass & Martini. This bank had been purchased in the fall of 1929 by “a group of American promoters,” then ownership changed twice and the institution finally ended up in the hands of Paul Roth, a leading German Communist and a Soviet employee.⁶ The next discovery was that Franz Fischer, another Communist leader and Soviet intelligence operative, had deposited nineteen thousand dollars of bogus bills at Sass & Martini, withdrawing good money in exchange. Since the fraud had been discovered, the Soviet agents who had just purchased Sass & Martini were liable. Moreover, an arrest warrant was out for Fischer and he had to flee Germany.

Soon a Communist leader was arrested in Warsaw with large quantities of the forged currency on his person. In early 1930 the counterfeit notes appeared in such varied spots as Havana, Mexico City, Lemberg, Teschen, and Antwerp.

General Walter Krivitsky, Chief of Soviet military intelligence in Western Europe, was irate. He considered that the counterfeiting operation was irresponsible, that it was causing the arrest of key operatives, and that it would do the U.S.S.R. incalculable harm from a propaganda standpoint. Krivitsky ran into Alfred Tilton in Vienna and told him:

“You blockhead! You have lived in the United States and Western Europe for years, and learned absolutely nothing.”

Tilton protested: “But you don’t understand. This is real money. It isn’t like ordinary counterfeit currency . . . I got the same paper they use in the United States. The only difference is that it’s printed on our presses instead of in Washington.”⁷

Although Krivitsky believed him, Tilton was in error. While the paper stock was an excellent facsimile, it was not identical with that used by the Treasury.

Krivitsky turned his enormous energies to liquidating this ill-starred scheme. After reducing the self-satisfied Tilton to a state of

palpitating panic, he proceeded to Moscow and told Stalin's personal representative, General Tairov:

"Counterfeiting is no business for a powerful state to go into. It puts us on a par with some small underground sect without resources." ⁸

Krivitsky's efforts to educate his superiors in the intricacies of modern finance encountered strong resistance. He was reminded that Napoleon had forged British currency. When he pointed out that economic conditions had changed, he was told that huge quantities of the fake currency could be unloaded in China. As a matter of fact, the well-known German anti-Nazi attorney, Alphonse Sack, was to charge that the notes had been made in the Soviet State Printing Establishment in Moscow and that "\$2,500,000 in counterfeit pound and dollar notes from the same source was circulated in China by Soviet agents." ⁹

The scheme had apparently been concocted by Tilton and undertaken only after Stalin had given it the stamp of his personal approval. It may well have recalled to the ageing dictator one of the daring "expropriations" of czarist government funds which he had organized in his youth—an operation in which three people were killed and fifty wounded in order to seize \$170,000 for the illegal Bolshevik Party.

The counterfeiting venture was seemingly abandoned and Krivitsky forgot about it. Two years later, the Soviet Union faced even more stringent foreign exchange shortages. Dollars were not forthcoming even to meet the needs of the international military intelligence apparatus.

Large stocks of the counterfeit currency were lying unused in Moscow at a time when the country was starved for hard currency. Conceivably the Americans had by now forgotten about the matter. On the other hand, the king-sized hundred-dollar bills had become museum pieces. The danger of attempting to pass them was great and the responsible Soviet intelligence men were reluctant to repeat their earlier mistake of risking key agents in the operation.

In 1931 Nicholas Dozenberg reappeared in New York and established the American-Roumanian Film Corporation "which was to be used as a front for Soviet military intelligence in Roumania." ¹⁰

He was assisted in this by William Gregory Burtan, a 31-year-old, Russian-born doctor.

The most interesting thing about Burtan is that he was not a Communist. He had, in fact, been expelled from the Communist Party in 1929 as a member of the Lovestone faction. He was a heretic—the object of deep, bitter, and unrelenting hatred by the party. “I was not primarily interested in the Communist Party or the Soviet Government at that time,” Dr. Burtan later recalled. “As a matter of fact, we were fighting the regime that was in charge.”¹¹

Despite this, Dozenberg trusted him, readily admitted that he was a Soviet agent, and mentioned that he had about \$100,000 in counterfeit American notes which he would like to unload. As Burtan put it: “Well, Dozenberg had been passing that money all over the world, and he proposed to me that I should help him in getting this money converted in large blocks.”¹² Dozenberg would use his part of the proceeds to finance Soviet espionage work in Rumania, letting Burtan give his share to the Lovestone organization.

One possible explanation of this curious arrangement is that Dozenberg thought that the risk in attempting to pass the bogus hundred-dollar bills was so great that members of his apparatus should not be involved. Since Burtan was an enemy of the Communist movement, he was expendable. Moreover, Russia was in urgent need of the dollars.

Dozenberg has shed no light on this riddle. On October 4, 1949, he submitted an affidavit to the House Un-American Activities Committee which contains a summary of his career as a Soviet espionage agent. Although protected by the statute of limitations, he carefully refrained from mentioning the counterfeiting operation.

Whatever his role was, Dr. Burtan joined in the plan to distribute the fake currency. He had an intimate crony, Hans von Buelow, who had no job, no means of support, but a fund of stories—probably largely apocryphal—concerning his career as “an adventurer of the world.” ‘Count’ von Buelow used to appear at Burtan’s office nearly every day. For a year and a half, the two men regularly dined together. Burtan realized that his aristocratic companion was no Communist:

"As a matter of fact, I believe he was a Nazi. He used to advocate Hitler's views, which made no difference to me at that time. Very little was known of Hitler at that time." ¹³

According to Burtan, von Buelow planned to sell the bogus bills to his good friend the finance minister of Guatemala. His Excellency could deposit them in a safe and draw out bona fide Guatemalan or American money in exchange. All three of them could get rich and the hoax would not be discovered for years. By that time, there would probably be a revolution in Guatemala in any event. This was substantially the story that von Buelow told Burtan and it was backed up by cables supposedly from the finance minister.

There were angles to this affair about which poor Dr. Burtan was grossly ignorant. 'Count' von Buelow was in reality a certain Hans Dechow, who had been dabbling in the munitions business and had "a police record in Chicago." Without Burtan's knowledge, von Buelow (or Dechow) contacted eight Chicago underworld characters through another intermediary—a private detective.

The Chicago group was informed that the money was genuine but that it had been paid out by a member of the Arnold Rothstein gang who was being temporarily embarrassed by an income tax evasion investigation. They took the notes to various banks. When the tellers pronounced them authentic, the gentlemen from Chicago agreed to unload the \$100,000, retaining 30 per cent for themselves.¹⁴

A few days before Christmas of 1932, the money reached the Federal Reserve Bank of Chicago and immediately aroused old memories and suspicions. Thomas J. Callaghan of the Secret Service made an examination and identified the currency as part of the Sass & Martini crop.

A man was arrested trying to change the bills and this led to the apprehension of the Chicago syndicate. The racketeers were furious at having been swindled and, according to a *New York Times* report, put pressure on von Buelow, learned about Dr. Burtan, and proposed to "take Burtan for a ride." ¹⁵

Burtan claimed that he was entirely in the dark about von Buelow's dealings with Smiley and the Chicago syndicate. The German told a different story. He later alleged that, fearing reprisals by the racketeers, he had had a heart-to-heart talk with Burtan in

New York in which he explained that the Chicago group wanted its losses covered with good money—or else. Still according to this account, Burtan advised him to skip the country.

Dr. Burtan may well have been marked for slaughter by both groups. As far as Dozenberg was concerned, Burtan was on the fringes. He was merely “asked to help” without being given any information or being introduced to other Soviet agents. Burtan claimed that, at his trial, one of the Chicago underworld elements committed perjury on the stand in order to incriminate him.

On New Year's Day 1933, von Buelow arrived in Montreal and registered at the Mount Royal Hotel. Secret Service operatives followed him but arrived at the Canadian city a few hours too late. Von Buelow had left a message that he was proceeding back to the United States by bus.

The Secret Service men believed this message was a hoax. They reasoned that, as a former German aviator, von Buelow would travel by air unless he were broke. The fact that the German had stayed at an expensive hotel seemed to rule this explanation out.

On January 3 a plane came into Newark airport from Montreal. As the passengers walked off, a Secret Service operative shouted von Buelow's name. The man who turned his head in recognition was arrested. Twenty-four hours later, Dr. Burtan was also apprehended on a charge of possessing and passing counterfeit currency.

At the trial, von Buelow turned state's evidence and was let off with a nominal penalty. The Chicago underworld characters were not prosecuted on the theory that they had believed the money to be genuine. Dr. Burtan preserved a stony silence. He refused to indicate how he had obtained the notes and stated later than his motive had been to protect Dozenberg.

One of the government investigators concerned with the case later described Burtan as “the worst liar” he had ever encountered. Krivitsky's verdict was “a staunch Communist . . . [who] knew how not to talk.”¹⁶ The New York physician was sentenced to fifteen years' imprisonment and was later disbarred from the practice of medicine. He served ten years at Lewisburg, Pennsylvania, penitentiary.

When Burtan was arrested, Nicholas Dozenberg was summoned to Moscow. During the next six years, he worked for Soviet military intelligence, setting up cover organizations in China and the Philippines.

A few months before the outbreak of World War II, Dozenberg refused to obey a Moscow order to proceed to China unless he could be given \$100,000 with which to establish a business "front" for espionage. Disgusted, the Soviets gave him \$600 to return from Moscow to the United States and washed their hands of him. By this time, Krivitsky's memoirs had appeared; Dozenberg had been exposed and was therefore practically useless.

The former Communist leader and espionage director settled down as the proprietor of a small grocery store in Bend, Oregon. He was arrested for passport fraud and served a nine-months' sentence in the same cell block at Lewisburg as his colleague, Dr. Burtan.

Meanwhile, Valentine Markin, a young and ambitious Soviet intelligence agent, returned to Moscow in the wake of the Burtan arrest to expose the stupidity and bungling that had characterized the affair from the outset. He had the temerity to clash with General Berzin and carried his appeal directly to Premier Molotov.

Unexpectedly, Markin won his fight and was rewarded with the post of director of Soviet military espionage in the United States. His career, however, was short-lived. Lazy, incompetent, and a drunkard, he was denounced in 1934 for filling his organization with "Trotskyites" and later was mysteriously murdered in New York.

The counterfeiting escapade was a tragi-comedy of errors. The Soviet Union may have netted three or four million dollars at the cost of throwing away some of its most loyal and resolute operatives. Had the Russians forged small-sized five-dollar bills, they might have succeeded in passing them without destroying a large part of their underground organization. However, as Krivitsky had realized from the beginning, counterfeiting was an obsolete and picayune means of attempting to cover the foreign exchange requirements of a world power. When the swift expansion of the Nazi empire altered the political shape of the world, the Soviet intelligence organizations

perfected their methods and abandoned such comparatively paltry ventures for the serious tasks of political and military infiltration.

Until the revelations of Whittaker Chambers and Elizabeth Bentley shook American complacency, there was a tendency to regard Soviet espionage as little more than a hobgoblin created by hysterical minds. Men charged with spying for Russia succeeded in escaping punishment with monotonous regularity.

In 1933 a court martial in the Canal Zone convicted Corporal Robert Osman of espionage, the most important specific charge being that he had turned over the text of the White Plan for the defense of Panama to Communist agents. The Socialist lawyer, Louis Waldman, a lifelong, implacable enemy of Communism, became convinced that Osman was innocent and that this was a "Little Dreyfus Case." He prevailed upon President Roosevelt to disapprove the court martial findings and order Robert Osman retried.

Waldman flew to Panama and immediately began a searching investigation. Within a few days, he discovered a little fact that had entirely escaped the attention of military intelligence, namely, that Gordon Switz, a notorious international Soviet espionage agent, had been recently operating in Panama under a *nom de guerre* and had been closely associated with Osman.¹⁷ Waldman concluded from this that the army corporal had been used by Switz as a scapegoat and was innocent. In the second trial, he saved the face of G-2 by not injecting the Switz issue into the testimony and Osman was acquitted. Switz was later convicted of espionage.

Seventeen years later ex-Communist Paul Crouch testified concerning the anti-militarist activities of the Comintern, and the testimony had a certain bearing on former Corporal Robert Osman. Describing a 1928 meeting in Moscow concerning the tasks of the American Communist Party within the armed forces, Crouch testified:

"Concentration on strategic military objects was first and foremost emphasized by Marshal Tukhachevsky and three other members of the Soviet general staff who met with me on one occasion at the Lux hotel in the room of Nassonov . . . At this meeting, Marshal Tukhachevsky and other Red Army officials said that they feared the

scattering of efforts, and urged that particular concentration spots be selected. They were most interested, from the military point of view, first in Panama, and that efforts be made simultaneously to strengthen the civilian Communist Party in Panama as a basis for collaboration with the agents in the Army . . .

"MR. WHEELER: In connection with Panama, were you instrumental in Osman being inducted?

"MR. CROUCH: Indirectly; yes . . ." ¹⁸

One of the first prosecutions of Soviet spies by the United States Department of Justice was that of Hafis Salich and Mikhail Nicholas Gorin in Los Angeles in 1939. This was an utterly amateurish affair comparable to the bungling efforts of enemy agents during the Spanish-American War and quite unworthy of the high level of technical proficiency of the principal Soviet espionage groups.

Moscow-born Hafis Salich was part of the jetsam cast off by the Bolshevik Revolution. Of middle-class origin, he emigrated to Manchuria, then to Japan, and finally, in 1923, to the United States. He became an American citizen and was employed successively as a clerk, a police sergeant, and an investigator for the Office of Naval Intelligence at San Pedro, California. In the last position, he became acquainted with Gorin, a Russian citizen who worked for the In-Tourist travel agency headed by Jacob Golos. Salich was in the midst of a divorce action and had alimony troubles. Gorin became the friend in need, advanced him seventeen hundred dollars and, in return, received twenty-eight confidential naval intelligence reports on Axis agents from Salich.

In September, 1938, Mikhail Gorin, the master spy, sent a suit to the dry cleaners without first removing a stolen naval intelligence report from its pockets. Consequently, both Salich and Gorin were arrested and convicted of espionage. With the sands of the Hitler-Stalin Pact running out, the State Department urged that Gorin be paroled, because of "certain important considerations of an international nature," on condition that he leave the United States and never return.

It may be added that on July 23, 1941, a month after the Nazi attack on Russia, Gaik Badalovich Ovakimian, one of the key Soviet

espionage agents in the United States, was allowed to leave the country unmolested because of State Department intervention.

Five years later another espionage case went up in smoke. Naval Lieutenant Nicolai Gregorovich Redin, a member of the Soviet Purchasing Mission in Seattle, was arrested on charges of spying. Redin had approached Herbert Kennedy, a shipyard engineer, and had paid him \$250 for plans of the new destroyer tender *Yellowstone*, with particular reference to its radar equipment.

Kennedy promptly went to the FBI and thereafter served as a decoy. For six months, the bureau had Redin under surveillance. When the case was tried, the government was able to introduce sixty exhibits, including nine "whispering wire" recordings of conversations between Redin and Kennedy.

There may have been more to this case than met the eye. The radar installations on the *Yellowstone* did not seem important enough to justify the intense activity of the FBI and it was suggested that the Soviet officer had been engaged in considerably more dangerous activities which the United States government did not wish aired in open court. Moreover, there was some reason to believe that he was linked with the Canadian espionage ring.

The bloom of wartime friendship between the United States and the U.S.S.R. still held. "There was not a syllable of evidence presented that the Kremlin had instructed Lieutenant Redin to secure the secret information at issue here or that the Kremlin even knew that he was in America," the court stated. The jury acquitted the prisoner and the Soviet officer graciously thanked them for "this fair trial." ¹⁹

As the facts about Soviet espionage in the atomic bomb field became known, the prevailing attitude of tolerance and complacency changed. The dramatic nature of atomic espionage tended to overshadow the more quiet work of the political spies. To some Americans, the Whittaker Chambers "pumpkin papers"—microfilms of stolen State Department documents—seemed stale and unimpressive when published after the lapse of a decade. Nevertheless, former Undersecretary of State Sumner Welles testified that two of them "would greatly jeopardize our security if released" and added: "If

any agent of a foreign power saw these, he could have broken our code."

The exploit of the Sorge espionage ring in wartime Japan was as impressive as that of the atomic spy, Klaus Fuchs, in England. A known German Communist leader who secretly held the rank of general in the NKVD, Richard Sorge returned from Russia to the Third Reich, convinced the Nazis that he had become a Hitlerite, and secured an appointment to the German embassy in Tokyo. He there recruited a spy ring which included among its members the private secretary to the prime minister of Japan. Sorge's ring obtained advance information of the Japanese decision to attack Pearl Harbor. This was immediately relayed to Moscow. The Kremlin accepted its truth, realized that Siberia was now immune from Japanese invasion, and transferred crack divisions of the Soviet Siberian Army to the Central Front. These troops were thrown into the winter campaign against the Wehrmacht in time to save Moscow, break the German offensive, and change the course of history.

The fact that a Russian spy organization of this caliber could have been created in militaristic Japan may serve to dispel the illusion that the Soviet underground was able to operate successfully within the United States government solely because of the New Deal. It is nonetheless true that Soviet espionage everywhere reached its climax of importance during the war years. The exigencies of a common struggle against fascism enabled the Russian despotism to wear the mask of democracy and social progress and to draw a minority of the creative minds of the West to it.

Chapter Eleven

NAZI SPIES, SEDITIONISTS, AND SABOTEURS

DURING THE PERIOD 1924-1937, the Federal Bureau of Investigation averaged fewer than four hundred special agents and was engrossed in the tasks of "gang busting."

Although it had little previous experience in the field, the FBI was given responsibility in 1939 for guarding American internal security against Nazi agents. It received this authority in two presidential directives, one of which was confidential. The bureau swiftly turned its attention to counterintelligence work against spies, seditionists, and saboteurs. In addition, it took on the less dramatic, but equally important tasks of guarding American war plants, drawing up lists of dangerous enemy aliens for internment, and policing the activities of the disloyal element during the war years.

The bureau rapidly adapted itself to these new assignments. In contrast to the confusion and havoc of World War I, the American home front was adequately protected in 1939-1945.

Prior to Hitler's assumption of power, Germany had conducted no intelligence activities in this country other than the routine and aboveboard activities of her military and naval attachés. This situation changed overnight and Nazi spy rings were intensely active in the United States during the decade 1933-1943. The concentration point of effort was detailed engineering data on American aircraft to contribute to the creation of a Luftwaffe which could dominate the skies of the European continent.

The Nazi spy rings were, for the most part, directed by and

composed of Germans or German-Americans. The cement of loyalty, which held the groups together, was nationalism and supposititious racial brotherhood. These espionage apparatus were intensely competitive and mercenary. Their leaders appealed to greed and fear, recruited underworld elements into their ranks, and habitually cheated their own agents.

The caliber of the pro-Nazi groups was quite different from that of the Soviet conspirators. While the Nazis had friends in Congress and the Senate, they never gained a foothold in the high policy echelons of the executive branch of the government. Their crude, garbled, and savage philosophy had little charm for the intellectuals. Instead of recruiting agents among nuclear physicists and other pure scientists, they gathered up skilled mechanics, technicians, and production engineers. These people were not engaged in great creative projects but merely in applying scientific principles—more or less by rote—to practical problems. The sort of technical man who was neat, meticulous, a worshiper of order, of strict discipline, and of strong authority often found fascism appealing. The Freudians have a phrase for this emotionally immature type—the anal character structure.

Finally, the Nazis placed a certain amount of reliance on that historic anachronism, the professional spy. Picturesque adventurers, globe wanderers, explorers, cutthroats, quack scientists, and searchers for the fabled lost city of Atlantis stumble through the records of German espionage activity in America before and during World War II. For the most part they had become faded and somewhat shopworn; they were disillusioned figures—fearful, cunning, and avaricious. Their technical and scientific knowledge was rudimentary and their sources of information were often the reports of greedy German-Americans, who sold whatever they could pick up for whatever it would fetch.

Where the Soviet spies carried briefcases, the Nazi agents affected sword canes. The former were often unobtrusive, mild-mannered men, who impressed their neighbors as model fathers and husbands and their associates as superlatively competent scientists. The latter tended to be human tumbleweeds—unstable, flamboyant, and frequently alcoholic. The Nazi spies had a sort of shoddy glamor about

them, but they were amateurs who operated on the periphery of the American military power whose secrets they coveted.

The guilelessness of the public was graphically illustrated by the Lonkowski affair.

Wilhelm Lonkowski began his espionage activities in the United States at least as early as 1933. He obtained blueprints of the most secret American military airplanes by placing his agents in the Seversky Aircraft Corporation, setting up a spy base in Montreal, and receiving espionage reports from an airplane factory near Boston and from the Boston Navy Yard. He obtained the plans of a new rapid-fire American antiaircraft weapon with electromagnetic controls. He smuggled German agents into the United States and lured German-born military engineers and designers to the Reich with the bait of high salaries. The German government paid him five hundred dollars a month, a liberal expense account, and a bonus for all information delivered.¹

His methods were extraordinarily simple. A skilled mechanic and engineer, he took jobs in aircraft factories and struck up friendships with German-American workmen. He appealed to them as "good Germans." If this didn't work, he offered money; and finally, if necessary, he threatened their families in the Reich with reprisals.

Lonkowski's chief espionage associate in the United States was Dr. Ignatz Theodor Griebel, a paunchy physician and a superannuated Lothario. Griebel was an officer in the United States Army Reserve. He was also a former vice president of the Friends of New Germany and an active Bund leader. As early as 1933, he was dragged before a federal grand jury which was probing subversive activities. He was ousted from the staff of Harlem Hospital as a Nazi and, in 1934, Representative Samuel Dickstein, organizer of the Special House Committee on Un-American Activities, denounced him as a spy. Despite his record of disloyalty, Griebel remained an American officer. He used the uniform which he had dishonored to impress audiences with the patriotism and sterling Americanism of the Bund.

On the night of September 27, 1935, Customs Guard Morris Joseph saw a man on Pier 86 talking to a steward from the German liner *Europa*. Josephs interrogated him as a suspected smuggler and,

examining the package he was carrying, found that it contained rolls of developed film which were not dutiable. Unfortunately, Josephs paid no attention to the steward and it was only three years later that this humble ship's employee was identified as Karl Schluter, Nazi *Ortsgruppenfuehrer* on the *Europa* and one of the most dangerous directors of Nazi espionage in the United States.

The customs guard had the presence of mind to turn the man with the package over to Major Stanley Grogan, in charge of military intelligence for the vital Second Corps Area with headquarters in New York. The suspect correctly identified himself as Lonkowski. His parcel was examined and found to contain detailed specifications of Seversky plane floats (stolen from Langley Field), critical comments on the design of Curtiss and Vought aircraft, and a statement that he had been unable to get photographs of the new and highly secret Flying Fortresses. If G-2 had pieced the photographic film together, it would have discovered complete blueprints of the Curtiss X-2 experimental scout bomber, which Lonkowski had obtained from a subordinate spy in Buffalo.

The German explained that he was a piano tuner who earned extra money as a free-lance writer for the Nazi aviation magazine *Luftreiser*. A letter found in Lonkowski's parcel referred to contacts with von Papen. When Major Grogan asked who von Papen was, Lonkowski first stated that he was an American officer in Monticello, New Jersey, and later declared that he was an individual "now in Austria."

Unbelievable as it may seem, Wilhelm Lonkowski was released and allowed to flee to Germany where he was given a high official position. The report of the interrogation, which listed him as a "suspected spy," was pigeonholed in G-2 files for three years until the FBI unearthed it. Griebel remained in the country unmolested and the Nazi espionage apparatus carried on.

In January, 1938, the efficient British military intelligence organization discovered that Mrs. Jesse Jordan, a middle-aged hairdresser in Scotland, was receiving mail from all over the world. When Mrs. Jordan's letters were secretly opened—a procedure permitted in espionage cases in the United Kingdom, but not in the United States—it became evident that she was an international letter drop

for German intelligence. The British MI-5 advised the General Staff of the United States Army that a loquacious Nazi agent in America, who signed his letters Crown, was planning several bold coups. American military intelligence turned over the investigation to the FBI.

Characteristic of Crown's inventiveness was his project to acquire the secret plans for defense of the east coast from Colonel Henry W. T. Eglin, Commanding Office at Fort Totten. The colonel was to be lured to the McAlpin Hotel with faked military orders under the forged signature of Major General Malin Craig, Chief of Staff of the United States Army. Eglin would be instructed to appear in civilian clothes for a highly secret meeting, bringing with him "all mobilization and coast defense plans . . . also pertinent maps and charts and a notebook for entries at the meeting."² He was to consider the summons absolutely secret. At the McAlpin, he would be pagged under a false name and escorted to the meeting room. There he would be overpowered by Crown and by two men posing as window washers; his plans would be seized; if necessary, he would be killed; copies of *The Daily Worker* would be strewn around the premises to throw the police off the track.

Nothing came of Crown's grandiose projects. He stumbled into the hands of the authorities while trying to steal thirty-five passport blanks. The State Department and the New York police interrogated him for three days without realizing that this was an espionage case. Somebody gave the story to the press, thus warning the entire Nazi spy apparatus, and this was the first the FBI heard of it.

Crown turned out to be Guenther Gustav Rumrich, a 27-year-old American who had spent his childhood in Germany. Handsome, weak, and cunning, he had twice deserted from the U. S. Army and was a small-bore embezzler and a hunted man. By playing on Rumrich's conceit, FBI Special Agent Leon G. Turrou, who took over the case, got a full confession which implicated Dr. Griebel and the redheaded hairdresser on the *Europa*, Jenni Hofmann. The arrested Nazis broke down in FBI headquarters in New York and made full confessions. Soon the bureau had a vast store of information concerning Nazi espionage and Gestapo activities in the United States, and a federal grand jury was summoned.

Turrou made the serious blunder of believing, on the basis of a lie-detector test, that Griebel was honestly cooperating with the authorities. Surveillance over him was relaxed and, in May, 1938, he escaped to Germany on the *Bremen*. Incredible as it may seem, Turrou repeated his error by trusting the supposed repentance of a second espionage informant who also fled to the Reich.

At the trial only four defendants were present. They were convicted and received extraordinarily mild sentences, ranging from two to six years. Thus, the first round in the battle against the Nazi underground was little better than a draw. An espionage apparatus had been shattered, but its principals had escaped punishment and the Third Reich had shown that it was able to protect its agents of destruction abroad.

By the time war broke out in Europe, it was clear that Hitler's allies and dupes in the United States were engaged in two very distinct tasks.

Small, desperate, and daring groups served as spies, saboteurs, and, after Pearl Harbor, as traitors. Due to the brilliant and thorough counterintelligence work of the FBI and other agencies, they were detected, prosecuted, and, with few exceptions, convicted.

A larger group fought in the political arena with ideas, incitation, and subversive propaganda. Here, courts and juries were faced with the exceedingly difficult task of defining the frontiers between permissible political action and sedition. A Supreme Court nurtured in the liberal traditions of Holmes and Brandeis turned to the doctrine of clear and present danger for guidance.

Two years before Pearl Harbor, the Federal Bureau of Investigation infiltrated one of the most rabid of the small, paramilitary organizations of American fascism and arrested its members. The sedition trial ended in a miserable, smarting defeat for the government. Without in any way identifying the case, Max Lowenthal comments as follows in his heavily biased work, *The Federal Bureau of Investigation*:

"The case was brought to the attention of the public by Mr. Hoover in January 1940, when he sent for the press and told them that his agents had arrested a large number of men 'on charges of plotting the overthrow of the Government of the United

States.' . . . The evidence at the trial of the plotters, however, disclosed that the FBI detectives had mistaken drunken declamations and braggadocio for a gunpowder plot, that the FBI's informer had plied the alleged plotters with liquor and expensive dinners, and that the FBI had itself furnished the funds to enable them to practice at a public rifle range described by the FBI in its publicity as a place in which the revolution was being prepared."³

The case which Lowenthal so sedulously avoids identifying was that of Cassidy's Sports Club in Brooklyn. This was one of several small, closely interlinked combat organizations which sprang up in 1939 and formed part of the so-called Coughlin movement. John Roy Carlson, a volunteer undercover agent inside the American fascist movement, knew Cassidy as the "fuehrer of the Christian Front" and was himself a member of the Iron Guard, the Manhattan counterpart of the Cassidy organization. Carlson quoted the leader of the Iron Guard as follows:

"Headquarters has passed on orders that you are to train yourselves in smashing up stores—Jewish stores—and beating the brains out of Jews that put up a fight. You men will put the fear of God in the Jew. You'll be known as the Death Legion and will specialize in terror . . . Not faith, hope and charity, but faith, hope and terror."⁴

New York fascist combat groups were being organized borough by borough. They were drilled by German and Irish Republican Army experts in street warfare. They imposed secrecy and discipline on their members. They provided training in sabotage techniques and fed on the inspiring vision of civil war in America and a triumphant march on Washington. This rapidly growing fascist movement was associated with the Klan and linked with the German-American Bund, an organization of eighteen thousand tough, drilled, uniformed Nazi fighters with camps scattered across the nation. It was being spurred forward by the contagion of Hitler's victories in Europe and, in 1940, it was both evil and dangerous.

At the trial of the Cassidy group, the New York tabloids pilloried the FBI undercover agent who had risked his life by working inside the organization. They treated the affair as a vast drunken hoax on the part of a few irresponsible young men and giped about "revo-

lution with chocolate icing." As Lowenthal does, they jeered at the fact that the FBI informant had furnished liquor for a group of heavy drinkers—the theory perhaps being that he should have gained their confidence while comporting himself like a saint. Readers were to believe that Cassidy's men practiced infantry assault methods, stored bombs, and discussed sabotage and assassinations from sheer exuberance and excess of animal spirits.

In addition to Irishmen, the Cassidy group contained Nazis. Because it opposed American entry into the war, a large part of the public tended to sympathize with it. Father Charles E. Coughlin, who had at the time millions of rapt followers, hailed the Christian Front as a band of twentieth-century "Crusaders." This combination of political forces was too strong and the Cassidy group was acquitted.

When the FBI made the arrests and Director Hoover exposed the conspiracy, the closely affiliated Iron Guard organization promptly dissolved. Efforts to build a strong fascist organization of terror in the New York area were scotched. When the Nazi-controlled National Workers League made a similar attempt in Detroit, two of its leaders were indicted for incitement to riot.

This was more a change in fundamental fascist strategy than a withdrawal from violence. Dr. Hans Thomsen, chargé d'affaires of the German embassy, protested again and again against resort to those tactics of violence and crime which the Nazis had used so successfully elsewhere. In May, 1940, he cabled the German Foreign Office to demand that orders issued by the Wehrmacht to unleash sabotage in the United States be withdrawn. "If it is my chief task to prevent with all available means the entrance of the U. S. into the war and to cultivate the few valuable relationships which we still have here," he argued, "such tasks will be sabotaged outright by the above-mentioned activity of the agents of the army."⁵

While Thomsen was eventually overruled, the pro-Nazi movement in the United States in 1940 turned away from the unrealistic attempt to prepare for civil war and concentrated on building a great peace movement.

The German-American Bund and its swarm of native fascist organizations radiated outward into a vast, inchoate, and heterogeneous movement which defies exact characterization. Its one uni-

form trait was that it acted in a manner which served German interests. However, it did not necessarily and in all cases do so deliberately and with disloyal intent.

This popular movement embraced the followers of Father Coughlin and a powerfully placed clique of profascists in the Senate and House. As the nation split over the issue of military aid to the embattled democracies, the America First Committee knit together the various strands of dissent and appealed for neutrality until United States soil was invaded. Under the leadership of men such as Colonel Charles A. Lindbergh and Senator Burton K. Wheeler, America First took on the traits of a major political party.

While the out-and-out fascists never held the chief offices in the America First Committee, they provided the only disciplined, strong-willed element within it—the one group which acted as a phalanx, which was willing to work zealously and persistently and which knew exactly where it was going. The contemporary analogy is between the Communist Party and the mass organizations that it manipulates.

America First, as a whole, clearly fell within the protected area of free speech and free political activity essential to the health of a democratic society. The prestige of this “peace movement” was nonetheless tarnished by peripheral prosecutions.

One of the most extraordinary operations in the history of Congress was unearthed by William P. Maloney, Special Assistant to the Attorney General. By paying a surprise visit to the apartment of a publicity man on the payroll of Flanders Hall (a dummy publishing outfit financed and controlled by the German government) and by following the trail of some government mailbags, Maloney discovered how the American people were being hornswoggled into financing Nazi propaganda. A score of Senators and Congressmen were engaged in delivering speeches which had either been written or inspired by George Sylvester Viereck, a paid German agent whose record spanned two wars. These addresses were printed at less than cost by the Government Printing Office and mailed under frank to millions of Americans, who believed that they represented the independent opinions of their elected representatives and not those of Adolf Hitler.

Viereck finally went to jail as an unregistered Nazi agent. Mired in lies before a federal grand jury, George Hill, the rabbitlike, furtive secretary to Congressman Hamilton Fish, was convicted of perjury and served time.

Two of the most effective propaganda vehicles of America First were *Scribner's Commentator* and the *Herald*. The Justice Department developed an intense interest in how these publications were organized and financed. When subpoenas were slapped on the editors, a high-power short-wave radio receiver and transmitter suddenly vanished from the *Scribner's* plant and materialized in the home of Seward Collins, a prominent leader of the tea and lady-finger set of Park Avenue authoritarians. Editor Townsend also disappeared, but was later discovered and imprisoned for having taken \$175,000 from the Japanese government.

Douglas M. Stewart, the chief manipulator of these "patriotic" publications, testified concerning his unorthodox methods of financing. Wads of bank notes were hurled by unknown hands through the open windows of his house and left by pixies elsewhere on the premises. Federal Judge Edward C. Eicher thought this account so preposterous that he illegally jailed Editor Stewart for contempt. In March, 1947, the United States tried Stewart for perjury and brought to the stand Baron Heribert von Strempel, who had once been the German embassy's pay-off man for greedy Americans. The baron testified that he had handed Stewart ten thousand dollars in small denominations at a secret meeting in a New York hotel. The jury, however, preferred to believe that the case had been concocted by the Justice Department and the FBI and that Stewart was, as he claimed to be, a much maligned patriot. It acquitted him.

The one great effort to crack down on the entire conglomerate of American fascist organizations was the mass conspiracy trial in Washington. On the direct orders of President Roosevelt, a federal grand jury was summoned in Washington in July, 1941, to probe the ramifications of the disloyal movement and indict its principals. Three grand juries heard evidence intermittently for over two years. The indictments that issued charged thirty men and women with violating the Smith Act in conspiring to set up a Nazi-type government in the United States and "cause insubordination, disloyalty,

mutiny, or refusal of duty" by members of the American armed forces. The conspiracy was spelled out as active cooperation "with each other and with leaders and members of the said Nazi Party."

The prisoners before the bar ranged from Joseph Ellsworth McWilliams, rabble rouser, apostle of terror, ex-Communist, and leader of the so-called American Destiny Party, to the suave, intelligent brain-truster of American fascism, Lawrence Dennis. The roster included "the Duke of St. Saba" (in reality, a small-town lawyer named Broenstrupp, expert at soliciting money from credulous and faded females); the former asylum inmate, C. Leon de Aryan (who had been dishonorably discharged from the American Army under a less euphonious name); the hysterical Elizabeth Dilling; and Robert Noble, fuehrer of the National Copperheads, who had written "To hell with MacArthur" at a time when other Americans were dying at Bataan. The gray, lifeless Colonel Eugene N. Sanctuary, reserve officer in an Army too busy to purge itself of disloyal Americans, was also among the accused. When Sanctuary later sued for libel on the grounds that he had been called an American Quisling, Justice Ferdinand Pecora termed the description apt and defined the term as "a person who voluntarily serves his country's enemies."

This galaxy of patriotic Americans invented the courtroom tactics which the Communist Party leaders were to ape when they were tried under the same statute in 1949. The defense lawyers leveled a continuous barrage of objections, many of them fanciful and insulting, at Edward C. Eicher, the aged, ailing, and harassed trial judge. The defendants delivered long political harangues and the audience of fascist sympathizers which packed the courtroom howled its approval. Whether or not the purpose of this was to provoke the judge, these tactics helped bring about his death during the trial.

For over half a year the jury had listened to some 3,500,000 words of testimony. With Judge Eicher dead, Prosecutor O. John Rogge was sent to Germany after the Nazi defeat on a fishing expedition for new evidence. The clear inference was that, after five years of investigation, the Justice Department had been unable to find enough facts to prove its case.

Returning from Germany, Rogge disgorged what he alleged he

had discovered, not before the court, but in a public speech. For this willful violation of security regulations, he was fired. At the end of 1946, the case came up before the Circuit Court of Appeals for the District of Columbia, which released the defendants for the sound reason that they had been denied that speedy trial which the Constitution guarantees.

The marked difference between this case and the trial of the Communist leaders was that the latter had acted collectively and in concert to further a definite political plan. The alleged Nazi seditionists, however, were the leaders of small, independent groups. Some of them had met for the first time when brought before the grand jury or put on trial. Intensely ambitious, obsessed with delusions of their own importance, one of the many things they were unable to do was cooperate. The case was thus poisoned at the outset by the fact that there was no proof whatsoever of an all-embracing conspiracy.

Some of the merchants of hate had incited to mutiny and desertion; others had urged violence and riot; still others might have been brought to book as ordinary swindlers. The propaganda value of convicting self-styled political leaders of sordid and petty felonies would have been greater than that of trying them as agents of a world-wide ideology. However, the Justice Department had chosen the more dramatic course of regaling the public with a grand show trial, reading hundreds of pages of Nazi government directives into the record and giving the jury a boring, postgraduate course in modern European history.

The years of the Second World War were the high-water mark of liberalism in Supreme Court decisions. The shadow of the dead giant, Holmes, towered over the court, assuming forms which were sometimes grotesque and exaggerated. Thus, by a five to four decision, the tribunal released a certain Hartzel who had surreptitiously distributed fascist propaganda among American staff officers in time of war for the avowed purpose of weakening their will to fight. The court held that Hartzel should go free because no clear and present danger had been shown and because he had not made a direct appeal for mutiny and insubordination.⁶ Unlike the pacifists and Socialists, who were imprisoned in World War I, Hartzel's record indicated sympathy with the enemy. After this decision, it was plain

that the Espionage Act would be useful only as a means of jailing fools and crackpots.

As distinct from the chaos in World War I, responsibility for counterespionage work was centralized. The Army and Navy intelligence services worked independently, but local police departments were required to refer all loyalty matters to the FBI. In contrast to the excesses of the American Protective League vigilantes in the First World War, citizens were urged to investigate nothing themselves, but report all indications of subversive activities to the Federal Bureau. In one day, the FBI received 2800 complaints—many of them fantastic, absurd, or the spawn of malice. By investigating these matters in a central agency equipped to sift fact from fiction, the government prevented dangerous outcroppings of irresponsibility and intolerance and, at the same time, minimized the possibility that actual enemy agents would escape because of incompetent investigation.

The FBI staff was rapidly expanded and new agents were trained in an intensive four-months course with twelve hours of daily classroom instruction. One of the new responsibilities of the bureau was to devise security systems for defense plants. Over two thousand of these installations were subjected to exhaustive investigation. In most cases, precautions against sabotage and espionage were either nonexistent or woefully inadequate. Specially trained FBI agents worked on this problem, planning guard systems, identification passes, control of visitors and strollers, and the proper safeguard of secret plans and installations. The security-sensitive areas of American war industry eventually ceased to operate like a tobacco auction.

The Federal Bureau of Investigation had begun to probe into Nazi activities shortly after Hitler came to power in the Reich. By 1938–1939, the bureau began gathering dossiers on German aliens and devoting close attention to the Bund and other pro-Nazi groups. Soon pressure groups charged that the FBI was developing into a sinister political police system, which was spying on the lives and menacing the liberties of all Americans. By the time of the Nazi-Soviet Pact, Communist fellow travelers joined the chorus of complaint.

The greatest reservoir of German espionage agents was the Bund. Special agents of the FBI took thousands of movie and still shots of Bundists at their various camps, uniformed parades, and mass meetings. Files were built up on all implicated in the Nazi movement.

When the Japanese struck at Pearl Harbor, the Federal Bureau was ready to paralyze the nerve centers of fascism in America. While the Japanese bombs were still falling, the FBI office in Honolulu was in communication with Washington and receiving orders. During the quiet Sunday afternoon of the enemy attack, every FBI officer was recalled to his post; the organization was put on 24-hour duty; all field offices were ordered to remain open day and night, and all annual leaves were cancelled. Japanese diplomatic premises in the United States and Hawaii were placed under protection. All Japanese nationals were taken off planes and refused transportation. Air express to or from Japanese was denied and instructions were issued to stop all press service to Japan and occupied China and all overseas telephone communications by Japanese.⁷ Within a matter of hours, citizens of the enemy power had been effectively quarantined until further notices.

Those Japanese citizens who had been under surveillance and marked as dangerous were arrested. On December 7, twenty-six squads of FBI special agents and local police, equipped with three-by-five cards showing the names, addresses, and citizenship status of the Japanese to be arrested, scoured the Hawaiian Islands. Similar arrests were made on the mainland and, on December 8, when Germany and Italy declared war, Germans and Italians, previously classified as dangerous to national security, were also taken into custody. The organization of this roundup proceeded at such top speed that instructions from the Washington FBI headquarters were frequently dictated directly into teletype machines to be carried over the bureau's twenty thousand miles of telephone circuit. Within thirty hours after the Pearl Harbor attack, some seventeen hundred enemy aliens, comprising the hard core of potential saboteurs, were in custody, as compared with only sixty-three arrests during the first twenty-four hours after the 1917 American war declaration.⁸

This swift and efficient operation forestalled any possibility of a concerted movement by fifth columnists in the wake of the Pearl

Harbor attack. While hysterical reports of Japanese sabotage circulated throughout the Pacific Coast and in Hawaii, not a single act of sabotage occurred in the United States during World War II.

During the war, the bureau arrested over sixteen thousand alien enemies, of whom about four thousand were confined for the duration, some six thousand were placed under restrictions but paroled, and the remainder were released. Some four thousand firearms and hundreds of thousands of rounds of ammunition were seized as contraband in raids on the premises of enemy aliens.

There was, of course, no question as to the legal right of the FBI to arrest and intern. The Alien Act of 1798 authorizes the apprehension of all "natives, citizens, denizens, or subjects" of any nation which wages war on the United States or attempts "predatory incursion" against its territories.⁹ This law becomes effective when the President makes "public proclamation of the event"—a step which Roosevelt took on Pearl Harbor day. The Supreme Court has held that the nation has "full right to take the persons and confiscate the property of the enemy wherever found."¹⁰

Nonetheless, as a measure of largess, Alien Enemy Hearing Boards were established, which heard evidence and recommended internment, parole, or release of the arrested persons. The final decision rested in the hands of the Attorney General.

In addition to its other functions in the wartime alien control field, the FBI searched over 25,000 dwellings for such contraband as firearms, explosives, cameras, and short-wave radio receivers; made over 2,000 investigations of naturalized citizens suspected of having acquired American nationality by fraud, and conducted over half a million employment verifications of subjects of the Axis states at war with the United States.¹¹

By the time of the Pearl Harbor attack, the Nazi espionage organizations on American soil had been largely destroyed. Perhaps the most famous counterespionage exploit of the FBI was its penetration of the Duquesne ring during the uneasy years of American neutrality.

The story began in February, 1939, when an American airplane draftsman of German descent, identified in FBI files as Harry Sawyer, returned to the Reich to visit his mother. As he stepped off

the gangplank, a Gestapo agent accosted him with the ominous message: "You will wait to hear from us in the near future."

Sawyer found work in a steam turbine construction plant in Mulheim. Immediately after the outbreak of war in Europe, he was approached by Gestapo agent Dr. Gassner and Major 'Nikki' Ritter of the German Secret Service—an important intelligence operative who had worked for the Reich in the United States. Warned that he was partially non-Aryan and that his whole family might be sacrificed if he refused, Sawyer was asked to serve as a spy against his country. In this terrible predicament, Harry Sawyer acceded and became a Nazi intelligence agent, but he also made contact with the American consulate in Cologne and offered to risk his life working with the FBI to expose and destroy the apparatus.

Sawyer was sent to an espionage training school at Hamburg, where he was taught microphotography and coding. When he had graduated, he was given a thousand dollars and his code book—Rachel Field's novel, *All This and Heaven Too*. In his watchcase, the double agent carried five sets of instructions which had been microfilmed to the dimensions of a postage stamp. Three of these were to be turned over to his chief contacts; the other two were for his own use. Sawyer had been told by his German principals that he was to contact an amateur radio operator in the United States and make arrangements for regular transmission of the spy data in code to the Reich.

This was a magnificent stroke of luck for the FBI. Sawyer was to be the bottleneck through which the stolen data would funnel. Necessarily, his contacts would ramify through the espionage apparatus and he could keep the other German spies away from his radio transmitter for security reasons.

The Federal Bureau of Investigation set up and operated the short-wave sender for the Nazi spy ring. It also provided Sawyer with offices on Forty-second Street. Here, masquerading as a consulting diesel engineer, Sawyer sat in a room wired for sound and equipped with an X-ray mirror and bought espionage reports over the table. The grimaces, gestures, bragging, and bargaining of his Nazi sources were permanently recorded for future courtroom use. Oddly enough, the spies thought themselves brilliant and supremely

capable. They regarded both the FBI and the American people as scarcely better than Simple Simons.

Sawyer cautiously spread the word around that he was buying information for Germany. The little, independent agents began to flock to his office. Shrewd or flamboyant, mercenary or fanatical, they were all ready to trade in death for small payments. As the United States moved closer to war, instructions went out from the Reich to its American underground: ". . . in the future technical questions do not interest us as much as military questions."¹² Data was requested specifically on the movement of American pilots to England and the transportation means utilized. German agents prowled along the waterfront, drank with sailors, and reported the departure dates, routes, camouflage, and cargoes of Allied vessels. This information was to be relayed to Germany so that coded orders would go out to U-boats at sea to track down and destroy their quarry.

The reports Sawyer transmitted through the FBI-operated short-wave radio station were falsified, wherever necessary, for security reasons. Leading members of the espionage ring, however, sent duplicate reports by mail to various letter drops in neutral countries and by courier. There was always the risk that the German authorities would detect these discrepancies, infer that Sawyer had betrayed them, and take the reprisals against his family which they had threatened.

In June, 1941, the FBI rounded up the thirty-three members of the apparatus. For almost two years, the bureau had worked quietly and systematically inside the largest espionage organization in the history of the United States. Special agents had taken hundreds of photographs and thousands of feet of motion picture film of the spies at work, including shots of the actual transfer of secret data. For sixteen months, the Nazi agents had communicated with their superiors via the special radio station on Long Island, unaware of the fact that it was FBI-installed and operated. From May, 1940, until the actual arrest of the members of the ring, almost daily contact had been maintained with Germany over this short-wave transmitter. All highly secret data furnished by the German spies had been doctored to make it worse than useless.

Less than a month after the Pearl Harbor attack, the thirty-three German spies were convicted and given sentences totaling more than three hundred years' imprisonment.

The most dramatic figure in the espionage ring was Frederick Joubert Duquesne, a 62-year-old South African adventurer, who had spied for the Herrenvolk in three wars. He was by this time crusty, shabby, defiantly suspicious, and going to seed, but still interested in women. After narrowly escaping being shot as a spy in the Boer War, Duquesne had turned explorer and returned from the wilds of Bolivia as the sole survivor of a party attacked by Indians.

In the First World War, he was believed to have sabotaged and sunk a considerable number of British vessels, including the *Hampshire* on which Lord Kitchener perished.

On February 18, 1916, the S.S. *Tennyson* caught fire on the Bahia-New York run and several lives were lost. Investigation disclosed that the fire had started in some boxes, labeled "minerals," which Duquesne had shipped. The explorer had the temerity to attempt to collect insurance on his goods and was soon picked up by the New York police on a charge of fraud. When his rooms were searched, a large file of clippings on disasters, bomb explosions, and incendiary fires at sea was discovered.

While in custody in New York, Duquesne was confronted with a request by the British government that he be extradited to stand trial for murder. The astute Boer promptly admitted the insurance fraud charge, giving insanity as his reason, and was sent to Bellevue Hospital for observation. He then sawed through the bars of the prison ward, jumped to the roof of an ice shed below him, scaled a seven-foot spiked fence, and vanished.¹³

In February, 1940, Duquesne reappeared in New York to serve as a German espionage director behind the business front of Air Terminals Company. Jittery, a heavy drinker, a man who lived in chronic fear of planted dictaphones and FBI undercover agents, the veteran agent was a vast clearing house for engineering data on American weapons. He provided a mass of information, much of which was wide of the mark. As Duquesne's instructions showed, the Germans, for some incomprehensible reason, used their exposed

espionage channels to procure such aboveboard and routine material as "copy of United States Senator Barbour's Espionage Law."¹⁴

Also among Sawyer's key spies was Lilly Stein, a would-be Mata Hari who had planned to set herself up as a *femme fatale* in America for the Abwehr (German military counterintelligence), but had failed and was down on her luck. Being Jewish, she had agreed to become an agent to save her life and had previously helped pave the way for the German blitz invasion of Belgium and France.

A more dangerous operative was Everett Roeder, the thick-jowled, Brooklyn-born designer and inventor at the Sperry Gyroscope Company, which made important components of the Norden bombsight. Tapped for espionage as early as 1937, Roeder was the most prolific—and probably the second most valuable—source the Nazis had in America.

These were the three contacts to whom Harry Sawyer had delivered microfilmed instructions from the Reich. An even more important agent, whose security was far more carefully guarded, was Herman Lang, a foreman at the Norden plant. The Nazis had tried to reproduce the bombsight on the basis of sketches and data which Lang had reproduced from memory while in Germany. Dissatisfied with the result, they wanted complete blueprints and Lang, who lived in fear of discovery, was desperately anxious to return to the Reich. Arrangements were made, but the timid foreman procrastinated and was rounded up by the FBI, together with his thirty-two espionage coworkers.

One major espionage ring remained to be destroyed. The FBI first got wind of its existence from letters containing both *en clair* and secret messages intercepted by the British censorship at Bermuda. In March, 1941, the leader of the new organization, who had just taken over in the United States, was killed in a traffic accident.

The dead man carried papers identifying him as Julio Lopez Lido and was staying at the Hotel Taft. In his hotel room, an alert New York detective noticed a map of the United States with crayon markings in red and blue, an enormous supply of headache tablets, and a folding electric iron.

None of this may have seemed particularly sinister. However,

Police Commissioner Valentine's detectives identified the headache tablets as a German preparation used for secret writing, the electric iron as a developer, and the crayon marks as denoting American military installations. The case was handed over to the FBI.

Lopez Lido turned out to be Captain Ulrich von der Osten, a former officer of the German General Staff who had been sent to Spain to aid Franco in his insurrection. An important director of the Nazi world-wide espionage system, von der Osten had proceeded from Japan to the United States via Honolulu.

The spy was in possession of a Spanish passport and had papers indicating that he was on a diplomatic mission for Spain. An official of the "neutral" Spanish consulate in New York claimed his corpse, although the Franco regime was well aware of the fact that von der Osten was a German agent.

An interesting aspect of the case was the close working relationship between Nazi and Japanese agents. The earlier Griebel-Lonkowski group had sold espionage gleanings to the Japanese at a substantial profit. By contrast, von der Osten described his lengthy report on Pearl Harbor defenses, which was intercepted before reaching its destination, as of special interest to "our yellow Allies."¹⁵

With von der Osten dead, the ring was turned over to Kurt Friedrich Ludwig, an Ohio-born pocketbook-maker, who had spent six years in Hitler's Germany and had been arrested by the Austrian authorities as a spy prior to Hitler's invasion of that country. This pale, short, owlish, balding individual soon proved to be more energetic than capable. With his 18-year-old secretary and female companion, Lucy Boehmler, Ludwig made an automobile tour of army camps and military installations. He photographed bridges, harbors, and encampments and plied soldiers with seemingly naive questions. FBI special agents followed him as he drove at ninety miles an hour.

The technical and scientific adviser to the ring was known only as "Robert." Fortunately, Walter Morrissey, the patriotic head janitor at the German consulate building in New York, decided that he could help the United States by rescuing trash from the consulate incinerator. Confidential waste was burned in the presence of Nazi officials, but Morrissey tampered with the flue and later rescued the charred documents.

These fragments identified Robert as Paul T. Borchardt-Battuta, a partially Jewish veteran of the Kaiser's officer corps with an enviable combat record. After an extensive but helter-skelter education in various German universities, Borchardt had traveled through Africa and the Near East, become a Mohammedan, and changed his name legally to Abdul Bey Battuta Ben Borchardt. A member of that large group of pseudoscientific obsessionals who range from charlatans to hopelessly sincere crackpots, Borchardt believed that he had located the mythical lost city of Atlantis and was anxious to dredge for it in the north Sahara desert.

He returned to Germany, taught at Munich University, and became a disciple of Karl Haushofer, the pundit of geopolitics. At first the Nazi seizure of power left him undisturbed. Then in 1938 his small world crashed around his ears; he was thrown in a concentration camp, stripped of his property, and forced to divorce his Gentile wife. Released by the Gestapo, Borchardt was given an assignment to do espionage work in the United States, where he posed as a refugee.

In March, 1942, the eight German agents who constituted the Ludwig organization were convicted. At his trial, Borchardt said stiffly that he would remain true to his code of honor and would rather die than reveal the secrets of the German Army.

Thus, many months before Pearl Harbor, the Federal Bureau of Investigation, with the aid of municipal police, had shattered the chief Nazi espionage organizations in the United States. The Germans found it extremely difficult to replace these cadres. The chief problem was communications. Prior to the outbreak of war in Europe, the German shipping lines had provided an excellent courier channel for funds, data, personnel, and directives. The British blockade cut this off. The spies then turned to short-wave broadcasting, but the FBI discovered their radio stations. Closing of all German and Japanese consulates immediately after Pearl Harbor locked another communications system.

Thereafter, reliance had to be placed on secret-ink messages in letters to neutral countries. This procedure was uncertain, dilatory, and entirely unsuitable for lengthy reports. Moreover, overseas mail had to run the gantlet of British and American counterintelligence

inspection. The seemingly foolproof method of microfilmed spy reports was defeated by exposure to ultraviolet light.

In desperation, the Nazis turned to Mexico, where control over bootleg, short-wave stations was faulty and where couriers could take reports to neutral European ports. One of the most ambitious projects devised was for a prominent German-American Bund leader to go to a Mexican Pacific coast port, take off in a fishing smack with the accumulated harvest of months of concentrated espionage work, and deliver the material at sea to a lurking submarine, probably Japanese, which was to surface by prearrangement.

The directing brain of this exploit was Count Vosniatsky-Vosniatsky, a White Russian who lived in a fortress estate in Connecticut. The count had acquired a fortune by marrying an American heiress twenty-two years his senior. He directed the virtually nonexistent International Russian Revolutionary Fascist Party and was an expert on firearms, sabotage methods, and street fighting. Harsh, grim, bitter, and fanatical, he was generally regarded as an obnoxious crackpot. The count was on close terms with high Nazi officials and had been carefully watched by the FBI for three years.

Plans for the conspiracy were laid at a Chicago meeting attended by the count, four Nazi activists, and a Ukrainian priest. The priest kept the FBI posted.

The count toured the United States by car, visiting the nation's leading war plants and receiving data from about forty pro-Nazi sources. Wherever possible, falsified plans and blueprints were put within reach of the grasping hands of these known Nazi agents.

His tour completed, the count packed his store of data in a suitcase and turned it over to a German confederate. The latter stowed both the valise and Bund leader Kunze in the luggage compartment of his car and crossed the Mexican border.

At this point, the Mexican police took over. Kunze idled for a week at a Mexican Pacific port, then one night took his suitcase out to sea in a fishing boat with the police following him. The Mexican authorities lost the trail and Kunze returned without the suitcase, having presumably completed delivery. The members of this ring were nonetheless arrested and convicted in the United States.

The last great effort of the Nazi High Command was to send teams of saboteurs to the United States to burn, blast, and demolish the key industrial installations of war production and spread panic among the people. These saboteurs were picked Bundists and pro-Nazis, most of whom had returned to Germany to fight in the Wehrmacht.

The story of their attempt and apprehension is well known and will not be repeated here. The FBI considers it one of its two or three outstanding accomplishments.

The importance which the German High Command attached to this venture is indicated by the fact that the two teams of four saboteurs were each given approximately \$175,000 in bona fide American currency with which to establish themselves. Before sailing, they were taken on a three-day tour of German aluminum and magnesium plants at which the units vulnerable to sabotage were pointed out to them. An equally important part of their training was concealment of identity—memorizing their fictitious names, practicing English, poring over American newspapers and magazines so that no slip of the tongue would reveal that they had been absent in Germany.

The saboteurs' tools were, in essentials, identical with those used in World War I. Each of the two groups carried four waterproof cases, containing demolition explosives sufficient to last for two years, incendiary pencils, precision watch mechanisms which could be timed to the minute to set off explosions many days later, electric matches and blasting caps, sulphuric acid capsules, and blocks of TNT disguised as lumps of coal.

With this, the eight saboteurs were supposed to cripple three great aluminum installations and a cryolite plant—the highly vulnerable, raw-material processing core of the American aircraft industry—and also demolish the Hell Gate Bridge, the Horseshoe Curve near Altoona, and various railroad terminals.

By presidential order, the saboteurs were tried before a special, secret military commission sitting in Washington. All were sentenced to death, but on recommendation of FBI Director Hoover, the punishment of one was commuted to life and that of another to thirty years' imprisonment.

The Supreme Court stayed the executions to consider the right of the military court to try the case. It held that these men were part of an invading force on American soil, charged with violation of the laws of war and hence subject to summary military justice. There were two reasons for the secret trial. The first was to prevent airing in open court the information obtained concerning German plans and methods in future sabotage operations. The second was to impose swift and terrible punishment to deter fresh bands from attempting the same task.

The Nazi plan had been to send sabotage parties to American shores every two weeks. There was no underground German organization in the United States for the saboteurs to contact since the FBI had already rounded up the spy rings. Thus eight isolated individuals—four machinists, an apprentice optician, a cook, a waiter, and a domestic servant—were supposed to cripple one of the greatest industries in the United States. As preparation for this venture of shattering aluminum production, they were given an intensive but hurried training and equipped with implements of destruction which had been in use for a generation. The project seemed the product of a nightmare mind. Yet Kristoff and Wozniak, who wrought such wholesale destruction as agents of the Kaiser in America, were men of even less education and capacity.

The record on espionage is clearer. After Hitler's defeat, the United States was able to attempt an appraisal. Documents, now in the possession of the FBI, were found in the bomb-battered government buildings of the Third Reich that Hitler boasted was to last for a thousand years. These papers testify to a raging and protracted argument between the Nazi High Command and the German Foreign Office as to whether the game of espionage was worth the candle.

This bitter dispute reached a crescendo after the FBI cracked the main espionage ring in the United States and arrested the thirty-three spies. Hans Thomsen, chargé d'affaires in Washington, characterized the German agents as "completely unadapted for such activity." He believed that "the American authorities knew of the entire network, which certainly was no work of art in view of the naive and

to a certain extent downright stupid manner in the way these people carried on." 16

Admiral Canaris of the Abwehr wrote a furious memorandum on July 23, 1941, which listed the achievements of the three chief German spies in the United States, declared that Thomsen was talking through his hat, and demanded that he withdraw his accusations.

The admiral rated the reports of the professional spy, Fritz Duquesne, as "valuable," "very good," and "good." He credited him with delivering important information on "U.S. gas masks, radio control apparatus, leakproof fuel tanks," and other items.

The engineer Everett Roeder had provided data on bombsights, blind-flight instruments, course and bank indicators, speech scramblers, and radio equipment on planes delivered to Russia.

The star of the espionage ring, however, was Herman Lang, the foreman in the Carl L. Norden, Inc., plant. Lang had provided data "important and decisive in the prosecution of the war" and his information had enabled Germany to "reconstruct" the Norden bombsight. Admiral Canaris added that "the American bombsights are far superior to those of other powers" and that "the pilots are instructed to destroy the bombsight in case the airplanes must land in enemy territory."

Admiral Canaris' claims were obviously self-serving. His bureaucratic organization was under attack and he was anxious to inflate its importance and value.

A more objective statement can be found in Colonel Leslie E. Simon's work, *German Research in World War II*. There is no mention of espionage in its pages. His conclusions concerning German bombing accuracy are: "The military improvidently relied on the judgment and skill of a pilot in a dive bomber for hitting point targets, and after the dive bomber was driven from the air by Allied fighters the Luftwaffe never hit anything smaller than acres or townships." 17

Thus, where the Nazis acquired critically important military data through espionage, they often failed to use it. The poverty of their organizational methods in the espionage field was matched by their

technological backwardness in sabotage and by their bureaucratic feuding in the over-all conduct of the war.

The Soviet spies were men of a different stamp and of a different order of intelligence and capacity. The contrast between the two espionage systems also reflected a changed situation in the weapons field. By 1945, there was no possible choice of world war strategy. In any future, all-out war, a nation would either have nuclear weapons or else go under. The Soviets were quick to recognize this. Their spies therefore concentrated on securing vital data on atomic bomb production and in this they succeeded.

Chapter Twelve

THE GOVERNMENT LOYALTY PROGRAM

NO PHASE of the battle against subversive activities has aroused as much controversy as the government loyalty program. It has been attacked as thought-control and as the embryo of a police state. Atomic scientists have complained that it contributes toward an atmosphere of super-secrecy which hampers free research and drives the best minds in nuclear physics away from military projects. In Congress, the Loyalty Review Board has been assailed on exactly opposite grounds—for having sheltered subversives within the federal service.

The government loyalty program marks a major departure from American traditions and in calm times it would probably be repudiated. It was born in crisis, when the nation was in the limbo between war and peace, at a time when convincing evidence had been produced of large-scale Soviet penetration of government. After the Communist invasion of Korea, the general public demanded a more summary procedure to oust all whose loyalty was suspect.

The fuse that touched off the program was the Royal Commission Report on Soviet espionage in Canada. The fact that the Kremlin employed spies was not news; the extent of its espionage operations was. The report proved that the Canadian Communist Party was a servant of the Russian espionage apparatus and that its two chief leaders, Sam Rose and Fred Carr, were paid Soviet agents. An equally significant fact was that the Canadian spies were eminent

and respected officials who had been drawn into the net from fellow traveler organizations. They seemed to be merely liberals with a leftist tint—intelligent, creative, and successful members of society whose loyalty would normally have been taken for granted. Had the American loyalty program been in effect in wartime Canada, a large majority of them would have had to weather full-field investigations.

American security officials assumed correctly that larger and more effective Communist infiltration had occurred within the United States government. The stakes here were higher. Washington in wartime had become the radiating center of world power, the place of authority and decision for the entire democratic world, the arsenal and military research nucleus of the antifascist coalition.

If the motive was greater, so also was the opportunity. The intellectual climate of the New Deal had favored a florescence of every species of maverick left-wing opinion. During the war years, Communists and fellow travelers had entered the government in droves. At the time, the Soviet Union was an ally and the American Communist Party "was actively engaged in working toward victory over the Axis."¹ During wartime, most government agencies had considered Communist affiliations to be unimportant.² In the Office of Strategic Services, it was common knowledge that the employment of pro-Communists was approved at very high levels provided they were suited for specific jobs.

After 1945 it became necessary to eliminate from government service those men and women who owed ideological allegiance to a foreign state during a period of conflict with that state. Separation of the hard core of subversives from the liberals, social reformers, and independent radicals who were loyal to their country proved difficult because the former had been drilled in camouflaging their true opinions. Under these conditions, some injustice was inevitable. The problem was to minimize it.

The Constitution of the United States vests in the President responsibility for the execution of the laws. Subject to Act of Congress, he can hire or fire any subordinate officer he pleases. In 1795 President Washington wrote Timothy Pickering: "I shall not, whilst I have the honor of administering the government, bring men into

any office of consequence knowingly, whose political tenets are adverse to the measures the general government is pursuing; for this, in my opinion, would be a sort of political suicide.”³ President John Adams removed officeholders for purely political reasons and Thomas Jefferson did the same. Under Andrew Jackson, the spoils system became a national institution. A large part of Lincoln’s time and energy was consumed in seeing that deserving Republicans found places at the public feeding trough.

While every capable President has reserved the key policy positions for men who shared his basic philosophy, public opinion has slowly turned against the notion that the government service as a whole should be political and that public office should be a bird sanctuary for lame ducks and others incapable of earning a living in the bleak, outside world. As early as 1884 the Civil Service Commission promulgated Rule I against the spoils system:

“No question in any form of application in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions, or affiliations, and all disclosures thereof shall be discountenanced.”⁴

This rule was in effect until 1939, when Congress became alarmed over infiltration of the government by adherents of the two struggling European totalitarian alliances. The original Hatch Act “to prevent pernicious political activity” sought to bar from the government members of political organizations that advocated the overthrow of constitutional government in the United States. The 1942 War Service Regulations of the Civil Service Commission provided that any federal employee might be disqualified if there was “reasonable doubt as to his loyalty.”⁵ Several years later, the heads of the War, Navy, and State departments were authorized to discharge anyone summarily whom they considered a bad security risk.

Prior to the inauguration of the Truman loyalty program, each agency coped with the problem in its own way and arbitrary and unjust actions were widespread. A notorious instance was the decision of the State Department to fire ten officials on security grounds without giving them either a clear picture of the charges against them or anything resembling a fair hearing. Bert Andrews wrote a

series of articles on "the case of Mr. Blank"—one of the ten men thus ousted. The *Herald-Tribune* thought that the State Department's action indicated a trend toward "purges, drumhead courts, liquidations and all the catastrophic evils they bring with them . . ." Andrews was awarded the Pulitzer Prize for his articles and the ten were finally permitted to resign without prejudice.

The State Department faced a peculiarly serious loyalty program after V-J Day. Almost thirteen thousand employees of disbanded emergency wartime agencies had been dumped on it by executive orders. Most of these men had been appointed in a hurry to do special jobs in time of war. Although there had been a slapdash loyalty program of sorts since 1939, some 70 per cent of the employees of Office of War Information transferred to State Department on August 31, 1945, had not yet been cleared by the Civil Service Commission.⁶

The reorganization problem was to assimilate this mass of new personnel into the State Department and "cull out the 'rotten apples.'"⁷ For this purpose, there was a trained corps of investigators under Chief Agent Thomas F. Fitch and a three-man security office under Robert Bannerman. These two agencies were at each other's throats and struggling for bureaucratic power. Although Congress had appropriated \$400,000 to enable Fitch's corps to investigate State Department personnel, the Bannerman group had excluded it from liaison with the FBI!⁸

In October, 1945, Secretary of State James F. Byrnes appointed a salty, cigar-chewing lawyer named Anthony J. Panuch to reorganize the State Department. Panuch thought that Bannerman's men were "acting not only as investigators but as prosecutors, court and jury—a 'kangaroo court.'"⁹ His second complaint was that "the 'Security Committee' had excluded from its membership the State Department's outstanding expert on Communist doctrine and subversive techniques of infiltration!"¹⁰ This was Sam Klaus, a swarthy, intense, dynamic attorney of social democratic background. As author of the White Paper on the Nazi connections of the Peron dictatorship in Argentina, he had made himself *persona non grata* to the business-as-usual crowd in the Department and, as a "pre-

mature anti-Communist," he had alienated left-wing New Dealers during the wartime honeymoon.

The operating methods of Panuch and Klaus were illustrated by the case of Carl Aldo Marzani. Toward the close of 1945, Panuch had decided that he needed graphic presentation of the State Department reorganization plan. Ex-sergeant Carl Aldo Marzani, newly transferred to the State Department from OSS, was recommended to him by Major General Otto Nelson. Marzani was not a cloak-and-dagger man; he was a headquarters specialist. Joining the OSS in 1942, he had made graphic presentations of capabilities studies for General of the Armies Marshall and his staff. This required access to top-secret military information at all times. In addition, Marzani alleged that he was the man who had selected the bombing targets for General Doolittle's air raid on Tokyo. Few officers in the United States Army had been as saturated with super-secret war data as the OSS sergeant.

Marzani had been at work on his presentation project for six months when Bannerman of the Security Office presented Panuch with the first batch of completed loyalty investigations. One of the folders stamped 'top secret' was entitled Carl Aldo Marzani. Panuch read the report immediately. His reaction was: "This is incredible." ¹¹

The Marzani story, as it finally unfolded, was interesting. He had been born in Rome in 1912, the son of a lifelong antifascist. Forced to emigrate after Mussolini took power, the Marzani family knew grinding poverty in a small Pennsylvania town. Marzani's mother was a seamstress. Determined to get an education, Carl Marzani worked from four until midnight in a filling station, attending high school by day. Despite this tremendous handicap, his scholastic record was so outstanding that he was given a scholarship at Williams. Here he majored in English, also studying quantum theory and relativity. He won the Moody Fellowship and was sent to Oxford, took time off to go up to the front with a Loyalist column in the Spanish Civil War, returned to Oxford, graduated, and took his wife on a trip around the world.

Back in the United States, Marzani joined the Communist Party

secretly under the pseudonym Tony Whales. According to the testimony of New York Police Department detective Archer S. Drew at his trial, Marzani told a Communist meeting during the Hitler-Stalin Pact era that "the young men in the Communist Party must get into the army so that we can disintegrate the morale of the men in order that the Communists may take over."¹² Marzani was not a mere rank-and-file Communist. He was, according to Drew, a member of the national committee—the second highest leadership echelon of American Communism.¹³

After urging infiltration of the Army of the United States for purposes of mutiny and armed revolution, Carl Marzani went to Washington, joined a top-security war agency and, despite youth, inexperience, and a distinctly shady political background, shot upward in the bureaucracy like a rocket. In 1943 the Civil Service Commission accused Marzani of being Comrade Tony Whales. Under oath, Marzani denied the charge. As the undercover witnesses against him were not brought out into the open, he managed to escape being rated ineligible for government employment on loyalty grounds. As he had been cleared, no precautions were taken to bar him from top-secret data.

On June 1, 1946, Panuch called Marzani into his office. The meeting was informal in the extreme with the two men calling each other Carl and Joe. There were no witnesses; there was no transcript of what was said, and Marzani was not put under oath.

Neatly dressed, calm, and ironic, Marzani listened to Panuch's charges. "As I reached the end of my recital," the latter recalled, "I thought I detected a look of relief pass over his face. When I had concluded, he said 'Is that all?' His comeback to my amazed 'Good Lord, isn't that enough!' furnished another surprise. 'Joe, all of that is old stuff; there's nothing to any of it.'"¹⁴

Marzani pointed out that he had refuted the very same charges before the Civil Service Commission's Loyalty Board and that the result had been acquittal. Panuch was shocked. The State Department Security Office, in its damning report on Marzani, had failed to mention the fact that he had already been exonerated by the government's top loyalty board. Not a single member of the Security Office had read the transcript of the Civil Service Commission

proceedings or "talked to any 'flesh and blood' witnesses with respect to the charges." ¹⁵

Panuch sent Klaus to New York to get evidence. The State Department investigator got permission to inspect the secret files on "Tony Whales." These had been compiled by the Anti-Subversive Squad, set up by Mayor LaGuardia in September, 1939, for the sole purpose of infiltrating Communist and Nazi organizations.

The squad consisted of undercover men of all races and creeds. They were furnished with false identification papers—such as Social Security cards, taxi drivers' licenses, and teachers' licenses. They lived away from home, made their reports to the Martin Pearson Company, a wholly fictitious concern, and after infiltrating subversive organizations tried to capture posts such as recording secretary, which would give them access to membership lists. ¹⁶

Klaus found a star witness in the college-bred Negro detective, Archer S. Drew, who was prepared to swear to twenty-five occasions on which Tony Whales had identified himself as a Communist functionary. The next step was to hunt up the members of Marzani's old Communist Party unit. One of these men agreed to testify against him.

On July 5, 1946, the McCarran Rider to the State Department Appropriations Bill became law. It authorized the Secretary, at his sole discretion, to "terminate the employment of any officer or employee . . . whenever he shall deem such termination necessary or advisable in the interests of the United States." ¹⁷ Under this authority, Marzani was fired as a bad security risk and his file was turned over to the Justice Department for prosecution.

The presentation expert could not be indicted for perjury. His lies under oath before the Civil Service Commission in 1943 were covered by a three-year Statute of Limitations. The Joe-and-Carl interview with Panuch provided no basis for a perjury charge because Marzani had not been sworn.

Sam Klaus thought up the scheme of using the Panuch-Marzani talk as the basis for a fraud conviction. While fraud generally means deception for purposes of illicit monetary gain, the prosecution urged a broader definition. The United States had a right to know whether or not its employees were loyal. When an official lied about this, the

government was thereby "deprived by deceit of the knowledge justly due its officers in the proper discharge of its business, and it is thereby liable to obtain a less efficient employee." ¹⁸ This opinion of the trial judge was eventually sustained by the higher tribunals.

The Marzani defense was planned in close consultation with the leaders of the American Communist Party. The case was of great political importance. It would determine, for the time being at least, whether Communists could infiltrate the government with impunity and lie about their affiliations.

The cold war was in its incipient stages and Secretary of State Byrnes was pursuing a policy toward Russia of alternating cuffs with caresses. In this situation, the party decided to strike out boldly and use the trial as a propaganda forum.

The nuclear ideas were these: Hostility toward Russia was being whipped up to divert popular attention from the coming capitalist crisis in America. The government loyalty program was a reactionary witch hunt, hatched by the Republicans and J. Edgar Hoover's Gestapo. Finally, the real traitors were not the Communists, but the "so-called liberals," that is to say those who hated the Soviet dictatorship.

Panuch was asked under cross examination whether Marzani hadn't really said in their interview:

"We are talking as if the Russians wanted war with us and that is nonsense. Our big problem in America is to keep a depression away." ¹⁹

Panuch was alleged by the defense to have replied:

"'Hell, Carl, it's not people like you we worry about. The real rats are these so-called liberals—people like these guys with the big mouths that see all the stuff and talk about it at parties. We are not worried about you.'" ²⁰

Panuch denied all this and the jury believed him. Marzani was convicted and the Circuit Court of Appeals sustained the verdict as far as two counts were concerned. When the case went to the Supreme Court, that tribunal split four to four, with one justice abstaining. Thus Carl Marzani went to prison by default.

Panuch's conclusion was: "His conviction gave the government

hope.”²¹ To be sure, the Marzani trial showed that juries would convict Communists if they were given the evidence. It nevertheless left a stench and had the earmarks of entrapment.

The responsibility for this rested on Panuch's shoulders. He had chosen to conduct a critical loyalty interview on a first name basis, without witnesses, without making it abundantly clear that this was a formal interrogation and not just a friendly chat. In 1947 the government instituted loyalty procedures which prevented this sort of thing. The rights of the accused were spelled out. Boards were established with definite jurisdictions and the accused were put under oath. No government official would ever again have to wonder whether a conference was a loyalty probe or a bull session. Moreover, in recent years State Department loyalty inquiries have been exemplary with respect to both fairness and thoroughness.²²

Carl Marzani was a secret Communist agent in a sensitive government position. He should have been fired and, if the evidence warranted it, prosecuted. The method of going about this, however, was not a mere matter of expediency, for the substantive rights of a free society are often guarded by the forms and technical procedures of due process of law.

On November 14, 1947, President Truman announced the new government loyalty program with an explanation that nobody would be subjected to a witch hunt.

“Rumor, gossip or suspicion will not be sufficient to lead to the dismissal of any employee for disloyalty,” the President said. “. . . The Government, as the largest employer in the United States, must be the model of a fair employer. It must guarantee that the civil rights of all employees of the Government shall be protected properly and adequately. It is in this spirit that the loyalty program will be enforced.”

The machinery was swiftly set up. Disloyalty was defined as advocacy of any change in the American system of government *by unconstitutional means*. The Attorney General was directed to issue a list of “totalitarian, fascist, communist or subversive” organizations. He was to make this decision personally and was not required to give the groups thus branded an opportunity to be heard in their own

defense. Membership in any one of these groups, the President stated, "is simply one piece of evidence which may or may not be helpful" in arriving at a decision.

The loyalty boards had no concern with establishing whether organizations were "totalitarian, fascist, communist or subversive." In a recent case, the Loyalty Review Board insisted that the Attorney General rule on whether the Panama Communist Party was Communist. It was not until this organization was placed on the subversive list that a government employee, who had previously been shown to have been a member, was rated ineligible.

The loyalty boards are supposed to consider several criteria, no single one of which need be conclusive. These comprise: treason, sedition, sabotage, espionage, association with sabotage and espionage agents, advocacy of armed revolution, intentional disclosure of government secrets under conditions indicating disloyal intent, performance of official duties in the interests of a foreign power in preference to those of the United States, and membership in organizations on the subversive list.

The task of investigating government workers fell to the Civil Service Commission and the FBI. By early 1951, some 3,167,000 federal employees had been checked by Civil Service and their files stamped with the notation "no disloyal data." Over fourteen thousand full field investigations of doubtful cases had been completed by the FBI.

The record shows that less than half of 1 per cent of government employees had backgrounds requiring a full-scale loyalty probe. Of those subjected to this scrutiny, over two-thirds were cleared and rated eligible for federal employment. Most of the rest resigned without prejudice at some stage in the investigation or while the verdict was pending. As of early 1950, only 212 persons had been dismissed from the government as disloyal and Seth Richardson, Chairman of the Loyalty Review Board, stated on April 3 of that year that "not one single case" of espionage had been uncovered anywhere in the government by the loyalty machinery.

The total of dismissals for disloyalty does not seem exorbitant and appears to refute the charge that a witch hunt is raging in Washington. In 1950 J. Edgar Hoover estimated that there were 54,000

Communist Party members in the United States. According to the party's claim of ten militant fellow travelers for every member, the total strength of the pro-Soviet movement could be placed at 600,000. By random chance, one might therefore have expected to find about sixteen hundred Communists and sixteen thousand fellow travelers in the federal service at the time the loyalty program started.

If there is any merit in this rough estimate, the inference is that the bulk of the doubtful were painlessly eliminated. When the loyalty program was launched, resignations from the government shot up and thousands of others resigned while being probed. Most men and women with Communist backgrounds which they wished to conceal preferred leaving the government to committing perjury.

The routine Civil Service check on government workers starts with the files of all federal intelligence agencies, including the House Committee on Un-American Activities. Interviews are conducted at the schools where the employee was educated, the places where he worked, and the neighborhoods where he lived. If nothing derogatory is discovered, he is cleared for government employment. New information, however, may at any time start off a searching investigation.

Full field investigations are made wherever data are found indicative of disloyalty. This is a laborious, exacting, and thorough probe. The FBI emphasizes specific charges of membership in subversive organizations, advocacy of revolution, or habitual contacts with known Communists.

Loyalty boards have been set up in each government agency to function as lower courts. Following a full field investigation, the FBI submits a dossier to the agency board containing the information it has gleaned and rating its informants according to their reliability. The FBI makes no judgment on the facts it reports and never recommends that a man be discharged or cleared.

When the informants request it or where their position inside disloyal organizations must be safeguarded, their identity is kept confidential. Contrary to general opinion, many—and perhaps most—of the adverse witnesses are identified to the loyalty boards. Some submit sworn affidavits and others appear before closed sessions of

the boards from which the accused are excluded. In still other instances, the informant appears before the board with the accused present.

The employees receive charges in writing. The Executive Order requires that these be as specific as security conditions permit. Naturally, there are circumstances under which the accusations must be vague to protect the anonymity of the source, but the trend has been toward more detailed charges. The accused government worker may appear before the loyalty board with counsel, but generally cannot cross-examine his accusers since he does not know their identity.

If the agency board recommends dismissal, the accused can appeal to the head of his department and, thereafter, can take a final appeal to the Loyalty Review Board, the members of which are appointed by the President.

The Review Board renders decisions, but does not publish its opinions. This is perhaps inevitable in view of the fact that the verdict of disloyalty and the FBI evidence on which it is based are both deemed confidential. Since it sits in panels, generally of three members, the Review Board may make decisions one week inconsistent with those of the previous week.

The Loyalty Review Board has been less subject to the tugs and hauls of bureaucratic politics than many of the loyalty tribunals within the agencies. It has made some effort to establish standards.

Men who were members of the Communist Party during the Popular Front period (1935-1939) or during the War Alliance (1941-1945) are often rated eligible.²³ The theory behind this is that the government was pervaded with pro-Soviet elements in both eras, that many young men and women joined the Communist Party in the belief that they were helping to fight fascism or win the war, and that the facts about the Soviet dictatorship were generally unknown at the time. Men who were Communists in 1945 or later—at a time when the line of the party was more openly insurrectionary and the chief target of its hatred was the United States—were ruled unfit for government service.

The question which the board is directed to answer by Executive Order is whether "on all the evidence, reasonable grounds exist for

belief that the person involved is disloyal to the government of the United States." It is concerned, in short, with *present* loyalty and with the past only insofar as it illuminates the present.

The case of William Walter Remington casts some light on the standards of the Loyalty Review Board. The tribunal cleared Remington after Elizabeth Bentley had accused him of having furnished secret data to a Soviet espionage ring in wartime and despite other testimony that he had been a Communist. However, a careful scrutiny of Remington's policy recommendations and actions as a government official in the postwar years indicated clearly that he had become anti-Communist. Even his divorced wife, Anne Remington, who testified against him during his perjury trial in New York in 1951, stated privately that he had broken with Communism in 1946.²⁴

Following Remington's conviction by the jury the Loyalty Review Board was severely attacked for laxity. Its new chairman, ex-Senator Hiram Bingham, urged that the government be given the power to discharge as disloyal wherever there was reasonable doubt.

Major issues of justice and due process of law in the Loyalty Program were raised in the case of Dorothy Bailey, a \$7000-a-year personnel officer who was ousted as disloyal in 1949 by the Loyalty Review Board. The charges against her came from half a dozen FBI informants, whose evidence was not sworn and whose identity she was not allowed to know. Since the accusations were rather vague as to time and place, Miss Bailey's defense was to assemble a mass of affidavits as to her good character and patriotism. The following from the transcript of the hearings indicates the sort of charges Miss Bailey faced:

"Here is a statement that it was ascertained you were a member of the Communist Party in the District of Columbia as early as 1935, and that in the early days of her Party membership she attended Communist Party meetings. . . . Here is another that says you were a member of the Communist Party, and he based his statement on his knowledge of your association with known Communists for the past seven or eight years. . . . That is part of the evidence that was submitted to us."

Dorothy Bailey took her case to the District of Columbia Circuit

Court of Appeals, which ruled against her two to one. In his dissenting opinion, Judge Edgerton said:

"Hardly any protection at all is possible against vague assertions of unseen and unknown persons. The accused employee can only deny such assertions and prove, as the appellant did, that they are inconsistent with her reputation and with some of her acts. She can prove no specific contradictions, no mistaken identities, and no alibis, for she cannot discover just when and where she is supposed to have done or said anything. However prejudiced, mistaken, untruthful, delinquent or defective her accusers might prove to be if they could be cross-examined, an unidentified agent's recorded belief in the reliability of their reports and inferences must go unchallenged." ²⁵

The majority of the court agreed as to the facts, but disagreed as to the conclusions. Miss Bailey "was not given a trial in any sense of the word and she does not know who informed upon her. Thus viewed, her situation appeals powerfully to our sense of the fair and the just." The court then made the pointed observation: "But the question is not whether she had a trial. The question is whether she should have had one." ²⁶

If Miss Bailey had been accused of crime, she could not have been punished by the procedures and on the evidence used. However, government employment is a privilege, not a right, and being discharged from the federal service is not punishment as the law understands the term.

Under the American system of balance of powers, the President must retain broad authority to hire and fire. If the courts could review his reasons and reverse his decisions, the Chief Executive would cease to control the administration of government and the entire machinery might bog down in sloth and incompetence.

A more real constitutional issue is whether the loyalty program violates the right of the people to engage in political activities. Within the past decade, the Supreme Court held that Congress could not "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work." ²⁷ The question is whether Communist organizations are

covered by this broad protection. The fact that the courts have convicted the Communist leadership of seditious conspiracy seems to provide the answer.

A more dubious aspect of the matter is that employees are not only being dismissed, but branded as disloyal in the process. The stigma is indelible. It may mean a blighted professional career, years of unemployment and poverty, being shunned by one's friends and neighbors. The loyalty program is helping to create a new class in the United States—the politically unemployable. These men are not convicted under due process of law and all that the loyalty boards establish is that "reasonable doubt" exists as to their allegiance.

In the Robert Morse Lovett case, the Supreme Court held that Congress had no right to bar three men permanently from government service on suspicion of disloyalty. It declared that the charge "stigmatized their reputation and seriously impaired their chance to earn a living," adding: "This permanent proscription from any opportunity to serve their country is punishment . . ." ²⁸ The court will have to decide whether those being fired under the loyalty program are being permanently proscribed and punished. If the answer is affirmative, they can demand the protection of the Fifth Amendment, which provides that no person shall be "deprived of life, liberty, or property, without due process of law."

This would utterly destroy the loyalty program. Moreover, the same consideration might apply to discharging an employee because of shiftlessness, dishonesty, alcoholism, or psychosis. In self-defense, the government would have to fire undesirables without giving any reason and in summary fashion. The safeguards that government workers have won against unjust and arbitrary action over the past three-quarters of a century would be jettisoned.

The most frequent criticism of the loyalty program is that some of the adverse witnesses are unseen and unsworn FBI informants. The bureau obtains its information in confidence. If it should violate this confidence, its sources would dry up and its effectiveness as a counterespionage organization would be gravely impaired. When the information comes from FBI informers within subversive organizations, exposure of their identity at loyalty hearings might result in their being ousted from the groups they have penetrated. To do this

during a period of armed struggle with Communist forces would be foolhardy. The issue, however, is not whether the FBI should be compelled to break faith, but whether the testimony of people who refuse to be identified and cross-examined should be used at all.

In a penetrating critique of the program, Leonard A. Nikoloric of the Arnold, Fortas, and Porter firm observes that the boards must inquire into "the existence of a nebulous state of mind which might lead an employee to commit in the future a disloyal act, either willfully or through an indiscretion."²⁹

This is thought surveillance, but it is not thought control. The distinction happens to be an important one. The former is a means of detecting conspirators who operate in secrecy; the latter is a means of imposing intellectual uniformity and stifling unpopular views. Obviously, thought control cannot be justified in a free society.

There is evidence that some of the loyalty boards cross the frontier from thought surveillance to thought control. This is not inherent in the machinery. It results from the fact that Bourbons are occasionally appointed to the boards and that insufficient control is exercised over them.

Nikoloric cites various questions from the transcripts of loyalty hearings, admitting that they are taken "out of context," but alleging that they are "routine." For example:

Q: Have you ever had Negroes in your home?

Q: There is a suspicion in the record that you are in sympathy with the underprivileged. Is this true?

Q: Are your friends and associates intelligent, clever?³⁰

Another writer cites the following questions: Do you read a good many books? What books do you read? How do you explain the fact that you have an album of Paul Robeson records in your home?³¹

As far as this writer can ascertain, such questions are far from being typical or "routine." They are fortunately the exception. The widespread belief that the loyalty boards are composed of bigots, however, tends to spread a miasma of fear and inculcate the illusion that cowardice and conformity are the sovereign means of bureaucratic advancement. One of the things the United States govern-

ment does not need is a system to push even more mediocrities up to the top-echelon positions.

A clear line of demarcation cannot always be drawn between proper and improper questions. The guiding consideration is motive. For example, at a loyalty hearing, a government official was asked: "Did you ever write a letter to the Red Cross about the segregation of blood?" One can jump to the conclusion that the questioner believed that mixing Negro and white blood in blood banks is communism—in short, that he was a bigot and a fool.

This is a possible, but by no means a necessary, conclusion. Part of the evidence against Mr. X may be that he has followed the Communist Party line through thick and thin. Is the loyalty board entitled to know whether he followed the leader in behalf of good causes or only in behalf of bad ones? What if he wrote a letter about blood banks ten days after *The Daily Worker* called for a campaign on the matter? This would seem to be just as properly part of the record as evidence that he opposed things which the Communist Party favored. The parallel between the conduct of a government official and the directives of the Communist Party is manifestly to the point and, where the parallel is absolute, the case for Communist affiliation is convincing.

On August 26, 1950, the President approved Public Law 733. This provides that ten agencies, covering most federal employees, may suspend men at their "absolute discretion and when deemed necessary in the interest of national security." The accused may present written statements in their defense before being finally discharged. If they are citizens and have completed their probationary period in government, the charges against them "shall be stated as specifically as security considerations permit" and they must be given a hearing.

This procedure provides for no independent review by a top board outside the agency concerned. Security, as distinct from loyalty, does not necessarily imply an intention to betray the United States. It can cover careless talk, excessive drinking, homosexuality, or treason. In theory, the man fired on security grounds is not branded as subversive. As far as the general public is concerned, he is a traitor.

In 1948 Miss Eleanor M. Deak was fired by the Army Security Review Board. The charges were "that you attended a meeting open only to Communist Party members" and "that you have attended meetings openly sponsored by the Communist Party or organizations known to be affiliated with the Communist Party and have evinced active and sympathetic affiliation with these organizations."

Miss Deak appealed and, on December 7, 1950, a majority of the District of Columbia Circuit Court of Appeals sustained her. The court said that "coupled with the power to remove is the duty of the Secretary to inform." It added that a fair hearing must be provided. This meant that the charges "must be sufficient to inform the employee with reasonable certitude and precision of the cause of removal. . . . We see no reason why details as to times, places and organizations should not have been furnished."

On balance, the loyalty program has served to protect government workers against injustice, has given them opportunity to defend themselves against false charges, and has been administered with restraint. Nonetheless, there is considerable doubt whether *all* government employees should be investigated. Agencies such as the Fish and Wild Life Service are as remote from national security as the social science departments of universities. The omnibus investigation order wastes the time and energies of the FBI. On the other hand, experience indicates that a more searching inquiry into the loyalty of policy makers, military-scientific personnel, and all those who have access to vital security data—including charwomen as well as generals—would be in the public interest.

The practice of firing employees on unspecified security grounds seems indefensible. The offense may be heavy drinking, but it carries the sting of high treason. The interests of the government require a more elastic means of downgrading, transferring, or discharging unsatisfactory personnel, but this can be done without applying the brand of subversion.

The loyalty program is one of those unpleasant compromises of individual liberty in the interests of national security which today seems unavoidable. Undesirable as a permanent institution in a democracy, it should be strengthened in time of crisis. The men who serve on the boards must devote their energies to the unpleasant task

of ferreting out the secret opinions of their fellow men. They operate largely outside the rules of evidence, where error is probable and where the result of error may be either to blast the careers of the innocent or to jeopardize the security of the nation. Working at this thankless task, they are attacked by many liberals as the vanguard of a police state and by many conservatives as coddlers of sedition.

The practical accomplishments of the loyalty program cannot easily be gauged. Some 212 men have been discharged; ten times that number have resigned while under investigation; an unknown number have left the government, or decided against entering it, because of fear of the program. The effect has been to eliminate a pro-Communist climate in which both espionage and the distortion of government policy in the interests of the Soviet Union flourished.

The loyalty program makes it difficult for the Communist Party to continue infiltrating the government. If men were normally converted to communism overnight, they could be drilled at once in secrecy and concealment. As a rule, however, they pass through an exploratory and probationary period, during which they express their views openly, associate with Communists, and join fellow-traveler outfits. These facts are generally picked up in loyalty probes and result in full field investigations.

This diminishes the inflow of new recruits, while the danger of perjury convictions reduces the total of pro-Communists already in government. The group least affected is the hard core of tested pro-Communists—men who have been thoroughly drilled in conspirative methods and whose devotion to the Soviet power is such that fear of punishment does not sway them from their course.

Chapter Thirteen

THE FEDERAL BUREAU OF INVESTIGATION

FOR ALMOST TWENTY YEARS the United States has been engaged in a struggle against messianic totalitarian forces, armed with the techniques of modern science and bent on world conquest. The stakes of this battle are the world in which we live and the future of man's freedom. As the conflict intensifies, the power, unity, and resoluteness of the American people become the main hope for the liberty of the world.

In this situation, the Federal Bureau of Investigation has expanded swiftly in power and influence, has acquired vast new responsibilities, and has become an increasingly pervasive feature of American life. Two separate processes have contributed to this development. First, federal legislation against disloyalty has spread like a bamboo forest; and the various laws against subversive activities have become so complicated that they occasionally conflict, not only with the Constitution, but with each other. Whether these statutes are wise or foolish, the FBI's duty is to investigate violations of them. At the same time, loyalty and security checks have been applied to the federal service as a whole and to a very large penumbral area of defense installations under contract to the government. Thus the work of enforcement has been enormously expanded.

The second factor is centralization. The Federal Bureau of Investigation was given responsibility for guarding the internal security of the nation in 1939, and it still has that responsibility today. Local police and law enforcement agencies are obliged to report espionage,

counterespionage, sabotage, sedition, and treason cases to the bureau. The Secret Service is completely out of the loyalty field. The Central Intelligence Agency is the coordinating body for American espionage and counterespionage overseas, but has no responsibilities within the United States. Thus, when an American engages in subversive activities abroad, he falls under the surveillance of the CIA. When he returns to the United States, the FBI takes over. There is close and permanent liaison between the two government departments and in 1949 the FBI made over six thousand name checks for CIA. Foreign atomic scientists who come to this country for consultation are accepted on the security clearance of their own governments. If they come here to work, the Federal Bureau investigates.

Army and Navy intelligence do valuable work, but only in military installations or in cases which concern military personnel. Coordination among the main federal investigation agencies is maintained through an Interdepartmental Intelligence Conference at which chiefs of Army, Navy, and Air Force intelligence meet monthly with the FBI director and a representative of the National Security Council.¹

The Federal Bureau thus bears the main burden of protecting American security against internal sedition at a time of gathering national danger and armed conflict abroad. Quite naturally, the FBI has expanded rapidly to discharge its new duties and meet the exigencies of crisis.

The best indicator of growth is the roster of special agents, since total employment figures are heavily weighted by personnel employed in fingerprint identification, searching, and filing.

During the twelve-year period 1921-1933 in which the United States faced no serious external dangers and Republican Presidents occupied the White House, about 370 special agents were employed with only minor year-to-year variations. As part of the New Deal tendency toward expansion of government agencies, the FBI began to grow during the first Roosevelt administration. By 1940 the bureau had approximately 875 special agents and, during the war, a sixfold expansion brought the total to approximately five thousand.

A cutback to about 3200 special agents occurred during the early postwar years at a time when durable peace seemed not improbable. However, due to revelations of extensive Soviet intrigue and espionage, the government loyalty program, and the progressive trend toward fission of the world into two antagonistic clusters, renewed growth occurred. By 1951 the wartime peak of five thousand special agents had almost been attained.

The FBI entered the daily life of most Americans through some fourteen thousand full-field investigations of government workers. The special agent became a familiar figure. Next to the postman, he was perhaps the most widely known representative of the United States government. Partly due to expert public relations work, but largely because of its record of accomplishment, the bureau became almost immune from criticism as far as the public at large was concerned. It had the confidence of the American people and of the vast majority of both Houses of Congress at a time when most government agencies were being sharply attacked, ridiculed, and, at times, pilloried.

This attitude is shown clearly by the "stereotype" of the G-man. To an increasing extent, the special agent stalks through the pages of comic books, rounds up malefactors on the screen, and arrests spies and public enemies on television soap operas. The "dumb cop" is part of the stock cast of these mass vehicles of entertainment, but the "dumb G-man" is conspicuously absent.

The stereotype of the special agent is a well-groomed, soberly dressed, clean-cut, and serious individual, who is not conspicuously brilliant, but who puts in long hours and does a solid, workmanlike job with practically invariable success. He is probably depicted as a church-goer, happily married, with a thriving family, a small suburban house, and a modest income. He is not particularly excited about politics and is not likely to have maverick opinions about controversial issues. He serves his country with unobtrusive loyalty and does a job which is nine-tenths routine and one-tenth excitement.

Obviously, no government agency is stacked with people who meet these exacting requirements and the FBI has its misfits. But the stereotype is nonetheless of vast importance. It is an automatic selector of the type of man who seeks employment, who is hired,

and who gets promoted. It creates a pattern which the public expects and those who conspicuously deviate from it will encounter difficulties in their work.

In essence, the G-man is merely the prosaic, well-meaning, and, at times, pedestrian law enforcement officer of a democratic nation. He is not selected or trained because of any special proficiency in combatting Soviet agents or any other disloyal element. Like the regular Army officer or the career diplomat, he is chosen and shaped so that he will conform to a more or less standardized pattern and be capable of handling any law enforcement problem which the bureau is likely to face. The FBI agents who are today engaged in unraveling espionage rings may have served their apprenticeship in tracking down gangsters or in detecting intricate financial frauds on the government. This selection process has both its advantages and disadvantages.

The special agent must be a college graduate. Most are lawyers; a minority are accountants. After the outbreak of the Korean War, the FBI began to accept college men with specialized training who fitted in neither bracket. The G-man must be at least five feet seven inches tall, free from serious physical deformity, in excellent condition, with corrected 20/20 vision in both eyes, able to hear ordinary conversation at a distance of fifteen feet with either ear, and capable of passing a rigorous revolver marksmanship test after training.² The age limits for entrants are twenty-five to forty. The special agent must be willing to serve anywhere in the United States. Before an applicant is appointed, his background and life history are thoroughly investigated, not only for indications of disloyalty, but for bad habits such as drunkenness, lack of moral standards, and abnormal sex life. The personnel interviewer will note such unfavorable characteristics as untidy or loud dress, lack of poise or alertness, inability to speak clearly, briefly, and to the point.

The newly appointed special agent is put through a hard, sixteen weeks' training course with nine hours daily classroom work and a heavy study load. During the 1950 emergency, this training schedule was reduced to seven weeks, but sixteen weeks of on-the-job training was added. On the defense side, this schooling includes marksmanship with weapons ranging from the .38 caliber police revolver to

the lethal Magnum and the 12-gauge shotgun. The G-man must be able to assemble his weapons and keep them in firing readiness for instant use. He is trained in the elements of jujitsu and in disarming criminals. The electronic firing range tests his capacity to make sound decisions with split-second precision, weeding out both the lethargic and the trigger-happy.

While this is the most highly publicized part of the special agent's training, it is not the most important. Agents must have confidence, ability, and judgment in the use of their weapons, but most will spend a working lifetime in the service without engaging in a single gunfight. They are trained in quick, accurate observations by such devices as staged interruptions during their lectures—a phone call, a series of explosions, a man rushing through the classroom. The special agents are then closely interrogated to find out what they have observed and how it relates to what actually happened. Fake crimes are committed and the FBI dummy, Daisy Mae, is murdered hourly at the Quantico Reservation. Parties of newly appointed G-men are sent off to the scene of the crime to pick up clues and interrogate witnesses. They later present the evidence they have gleaned before a mock court in which veteran special agents play the role of sarcastic defense attorneys bent on tearing the prosecution's case to shreds by cross-examination.

At Quantico, the G-men are trained in such elementary, but extremely important, matters as how to make an arrest, how to get a search warrant on probable cause, and the time that can elapse between arrest and arraignment. If, after arresting a murderer, the special agent dawdles about getting him arraigned, an otherwise airtight case may be thrown out by the courts.

The training course impinges on some 175 different subjects. "During the course of training for new agents," Hoover stated in the 1949 report of the Federal Bureau of Investigation, "emphasis is placed upon the absolute importance of protecting and preserving the rights of individuals who may be the subject of an investigation by the FBI. To this end, courses of instruction include civil rights, ethics, constitutional history and constitutional law, professionalism in law enforcement, as well as the law of arrests, searches and seizure."

Within the brief time allotted, a thorough grounding in these varied fields is obviously impossible. The special agent's formal education, however, continues after he has started work. During 1949 some nineteen In-Service Training Courses provided refresher education for veteran G-men. In addition, the Bureau holds schools for agents of "special aptitudes or experience" in such areas as Civil Rights and Domestic Violence and Espionage and Sabotage. This brings to the fore a highly trained group destined for leadership positions. The concentrated training on civil rights is for the benefit of the FBI section that investigates violations of the Reconstruction "Black Code," prohibiting deprivation of constitutional rights under color of law. While Southern local authorities have often been loath to cooperate in prosecuting such cases and Southern juries have been notoriously reluctant to convict, the possibility of FBI intervention serves as a deterrent to crime.

The FBI has consistently protested against efforts to bring any part of the organization under Civil Service. The reason Hoover gives for this stand is: "The method of selecting personnel employed in the Bureau and the merit system which it has developed are demonstrably superior."³

Behind the attitude of the bureau is a strong desire to maintain stability of employment and a high *esprit de corps*. Since FBI personnel acquire a great deal of information concerning countersubversive activities, both objectives seem highly desirable. As compared with an average turnover of 25 per cent per annum in government, FBI turnover is about 15 per cent. In 1950 Director Hoover attributed this high level of employment stability to the fact that:

"We select practically all of our male employees with the idea in mind of their being young men who will want to go to the law schools here in Washington at night and work as clerks in the daytime. When they are graduated and receive their law degrees, they can be considered for work as special agents."⁴

The statement that Negroes are not employed as special agents has been given wide currency in a recent and highly prejudiced book.⁵ Inquiry at the bureau reveals that there have been Negro special agents for many years. Hoover has frequently stated that

appointments are solely on a merit basis without regard to race, nationality, or religion.

As is the case in the regular Army, the FBI "officer" group starts at the same rung of the ladder. Nobody can be appointed in the FBI at a grade higher than special agent. It follows that all the assistant directors of the bureau were at one time G-men and that these top positions are open only to men who move up through the organization. On the basis of their service records and annual efficiency reports submitted by the special agents in charge of the fifty-two field offices, G-men are promoted, left where they are, or, in cases of serious inefficiency, dropped from the service. They may retire at fifty after thirty years' service and at seventy retirement is mandatory.

In addition to its responsibilities in the internal security field, the FBI acts as a servicing and training agency for local law enforcement groups and investigates breaches of scores of federal laws. The 115,000,000 fingerprints on file in the FBI are searched on request of state and city police authorities. The FBI laboratories provide technical aid in the solution of crimes committed anywhere in the United States. The National Police Academy trains law enforcement officers for work in municipalities, counties, and states. Although J. Edgar Hoover stated in 1950 that the FBI work load in the antislavery field was "heavier than it was at the peak of World War II" and that the bureau was deploying its "very best resources" against the Communist movement, no statistical breakdown of FBI activities, as between common and political crimes, is possible.⁶

The chief activity of the bureau in the subversive field is gathering data. This is obtained through FBI "informants," who are generally former Communists and fellow travelers, and FBI "informers," who remain within the disloyal organizations to provide information. As a general rule, the informants are neither paid nor compensated for their time and the informers are reimbursed merely for out-of-pocket expenses.

During the 1939-1941 period of American neutrality, the FBI was widely criticized for seeming inactivity against Nazi plotters. The strategy pursued was to wait until the last possible moment

before rounding up enemy agents, thus making their replacement virtually impossible.

A somewhat similar problem exists today. Hoover had been subject to powerful political pressure to release "raw" loyalty files on individuals charged with Communist activities to congressional committees. He has been adamant in refusing to do so, maintaining that "the confidential character of our files must remain inviolate."

The position of the bureau on this issue is: "A cardinal principle of success for any agency having a responsibility for investigations is its ability to secure information. To do that, it must be able to maintain confidences. Any person furnishing information must have the security of knowing that when he furnishes information on a confidential basis, he will not at a later date find that confidence broken." ⁷

In a period in which political investigation is becoming increasingly pervasive, the Federal Bureau is frequently characterized as the harbinger of an American police state. While he was cooperating with the Communists, former Vice President Wallace accused J. Edgar Hoover of resorting to Gestapo-like methods. A similar note was struck by *Collier's* in an editorial in early 1941: "The FBI is superb. But human beings are ambitious; and the FBI, unchecked and unbridled, could grow to be an American Gestapo." ⁸

In 1949 the New York press charged FBI agents with resorting to "totalitarian-state methods of blustering intimidation and police persecution" in a search of passengers on the Polish liner *Batory*.⁹ The search was actually conducted by Immigration and Naturalization Service Agents.

A Senate report in 1940 issued a blistering attack on "the recent resurgence of a spy system" and anathematized searches without warrants, holding suspects incommunicado, entrapment, illegal grilling of prisoners, "unwarranted chaining and other degrading and 'third degree' methods." ¹⁰

The writer, Max Lowenthal, claimed that: "While the report did not specifically state that its charges were directed against the Bureau, Chairman Burton K. Wheeler of Montana, in a press interview, acknowledged that the report was in fact aimed at that police unit." ¹¹ The Senate Committee contained such distinguished mem-

bers as Harry S. Truman, Alben W. Barkley, Sherman Minton, Warren Austin, and Robert F. Wagner.

Congressman Joseph Bryson investigated Lowenthal's allegations and found that the committee report merely accused "some police" of these lawless practices.¹² Using Lowenthal's own reference sources, he discovered that, instead of branding the FBI as the offender, Burton K. Wheeler had stated: "I am opposed to wire tapping, whether by the Treasury, the Federal Bureau of Investigation, the Interior Department or private agencies."¹³ Moreover, Senator Theodore Green of Rhode Island, who had initiated the probe, denied that the FBI was the target of the investigation and went out of his way to compliment the bureau for its "splendid accomplishments."

Regardless of whether the source of the accusation is tainted, the question deserves serious attention. Americans are rightfully fearful of any encroachment on their liberties—particularly in the sensitive sphere of freedom to think, speak, persuade, and act politically. However, a comparison between the powers, organizational methods, personnel, and procedures of the FBI and of totalitarian police systems indicates that there is little similarity.

(1) Totalitarian police systems exist to guard the dictatorship against its enemies. They must therefore have full authority to ferret out deviations from the dominant ideology of the ruling party.

By contrast, the scope of FBI political investigations is confined to suspected agents of foreign powers and individuals and organizations dedicated to the overthrow of democratic government by force.

(2) Totalitarian police systems have plenary inquisitorial powers.

By contrast, FBI activities are narrowly confined. "I very frankly feel," J. Edgar Hoover told the Senate Appropriations Committee in February, 1950, "that the Federal Bureau of Investigation should confine its activities to those violations of law that are violations of Federal statutes and to such other matters as are confided to it by the Attorney General."¹⁴ This has been the practice since 1924.

(3) The personnel of totalitarian police systems are highly trained in the ideology of the ruling political party.

G-men are not so trained. They represent all creeds and party affiliations, subject to the single qualification of loyalty to the United

States. No premium is placed on expertness in political problems unless it has a direct bearing on FBI work. Oddly enough, those who regard the FBI as a species of Gestapo sometimes also scoff at its special agents because of their political naivete.

(4) Totalitarian police have overriding authority over local law enforcement agencies.

The FBI has resisted such trends. "There have been efforts to draw the Bureau into investigation of local crime, which efforts I have consistently resisted," Hoover testified in 1950. "Local authorities should be compelled to handle their own problems of violations of local law."¹⁵

(5) The totalitarian political police organizations have cabinet rank and are responsible only to the chief of state.

The FBI, however, is subordinate to the Attorney General and does not make policy. To quote Hoover again: "We never make any recommendations to anyone as to what should be done on information we obtain either in a criminal case or in an investigation of an applicant. All that we do and all that our function is is to get the facts, bad and good. . . . I think that when the time comes that the Bureau must decide what shall go into a report and what shall not go into a report, then we are functioning as a Gestapo."¹⁶

(6) Totalitarian police systems habitually resort to torture and other unethical means of extracting confessions.

The bureau does not use third-degree methods, nor are suspects browbeaten into making confessions. Those that remain in FBI detention rooms for interrogation first sign a statement that they are there voluntarily.

(7) Totalitarian police systems tolerate no criticism and often imprison their detractors.

The FBI investigates all specific complaints and agents who abuse their authority are disciplined or discharged.

(8) Totalitarian police organizations arrest people on suspicion and confine them indefinitely merely because they are adjudged dangerous.

The FBI cannot arrest people because they have "dangerous thoughts." Preventive arrest is a totalitarian institution unknown in the United States, except for internment in wartime.

(9) Finally, the totalitarian police systems not only investigate, but evaluate. They make arrests, imprison suspects, hold them in confinement at their pleasure, judge them, condemn them, sentence them, and often administer the prisons in which they are incarcerated. No outside agency is allowed to challenge these actions. This consolidation of all the powers of the law enforcement process in a single hand is the vital and decisive criterion. It is the source of their terrible power.

In the American system, these powers are minutely subdivided among many independent authorities so that at every stage in the judicial process the rights of the citizen are protected.

The FBI investigates only where it is instructed by law or by the Attorney General. Although there has been "no instance" in which the bureau "completed a report involving disloyalty or subversive activities and referred it to the Attorney General where court action has not been instituted," the power of decision rests with the Justice Department.¹⁷ If FBI investigations were half-baked, the Attorney General would ignore them.

Generally speaking, the FBI must secure a warrant, based on evidence, before making an arrest. Once arrested, a suspect must be charged with a specific law violation. He is advised that he need not talk and may have a lawyer. As promptly as possible after arrest, he must be arraigned before a judge, where he may plead guilty or innocent and where bail will generally be fixed. He cannot be confined in bull pens, held incommunicado, or grilled without the presence of his attorney.

Once the government begins prosecution, it is up to grand juries to decide whether there is enough evidence to indict and up to petit juries to decide guilt or innocence. If the FBI, or any other government agency, tramples on a man's constitutional rights, the accused can appeal to the courts and have his conviction reversed.

This intricate system of separation of powers, coupled with the special role of the courts as watchdogs of the constitutional rights of the people, is wholly incompatible with police-state procedures. It is a system which the FBI did not create, but under which it operates.

It is hardly necessary to add that the intervention of the courts

is almost invariably effective. When a conviction is set aside because a law enforcement agency has violated either the laws or the Constitution, the practice complained of automatically ceases because all other convictions obtained in this fashion will also be set aside.

In the contemporary world, there is probably no investigating agency operating in the field of disloyalty which is as circumspect in protecting both the liberty and the privacy of the individual as the Federal Bureau of Investigation. England and Canada are good yardsticks since few sane men would characterize either country as Gestapo-ridden. Scotland Yard is authorized to rifle the mail of espionage and treason suspects and use the evidence thus obtained in court. This is illegal in the United States. Both preventive arrests and secret trials are sometimes permitted in England. During World War II, the Soviet espionage agent, King, was tried and executed in the Tower of London under an absolute shroud of secrecy. The Soviet spies in postwar Canada were secretly arrested, held incommunicado, interrogated behind closed doors, and denied either the privilege of counsel or of refusing to answer incriminating questions. These practices would not be tolerated in the United States.

In actual fact, the Federal Bureau of Investigation not only uses its powers with restraint, but has considerably less power than is needed to cope with Soviet conspiracy against the republic. The alarming loopholes in the law were dramatically illustrated when the U. S. Circuit Court of Appeals reversed the conviction of Judith Coplon for conspiracy to commit espionage in the winter of 1950.

The background facts of Miss Coplon's arrest, which have not heretofore been made public, cast light on this decision.

Toward the close of 1948, the FBI learned that someone inside the Justice Department was transmitting counterintelligence data to the Soviet Union. The identity, and therefore the lives, of certain American agents behind the Iron Curtain were seriously jeopardized. The culprit was soon identified as Judith Coplon, an attractive and sultry 28-year-old political analyst in the department. In the beginning of 1949, she was removed from the sensitive Internal Security Section and given work less dangerous to the government. Seven FBI agents were assigned to the case.

Taking classified Department of Justice data slips with her, she made three trips to New York during the winter of 1948-1949. Here she and the former Soviet official Valentin Gubitchev "wandered aimlessly about, meeting, separating, rejoining, going hither and yon, continually looking back, and in general giving every appearance of persons who thought they might be shadowed and wished to escape being trailed." ¹⁸

On March 4, 1949, Judith Coplon again went to New York, carrying with her abstracts of classified FBI reports and a memorandum stating that she had tried unsuccessfully to see a "top secret" report on Communist espionage in America. The FBI assigned twenty-four agents to trail her and a matron was detailed at the courthouse to take charge of her if arrested.

From all this, Judge Learned Hand of the Court of Appeals inferred that "the Bureau had decided to arrest her that day; and there was not the least need of doing so without a warrant." ¹⁹ While this deduction appears sound, it does not happen to be true.

The FBI had made all arrangements to make an arrest *if an actual transfer of documents from Coplon to Gubitchev was observed*. When Attorney General Tom Clark learned that the suspected Soviet spy in his department was to meet Gubitchev in New York that night, he instructed the bureau to keep him personally informed of every move in the pursuit. The G-men radioed their reports to New York FBI headquarters and these were relayed by phone to the Attorney General.

Gubitchev and Miss Coplon followed an erratic course through the New York subway system, giving "every appearance of furtiveness and fear of apprehension." They were being extremely careful and acted as if they were strangers to each other. The reports relayed by the FBI shadows to the Attorney General indicated that the couple sensed danger. The men in Washington believed that, if this suspicion developed into certainty, Judith Coplon would be abruptly severed from espionage and possibly smuggled out of the country.

Clark waited tensely through the later afternoon and early evening. The telephone calls kept coming in reporting each stage of the

surveillance. Finally, the FBI agents passed the word that they believed the pair intended to separate without handing over espionage data. Making a quick decision, the Attorney General ordered the FBI to make an immediate arrest. The bureau complied with this instruction.

Judith Coplon was convicted of espionage charges in both Washington and New York. At the latter trial, her Soviet accomplice was also found guilty and sentenced to prison. The State Department, however, intervened to have him released and returned to the U.S.S.R. Although Robert Vogeler, the American telephone corporation official, was being held incommunicado behind the Iron Curtain on a trumped-up espionage charge, no effort was made to exchange him for Gubitchev. High government sources alleged that they were obliged to surrender Gubitchev without any *quid pro quo* whatsoever to avoid further persecution of American nationals in Kremlin-dominated areas.

Miss Coplon's able attorney, Leonard Boudin, filed an appeal to set aside the New York conviction on two main grounds. The first was that she had been arrested without a warrant and the second was that part of the evidence which convicted her had been obtained through wire-tapping. Both points were of crucial importance to the efficiency of American law enforcement agencies in the struggle against disloyalty.

The FBI is reluctant to apply for warrants in certain types of espionage cases. There is always a possibility of a leak to the suspect—particularly if the supposed spy happens to be inside the Department of Justice. The danger is increased when the warrant must be sworn long in advance of the contemplated arrest. In the Coplon case, the bureau's plan had been to make the arrest only if data were passed to Gubitchev.

The Fourth Amendment to the Constitution protects the people against "unreasonable searches and seizures" and provides that "no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." This prevents the police from making dragnet arrests and harassing the innocent with arbitrary

arrests. The protection it provides may easily be exaggerated. Capricious arrests are generally self-defeating in any event because arraignment must follow within a few hours. If there is no charge, the victim will be released. If there is no evidence, he will be let out on bail and later freed by a grand jury.

The Constitution nowhere states that a man cannot be arrested without a warrant; it merely describes the conditions under which warrants shall be granted. In New York, in essence, an ordinary citizen has "the power to arrest without warrant for a felony committed in his presence, and for one, actually committed in the past, if he [has] reasonable ground to suppose that it had been committed by the person whom he arrested." ²⁰

Now Judith Coplon was committing a felony at the time she was arrested. At least, two juries thought so. If a man on the street had arrested her on the night of March 4, the procedure would have been perfectly proper and no appellate court would have considered letting her go because of lack of a warrant.

The Federal Bureau of Investigation, incredible as it may seem, did not have as broad powers as the ordinary citizen. A law passed in 1934 provided that agents of the bureau could make arrests without warrants, provided they had reasonable grounds for belief in the guilt of the accused "*and where there is likelihood of the person escaping before a warrant can be obtained . . .* [My emphasis—N.W.]." ²¹

This bizarre clause, inserted for some incomprehensible reason, compelled Judge Hand to free Judith Coplon although he believed her guilt to be flagrant and indicated that the law itself was senseless. In January, 1951, largely as a result of the fiasco of the Coplon prosecution, Congress gave the FBI the same powers to make arrests without warrant which most local law enforcement agencies have always possessed.

The second great legal issue in the Judith Coplon case was that of wire tapping. This practice has been strongly condemned on ethical grounds by Justices Holmes and Brandeis. The latter declared:

"As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared to wire-tapping.

"... it is also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard when the Government's purposes are beneficent."

The real issue is not one of "tyranny and oppression," but where the line of privacy, protected by the Constitution and the laws, should be drawn. A man is guarded against having his mail steamed open and read. Under most circumstances, police may not enter his home forcibly without a warrant and rifle his papers. He is not, however, immune from eavesdropping. Government agents are permitted to overhear and record the most confidential conversations and produce the transcripts as evidence in criminal trials.

Telephone communications are two-way conversations over channels controlled by private corporations and extending outside the homes of the persons using them. In practice, there is never any real guarantee of privacy. Party lines, extension receivers, and recording devices prevent this.

The telephone network thus occupies a position in respect to privacy midway between the mails and conversation in a public place. There is no great free speech issue involved here. What is needed is clarity in the law so that telephone users know exactly where they stand and law enforcement agents know exactly what they can and cannot do.

The Communications Act of 1934 says that "no person not being authorized by the sender shall *intercept* any communication and *divulge* or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person . . . [My emphasis—N.W.]." ²²

In the first Nardone case, the Supreme Court ruled seven to two that the words "any person" included law enforcement agents and that evidence obtained by wire tapping could not be used in court.²³ After this, the government promptly retried alcohol smuggler Nardone. The trial judge refused to allow the defense to force the Justice Department to reveal whether any substantial part of the evidence derived from wire tapping. Nardone was convicted and the case was appealed a second time to the Supreme Court, which again reversed the verdict.

Three general principles were established in the second Nardone

case. First, the burden was on the accused to show that wire tapping had been employed. Second, once this was done, the defendant must be given opportunity "to prove that a substantial portion of the case against him was a fruit of the poisonous tree."²⁴ Third, this, however, did not justify a random interrogation as "a means of eliciting what is in the Government's possession before its submission to the jury."²⁵

The law does not prohibit wire tapping. It does prohibit divulging the information thus obtained, which means publishing it or using it in court. Moreover, once it can be shown that data gleaned from wire taps contributed to the conviction of a criminal, the courts will let that criminal go free.

When Judith Coplon was tried in Washington, her attorney, Archibald Palmer, asked whether or not the government had tapped her wires. Prosecutor John M. Kelley, Jr., replied: "I deem what he said regarding tapping of telephones to be purely a fishing expedition which requires no answer."²⁶

In Miss Coplon's New York trial, however, the judge permitted an exhaustive six weeks' inquiry into the wire-tapping issue. The facts established were these:

At the direction of the Attorney General, the FBI had tapped Judith Coplon's wires from January 6, 1949, until her arrest on March 4. Moreover, some of the taps had continued thereafter and others had been reinstituted subsequently. The defense established this by the simple procedure of putting FBI officials on the stand and questioning them. The latter, of course, told the truth and the entire bureau record on the case, comprising some five thousand pages, was made available to the New York trial judge.

The original discs of the New York "taps" had been destroyed after thirty to sixty days. This was standard operating procedure, the purpose being to avoid cluttering up office space with bulky and useless records.

The government produced in open court "dubs," or recordings made from the originals, "logs," or transcripts of the wire-tap records made by monitors, and the reports sent to Washington containing summaries of the pertinent information revealed by the taps. However, "those passages were expurgated, which either related to

'taps' of other telephones, or whose disclosure the prosecution thought might be dangerous to 'national security.'" 27

The New York trial judge examined all the deleted material *in camera* and decided that it did affect national security and that none of it formed part of the evidence on which Miss Coplon had been convicted.

A closely related issue was whether the "confidential informant" who had tipped off the FBI to Miss Coplon's activities was merely a euphemism for a wire tap. Again, the judge examined all the documents, ruled that the informant was not a "tap," and prevented the defense from eliciting the identity of this secret source by cross-examination.

The federal Circuit Court of Appeals in New York believed that the FBI had not destroyed any evidence the production of which would have acquitted Judith Coplon. It assumed that the trial judge's determination on these points was honest and accurate and it further considered that Miss Coplon's guilt was "plain." It then reversed her conviction.

It did this because evidence had been suppressed. As Judge Learned Hand put the matter:

"... the refusal to allow the defense to see them was, as we have said, a denial of their constitutional right, and we can see no significant distinction between introducing evidence against an accused which he is not allowed to see, and denying him the right to put in evidence on his own behalf. . . . Few weapons in the arsenal of freedom are more useful than the power to compel a government to disclose the evidence on which it seeks to forfeit the liberty of its citizens. All governments, democracies as well as autocracies, believe that those they seek to punish are guilty; the impediments of constitutional barriers are galling to all governments when they prevent the consummation of that just purpose. . . . A society which has come to wince at such exposure of the methods by which it seeks to impose its will upon its members, has already lost the feel of freedom and is on the path toward absolutism." 28

After suggesting that the FBI should perhaps be authorized to make arrests without warrant and use wire-tapping evidence in court wherever national security was at stake, Judge Hand added:

"we take the law as we find it; under it the conviction cannot stand." ²⁹

There was a large red herring in the case, with which Judge Hand refused to concern himself. This was the fact that, with the Attorney General's approval, the wire tap on Miss Coplon's phone had been reinstalled after her arrest and while she was facing trial. Various newspaper writers made a great issue of this. Lowenthal, for instance, attacked the FBI for having "violated the privacy of some of the most sacred relationships recognized in American traditions, such as those between husband and wife, and lawyer and client." ³⁰

No great imagination is required in order to fathom why the FBI decided to tap the wires of a woman already in custody and hence no longer a potential spy. The aim was not that of eavesdropping on her conferences with her attorney and, in fact, no reports on these conversations were transmitted to the Justice Department prosecutors, nor would the latter have deigned to use them. Surely the point is that arrested spies have a habit of fleeing the country, that Gerhardt Eisler, the former Comintern representative in the United States, had just done so and that the FBI did not want a repetition of this unhappy episode.

The Judith Coplon case has been taken to the Supreme Court on appeal. If Judge Hand's interpretation of the law is sustained, Miss Coplon can be retried, but she probably will not be. To convict her a third time, the Justice Department will have to show that there was imminent danger of her fleeing the country when she was arrested. The price of conviction will be disclosure of wire-tap data which the FBI believes must be kept confidential.

"We in the FBI do not make policy," Hoover declared. "We follow it. The policy we follow on wire tapping was set by the late President Roosevelt on May 21, 1940. In each instance when the use of a telephone tap is under consideration the facts and recommendations are presented to the Attorney General, who must authorize the use of the tap before such a technique is utilized." ³¹

After quoting former Attorney General Biddle's statement of October 8, 1941, that wire tapping was authorized by the Justice Department only in case of espionage, sabotage, and kidnaping

"when the circumstances warranted," Hoover added: "The fact is that the FBI has less than 170 telephone taps in existence, confined to internal security cases, throughout the entire United States and its possessions."³²

Other agencies are considerably less restrained in their use of this method of detection. After commending the FBI for its cautious use of this dangerous instrument, Drew Pearson exposed wholesale and indiscriminate wire-tapping activities in the Pentagon. Senators have been accused of hiring Washington detectives to place taps on their political opponents. The sales figures for this equipment in the Washington area indicate that the practice by wholly unauthorized sleuths and interrogators is rampant.

Technological developments have increased the danger. Until recently, wire tapping involved cutting into phone lines. Accordingly, the Pentagon attempted to protect a main telephone channel for top-security messages by encasing it in a gas-filled conduit. Any break in the line would release gas and pressure gauges would reveal the existence of the tap. This expensive equipment had to be scrapped because it was powerless against induction methods which draw current from the lines without making physical contact.

The unsatisfactory wire-tap situation can be laid at the door of Congress. In the 1930's, bills were introduced to prohibit it, but failed of passage largely because of the fear that this would aid kidnapers. In 1940 during the climactic period of Nazi espionage in the United States, J. Edgar Hoover made vigorous efforts to have Congress authorize wire tapping by the FBI in internal security cases. He was staunchly supported by liberal Congressmen, such as Emanuel Celler of New York. Again, Congress failed to take a clear-cut stand on a highly controversial issue. The FBI proposal was reportedly killed largely through the efforts of then-Senator Harry S. Truman.³³

Congress should clarify the present situation. It should authorize the FBI to tap wires and use the evidence thus obtained in court, subject to the safeguards now in operation. Similar authority should be given to the military intelligence agencies provided their activities are controlled by the Secretary of Defense. Wire tapping by private individuals, local police, and Congressional groups, however,

should be defined as a crime, regardless of whether the information is divulged.

Morris L. Ernst, a lifelong champion of civil liberties and a close unofficial adviser of Franklin D. Roosevelt, stated recently: "A real 'smear' campaign has been carried on against Hoover's work. The FBI is unique in the history of national police. It has a magnificent record of respect for individual freedom. It invites documented complaints against its agents. It has zealously tried to prevent itself from violating the democratic process." ³⁴

The American Civil Liberties Union praised Hoover for "the fine balance which you are showing in statements dealing with the serious and intricate problem of national security in relation to civil liberties." ³⁵

The contemporary campaign to undermine the FBI will be of benefit to two minority groups in the United States—Communists and rabid reactionaries. If the bureau is crippled by "vicious and thoroughly unfair" attacks ³⁶ and thus cast into public disrepute, the rank growth of amateur delators, Congressional character assassins, and *ad hoc* loyalty groups—often scarcely distinguishable from vigilantes—will be enormously encouraged. Communism will gain from such a development. Amateur investigators and publicity hounds spoil cases which should be prosecuted. Moreover, the atmosphere of intolerance they create drives honest men toward the Communist movement for the basically inconsistent reason that they abhor persecution.

The chief safeguard against this is the strengthening of the Federal Bureau. It has long since emerged from the sordid era of Palmer and Daugherty and is today a living proof of the feasibility of combating totalitarian conspiracies against democracy without undermining democracy in the process.

Chapter Fourteen

THE AMERASIA STOLEN DOCUMENTS CASE

THE *Amerasia* AFFAIR was one of the gravest breaches of security in the wartime history of the United States. Indiscreet or disloyal American officials funneled hundreds of classified reports—including top-secret papers—to a Communist-controlled magazine. At the time of the 1945 raids on *Amerasia*, the Federal Bureau of Investigation believed it was on the trail of a Soviet spy ring as dangerous as the apparatus which had been exposed in Canada. Seventy-five special agents were assigned to the case; all persons involved were subjected to rigorous surveillance, and every effort was made to develop the facts.

Once the arrests were made, the *Amerasia* suspects were turned over to the Justice Department for prosecution. The air was suddenly let out of the case; four of those arrested were never indicted and the remaining two escaped with trivial fines. Whether this was unavoidable or the result of blundering, appeasement, or skullduggery is an issue which has been tempestuously debated for over five years.

The factual record on the *Amerasia* affair is voluminous. A federal grand jury took secret testimony on the case; two congressional committees probed it; the State Department Loyalty Board went into its detailed ramifications when it judged and eventually cleared foreign service officer John Stewart Service. The area of major disagreement is, not the factual record, but the motives of the men implicated and the reasons behind the government's decision to

abandon all efforts at vigorous prosecution. It should be added that, where there is friction between the Justice Department and the Federal Bureau of Investigation, the former may criticize, but the latter, as a subordinate organization, must remain silent.

Amerasia was founded in 1937. It was a dignified, fairly scholarly magazine, printed on high-quality paper. Its concern was United States policy toward the Orient and its primary political task was to influence the State Department to further the Communist line in China. Obviously, this propaganda message was carefully veiled to appeal to the scholarly and to the bureaucratic mind. *Amerasia* appeared spasmodically. In 1945, when it was raided, it was selling only seventeen hundred copies, losing circulation steadily and running on an estimated deficit of five thousand dollars a month. Despite its unprepossessing balance sheet, the periodical was a magnificent investment. The sums lost were trivial where the stakes were the destiny of 450,000,000 people.

The birth of this little magazine was midwived by events occurring twelve thousand miles away. Until the summer of 1936, the Chinese Soviets were engaged in carrying out a revolutionary agrarian program within their enclave and in resisting the punitive expeditions of Nationalist China. Then, in August, they proposed a common front against Japanese aggression. Chiang Kai-shek refused and four months later was kidnaped by an unruly warlord. The Chinese Communists took control and reportedly decided to put him to death. This was countermanded by Moscow. They released Chiang, acknowledged his position as leader of the Chinese people and urged a national alliance to resist Japan. This program was ratified by the Kuomintang in February, 1937, and a month later *Amerasia* was founded.

The point was simply that the Chinese Communists could now be sold to the American public as the vanguard of a nascent Asiatic democracy which was fighting expanding Japanese militarism. To put this across, it was necessary to have a respectable house organ which could appeal to the liberal mind.

Before *Amerasia* came to light, the propaganda vehicle for the Soviet cause in the Far East was *China Today*—a blatantly Communist magazine. According to its masthead, it was edited by J. W.

Phillips, Frederick Spencer, and Hansu Chan.¹ The real names of these three were Philip J. Jaffe, Frederick Vanderbilt Field, and Ch'ao-ting Chi.

China Today dissolved and its three editors, under their real names, proceeded to organize and operate *Amerasia*. Their political backgrounds were interesting:

Frederick Vanderbilt Field, chairman of *Amerasia's* editorial board, was a wealthy young man of impeccable social position. Field was also a member of the executive committee of the board of trustees of the highly respectable American Institute of Pacific Relations. Field was a Communist and, according to Budenz, a member of the Red underground, the chief of which was J. Peters, a shuffling, mousy man with a skin ailment who read mystery novels in his leisure hours, Peters directed both Washington espionage activities and the work of those Communists who posed as independent liberals.

The managing editor of the new periodical was Philip J. Jaffe, a wealthy manufacturer of greeting cards, who had been a leading figure in party-controlled fronts for about five years, who often operated under false names and who "had for years been contributing upwards of \$5,000 to Communist causes."²

The third member of the triumvirate was the Chinese economist and veteran Communist leader, Dr. Ch'ao-ting Chi.

The original *Amerasia* editorial board consisted of three other persons, one of whom was Owen Lattimore. Of the nineteen men and women who held the positions of editor or secretary of the magazine between 1937 and its collapse after the 1945 espionage arrests, nine have been identified as members of the Communist Party. Of the eight interlocking editors, researchers, and officials in both *Amerasia* and the American Institute of Pacific Relations, seven were branded as Communists by Louis F. Budenz.³

Several of the *Amerasia* people were dupes, who had no Communist affiliations and only the vaguest idea of what the magazine was trying to do. Two editors resigned because they suspected the existence of Communist control. It may or may not be significant that Lattimore remained on the editorial board throughout the period of the Hitler-Stalin Pact, severing his connection in July, 1941, be-

cause he was appointed political adviser to Generalissimo Chiang Kai-shek on the recommendation of President Roosevelt.

In his book, *Ordeal by Slander*, Lattimore implies that his editorial colleague, Ch'ao-ting Chi, became a Communist only after the Red victory in the Chinese civil war in 1949. The facts are otherwise. In the late 1920's, Chi had been important enough to serve as part of the Hongkong apparatus of the Communist International under Heinz Neumann, which directed the strategy of the Chinese revolution. He had gone to Moscow as delegate to an international Communist conference and, in the United States, he was the most influential of the resident Chinese Communist leaders.

There was a close, but somewhat impalpable, connection between *Amerasia* and the American Institute of Pacific Relations. When Senator McCarthy tried to point this out, he was greeted with storms of derision. The two organizations were linked by interlocking executive personnel. They were housed in adjoining buildings and one could pass from one set of offices to the other through a door which was generally left ajar.

The top leadership of the I.P.R. was nominally in the hands of such ultraspectable figures as Newton D. Baker, Woodrow Wilson's Secretary of War, Gerard Swope of General Electric, and Robert G. Sproul, the distinguished Republican president of the University of California. But actual control was in less conservative hands. In 1946 there were ten members of the executive committee of the board of trustees. The chairman, Dr. Sproul, had never attended a meeting. Of the remaining nine, according to Alfred Kohlberg—admittedly a highly prejudiced source—two were members of the Communist Party, three others were sponsors of Communist-controlled propaganda organizations, and a sixth, Owen Lattimore, was later to be accused of secret Communist Party membership.⁴

In May, 1937, two months after *Amerasia* was founded, Harriet Levine became secretary of the magazine. She was the wife of Ch'ao-ting Chi, the cousin of Philip Jaffe and a staunch and undeviating supporter of Communist policies.

The standard pattern for Communist domination had been followed. The basic rules were simple. A chain of organizations is set up or existing organizations are captured. These vary in respecta-

bility and apparent impartiality. The openly radical groups advance Communist policies boldly, bring forward "the face of the Party," and cite the respectable organizations for prestige purposes. Secret Communists, who are being groomed for high positions in the government, the business, or the academic world, function only within the stodgy and seemingly conservative outfits. Here, eminent and busy men serve as presidents and chairmen of the boards. The more important they are in national affairs, the less probable is it that they will find time to make any real scrutiny of the organizations they nominally run.

The humble and unobtrusive secretary, whether female or male, must be an absolutely reliable Communist. Generally, she will be recommended by a secret party member on the board. She will secure her position by displaying enthusiasm, intelligence, and hard work and because it is ill-paid drudgery which nobody else wants. As the communications channel between the board and the membership, she controls the correspondence, sometimes tears up appeals and directives of which the party disapproves, and uses her position to build up strong Communist factions in the branches of the local organizations. In this division of labor, the respectables are given prestige and the Communists take unobtrusive power.

While the average American had never heard of *Amerasia*, it became the Bible of a growing group of pro-Communists in government whose concern was our policy in Asia. On at least one occasion, the State Department cabled a digest of *Amerasia's* policy recommendations to the American ambassador in Chungking either for information or for guidance. Entire *Amerasia* articles were wired to Moscow by *Tass*, the Soviet news agency, prior to their publication.

Before World War II, the United States had only a skeleton staff of Far Eastern experts. As the crisis in the Pacific developed, the government scoured the country for men with intelligence and expert knowledge. Some of the new recruits had been trained on Rockefeller grants. These were nonpolitical and quite a few Communists and fellow travelers benefited from them.

The writings of Edgar Snow, Nym Wales, the late Agnes Smedley, and others had depicted the Chinese Communists as Homeric

heroes, as men of genius, Spartan simplicity, and utter integrity, as builders of a new social order, which was to provide equality and economic opportunity for all. These modern sagas—which had an element of truth in them—had created great sympathy for the Chinese Soviets within those academic groups from which the government would necessarily recruit most of its Far Eastern personnel.

While some of the extollers of Soviet China were independent observers, others were deeply implicated in Russian espionage activities in the Far East, according to the unpublished dossiers of the Sorge spy ring acquired by General MacArthur's G-2 in postwar Japan. Much of the data contained in these reports has been withheld from the public.

The Communist International regarded China and Poland as the two key countries ripe for easy postwar Sovietization. The preparatory process involved international organization on all echelons and in accordance with a strategic plan.

In the United States government, key positions in the Far Eastern policy area were held by men whose loyalty had been challenged. During the early war years, Alger Hiss, later to be convicted of perjury in connection with Soviet espionage activities, was assistant chief of the Far Eastern Division of the State Department. As such, he had considerable influence over appointments, promotions, and policy. The international monetary policies of the United States were in the hands of Harry Dexter White, Assistant Secretary of the Treasury. Years later, White was named as a Soviet agent by both Elizabeth Bentley and Whittaker Chambers, and the latter submitted material evidence to support the charge. In an even more strategic agency, an equally eminent official concerned with the Far East was to be accused of involvement with a Russian espionage ring.

Control having been established over major positions of power, it is not strange that the younger men sent to China on political and military missions were often staunch partisans of the Communist faction. This affected the way facts were reported from the field, the big military and political decisions, the management (or rather mismanagement) of China's monetary system, whether loans were granted or withheld. As the American government's "left wing" on

China affairs grew, the role of *Amerasia* expanded correspondingly, both as a policy guide and as an open international communications channel for world Communism on Far Eastern affairs.

In early 1945 an official of the Office of Strategic Services discovered that an *Amerasia* article on Siam had been cribbed from a secret OSS report. The matter was referred to Frank Brooks Bielaski, an OSS security officer. "Something had to be done to plug this leak," Bielaski decided. The Siam document had been routed to about thirty American government officials. Including their secretaries and assistants, about a hundred people could have stolen it.

Bielaski decided that "the only way to get facts would be to go right into the fountainhead of information." This was later described by a Justice Department official as "burglarizing" the premises of *Amerasia*. What the OSS man wanted to see was the dummy of the current edition. "We would see . . . if our secret document was in that dummy, and if there would be anything on that document to show through whose hands it came, and how it got in their possession." ⁵

Bielaski has been sharply criticized for this decision on the theory that he helped taint the case and make prosecution impossible. What were the alternatives? After sufficient evidence had been obtained against the *Amerasia* editors through surveillance, either search warrants or arrest warrants could have been obtained. There were two difficulties in getting search warrants. First the law requires filing a list of everything seized under such a warrant within ten days of the action. That would have meant identifying the stolen secret documents. Second, the government is empowered under a search warrant to seize only contraband and the instruments or fruit of the crime. "For instance," a Justice Department attorney explained, "if there were a letter in the files in which Jaffe confessed he was a Russian spy, that is evidence that cannot be seized under a search warrant." ⁶

Bielaski's primary interest was in blocking the security leak. For ten days, his men watched the *Amerasia* offices. They discovered that the editors—by now there were only two of them, Philip Jaffe and Kate Mitchell—worked there late every night.

Finally, around midnight on March 11, Bielaski and four of his

men illegally raided the deserted premises. Bielaski searched the front office and saw, to his disappointment, that there was nothing of any interest there. One of his aides came in from the back rooms:

"We think you better come here. We found some stuff you ought to see."

The "stuff" was a sizable room off the main corridor devoted to photocopying on a big scale. "They had a photo copy machine and developer pans all around on the shelves." Bielaski thought this a little unusual in a small, scholarly magazine and told his detectives to keep on searching. Editor Jaffe's desk, he discovered, "was covered with originals and freshly made photo copies of documents, everyone of which was secret in its character. Some of them were directed, personally, to the Secretary of State. Some of them were from military attachés in China and other places, confidential. All of them were marked 'Not to be shown OWI.' That was evidence of the confidential nature." The freshness of the copies "accounted for the fact that the office was working late at night."⁷

Bielaski found a bellows-type suitcase, which had been specially constructed with from ten to fifteen pockets, stuffed behind a door. This was crammed with more government documents, one of them classified top secret. Practically every government agency had contributed to this harvest of secret data and even British Intelligence reports had been gathered. The one agency which was not represented was the FBI.

In the *Amerasia* library, Bielaski found a top-secret Navy paper entitled "The Bombing Program for Japan." If this was authentic, it could give the Soviet government valuable clues as to when and how it should enter the war in the Pacific.

The search was over at 2:30 A.M. Taking a few of the OSS documents with him, Bielaski flew to Washington. His superior, Archbold van Beuren, the OSS security officer, "definitely felt their unauthorized possession constituted a threat to national security in time of war." General "Wild Bill" Donovan, the OSS director, agreed. He took the documents personally to Secretary of State Stettinius and had a night conference with him at his home. Donovan's plan was to turn the case over to a grand jury immediately. The State Department decided, however, that OSS should "get out of the

case" and the following morning full authority was given to J. Edgar Hoover's organization.

Five days later, on March 16, Inspector Gurnea of the FBI had set up a system of twenty-four-hour surveillance on Jaffe and Mrs. Mitchell. In addition, agents tapped telephone wires and made repeated surreptitious and illegal searches of *Amerasia's* offices. The documents found there were photographed, but not removed.

In the final arrest raids on *Amerasia* and the homes of the accused, the FBI seized some seventeen hundred government documents—or exactly one for each reader of Jaffee's magazine. Obviously, there was no innocent explanation for robbery of government property on this huge scale.

If this was espionage, however, it was carried out in a peculiar way. In contrast to the extraordinarily circumspect methods of Whittaker Chambers, the *Amerasia* editors left hundreds of classified documents on tops of desks and in valises. They had elaborate photocopying equipment, but no devices for microphotography which reduces the bulk of the material to be transmitted to a fraction of the original. It is possible that by 1945 even elementary precautions had come to seem unnecessary. Certainly, Soviet diplomatic missions were shipping out classified reports by the ton in packing cases and under diplomatic seal.

An FBI representative testified: "Obviously, spies do not pass documents in the presence of witnesses and it is not known whether classified information possessed by Jaffe and his associates was communicated to representatives of any other government. In the course of the investigation, however, Jaffe was observed to enter the Soviet consulate in New York City, on May 31, 1945. He met with Earl Browder, then head of the Communist Party, on four occasions during the investigation." This witness added: "Jaffe also had meetings with Tung Pi-wu, the Chinese Communist representative" ⁸ at the San Francisco Conference.

Although espionage may also have been involved, the chief function of *Amerasia* was to bend American Far Eastern policy in the direction of Soviet interests. Access to secret documents of all sorts ensured that *Amerasia* articles would be authoritative, accurate, and impressive to men in policy forming positions.

The FBI surveillance quickly identified two government sources of the classified documents. On March 21, five days after the shadowing began, Jaffe proceeded to Washington where he met two government employees—Emmanuel Larsen and Andrew Roth. The first rendezvous was in the Statler Hotel. Larsen carried a briefcase and Roth a large manila envelope. After lunch, Jaffe and Roth drove by a circuitous route to a parking lot, stopped there and examined documents over the steering wheel of the car. Evidently, Jaffe had had no other business in Washington. On another occasion, Mrs. Roth took manila envelopes from both her husband and Larsen, proceeded to New York and left an envelope in Jaffe's private office.

Andrew Roth was a young student of Far Eastern affairs who had previously been an *Amerasia* research assistant under the direct supervision of Jaffe. He was appointed a naval lieutenant and assigned to the Office of Naval Intelligence in Washington despite a security investigation which revealed that he "was suspected or alleged to be a fellow traveler." The sole precaution taken was to deny him access to top-secret reports.^{8a}

At the time, the Navy had no authority to deny commissions to suspected Communists. In fact, during the wartime alliance with the Soviet Union, President Roosevelt ordered that all military and naval intelligence files dealing with the Communist affiliations of armed service personnel be destroyed. This directive, however, was not obeyed.

Where Roth seems to have been a convinced Communist, Larsen was an opportunist and adventurer. Pink-cheeked, dapper, shrewd, and affable, he had spent most of his life in the Far East and it had been a rather active one, including reorganization of the Mongolian wool trade in partnership with a Korchin prince, employment by the Chinese secret service, and a supposed death threat by Japanese intelligence.

His security record was not particularly prepossessing. "According to the records of the Office of Naval Intelligence, Larsen was requested to resign from that service in 1927 or 1928 because of his relations with . . . a Russian girl of questionable character." In 1935 he was allegedly "either discharged or requested to resign from the

British-American Tobacco Co. because of discrepancies in expense accounts." The previous year, a Manchurian newspaper reported an interview with an E. Larsen praising conditions in the Japanese puppet state of Manchukuo.⁹

Shortly after his departure from the British-American Tobacco Company, Larsen went to the United States and received a Rockefeller Fellowship. Between 1935 and 1944, he was employed by naval intelligence as a Far Eastern analyst and, in October of the latter year, transferred to the State Department as a China specialist.

Larsen's niche in the bureaucracy was the compilation of biographical information on Far Eastern personalities. He had been collecting items since the early 1920's and noting them down on cards. After his arrest, he was to claim that his relationship with Jaffe was essentially one of marble trading. Jaffe was to give him items on Chinese Communists in return for material in Larsen's biographical file.

Larsen was ambitious. He worked hard, but advanced at a disappointing speed. He was resentful of those who won effortless promotions. This was his most vulnerable area and it made him an almost ideal tool. Larsen's subsequent testimony before the Hobbs Committee was psychologically revealing:

"A man called Robert Feary, an economist, working on Japan, he had an unadulterated nerve to write a paper on Manchuria. They let him write it, not me, because he was the man who would supply them with the motion they wanted."

When he spoke of his biographical file, Larsen again let his resentment rise to the surface:

"I have an attractive, young, fine wife, whereas other men go to the movies and to the National Theater and go out, I sit every night until eleven, and I do this, and where does it get me? I have this thing which is like a white elephant . . . I do not get any recognition for it."¹⁰

Larsen admitted after his arrest that he had received about two hundred dollars from Jaffe in return for his wife's work in typing copies of his biographical cards. This was certainly not an exorbitant payment. His close and improper association with Jaffe, in

short, was probably not mercenary in origin. Larsen was flattered by Jaffe's friendship and impressed with his opulence and acquaintance with the great. One day, Jaffe told Larsen in an offhand way that, after the war, the United States would pursue such-and-such a China policy. He added that he had just got this report from Edgar Snow who had it from President Roosevelt. Larsen decided to verify the matter. When he was finally ushered into the austere presence of Acting Secretary of State Grew, he discovered that the President had not told Grew what he had allegedly confided in Snow.¹¹

Kate Mitchell, Jaffe's colleague on *Amerasia*, was already implicated and soon Mark Gayn also came under surveillance. Of Russian extraction, Gayn had been born in Manchuria and educated in Soviet schools. During a five-year period of active Japanese aggression, he had worked for *Domei*, the official Nipponese news service. A free-lance writer, Gayn was the author of several books on the Orient.

Thus far, the FBI surveillance, which was to cost the government several hundreds of thousands of dollars, had led only to small-caliber government officials. On April 19, John Stewart Service, a 35-year-old, China-born career diplomat, met Jaffe in Washington. Exactly a week earlier, United States Ambassador Patrick J. Hurley had ordered Service recalled from Chungking in the belief that he "had been sabotaging America's China policy by favoring the Chinese Reds as against the Chinese Nationalists."¹² In June, 1950, Hurley accused Service of furnishing Mao Tse-tung "with secret information in 1944" and of being part of a clique which "was opposed to individual liberty, free enterprise, justice and government by the people . . . in favor of imperialism, or communism, and totalitarianism."¹³

Service vigorously denied these allegations. The former ambassador declined to appear before the State Department Loyalty Board and repeat the charges against Service under conditions where he would have been subjected to cross-examination.

Lieutenant Roth introduced Service to Jaffe on the afternoon of April 19 and a close relationship sprouted instantaneously. The three spent five hours together at a party that night. Service brought

a manila envelope to Jaffe's room the following day and had a long talk with him that morning. On the twenty-fourth and twenty-fifth, Service went to New York and had two further meetings with Jaffe. Other meetings occurred in May; yet there was only one brief occasion when Jaffe met Service in the latter's office in the State Department.

Meanwhile policy decisions were being made. On May 29 the Criminal Division of the Justice Department learned officially that the OSS and the FBI had made unlawful searches of the homes of the suspects and of the *Amerasia* offices. Although this fact might taint the entire case, the government decided to go ahead, a key factor in the decision being that "80 per cent of Federal law violators confess their offense after their arrest."¹⁴

The day before this, Secretary Forrester had recommended that prosecutions be delayed because they might "greatly embarrass the President in his current conversations with Stalin."¹⁵ Two days later, Mr. Truman telephoned the FBI "and stated that he wanted action on the case as quickly as possible, and wanted it to be vigorously followed, and in the event we received instructions from anyone that the case was to be held in abeyance, we were to contact him personally and let him know what instructions had been issued."¹⁶

On the afternoon of June 6, Jaffe, Gayn, and Mitchell were arrested in New York and Larsen, Roth, and Service were held in Washington. The charge was espionage. When the arrests were made, some seventeen hundred government documents were seized in the *Amerasia* offices and in the homes of Gayn and Larsen. "I would say that 96 per cent of them were not related to the national defense," Senator Tydings commented years later.

The Justice Department saw the matter in a different light: "If they could take that paper, they could take any paper," Congressman Fellows observed during the Hobbs Committee hearings.

"You are right as a clock about that," United States Attorney James McGranery commented. "That is the angle you are after."¹⁷

The evidence against the six defendants varied from strong to marginal. Kate Mitchell and Philip Jaffe had obviously received and used classified government documents. The reports were piled

high in *Amerasia's* offices and they had been reproduced, with slight verbal changes, in its pages.

Kate Mitchell, Mark Gayn, and John Service made the unusual offer of waiving immunity before the grand jury. That meant that they were prepared to answer any pertinent questions and risk perjury prosecution if they lied.

A large haul of documents had been made in Larsen's home. He admitted having swapped biographical files with Jaffe. However, FBI and Justice Department spokesmen declared that many of the other classified State Department reports had Larsen's fingerprints on them. Biographical files build up slowly and, if that was all Jaffe had wanted from Larsen, the frequent conferences between the two men would have been unnecessary.

Roth tried to explain the fact that he had been observed showing papers to Jaffe with the story that he wanted the latter's criticism of a book he was writing. However, Mrs. Roth flatly denied that Jaffe had ever reviewed this material.¹⁸ No incriminating papers were found in the raid on Roth's home, but three of the seized *Amerasia* papers were copies in his handwriting and others had been typed on his machine.

Mark Gayn's latent fingerprints were found on one paper and others were copies made on his typewriter. Gayn wrote articles for the *Saturday Evening Post* and had OWI cooperation. George E. Taylor, chief of the Far Eastern Department of OWI, claimed that he had declassified documents "as he handed them" to Gayn. The internal security system in this organization was woefully inadequate and it will be recalled that the highly classified documents found in *Amerasia* had been stamped "Not to be shown OWI."

The evidence against Service was thin. The career diplomat considered that it was his duty to brief journalists on background material and that he was high enough in the department to exercise his own judgment on such matters. He claimed that he had been assured by Roth that Jaffe was not a Communist. Service admitted readily that, when he first met Jaffe on April 19, he showed him his own carbon of a report he had filed from China covering an interview with Mao Tse-tung. Jaffe was interested and the next day Service brought ten more of his dispatches. The *Amerasia* editor

claimed that he did not have time to read them in Washington, took them to New York and returned them to Service a week later.

On May 8 an FBI microphone in Jaffe's hotel room picked up a conversation in which Service said among other things: "Well, what I said about the military plans is, of course, very secret." It appeared from the context, however, that Service had not revealed operational plans, but had merely stated that any American landing force on the China coast would cooperate with the local Chinese faction in control.¹⁹

The grand jury voted unanimously not to indict Service. A State Department Personnel Board interrogated him and recommended his reinstatement after "a very severe oral reprimand for being indiscreet." Secretary of State Byrnes and Undersecretary Grew both congratulated him on his vindication. In 1950 when Senator McCarthy stirred up the old charges, Service was recalled from the Orient to undergo a second loyalty probe in which the State Department again cleared him. At the moment of writing, the Service case is under investigation and unsettled.

The case against the other five *Amerasia* defendants was much stronger. The Communist Party promptly rushed to their defense, charging that the arrests were the work of reactionaries in the State Department. *The Daily Worker* urged its readers to protest to President Truman against this "attack on democracy." Democracy apparently was a system of government that gave officials the right to steal their country's secrets in wartime and turn them over to partisans of a foreign power.

Louis F. Budenz tells a strange story of frenzied meetings of the Communist high command at which strategy was planned on the *Amerasia* crisis. Leadership was taken by Robert W. Weiner, the fat, shifty party treasurer, a man with a criminal record and many names. At this level, there was no twaddle about democracy. Budenz alleges that somebody suggested that the Communist Party wash its hands of the mess by denouncing Philip Jaffe as a Japanese agent, but that this proposal was rejected. He further alleges that Andrew Roth contacted the Political Bureau with the recommendation that Alger Hiss be asked to pull strings and get the proceedings quashed. There is no independent corroboration of any of these statements.

Back in Washington, the Justice Department lawyers decided to drop the espionage charges and accuse the defendants of conspiracy to embezzle and receive government property. This carried maximum imprisonment of two years. The retreat seems to have been a necessary one. There was no direct evidence that the documents had been transmitted to Soviet agents. Even if there had been, the government could never have proved that the defendants knew this.

The first important question was where *Amerasia* had obtained its seventeen hundred documents. Service seemed in the clear because he had been overseas for two years. Roth's operations were confined to naval intelligence where *he had been denied access to top-secret documents for security reasons*. Gayn was not even in the government. As for Larsen, Robert M. Hitchcock, who prosecuted the case for the Justice Department, doubted that he had access to any government reports except those which crossed the China desk of the State Department. If other officials had been trafficking in secret reports, the FBI did not find them. Possibly, these miscreants had had the good fortune not to be in Washington during the 82-day period of FBI surveillance. Since the State Department internal security system was little short of a national scandal, it was impossible to find additional culprits through examination of document routing.

A two-thirds vote by the grand jury was needed for indictment. The vote was fourteen to six against Jaffe and Larsen. Roth squeaked by with a thirteen to seven ballot against him. Five jurors wanted Gayn prosecuted and two voted against Kate Mitchell.

Meanwhile, Larsen was becoming a nervous wreck. His weight went down from 162 to 132 pounds. He never slept more than two hours a night. He had diarrhea and couldn't eat. Nonetheless, he showed resourcefulness in extricating himself from what seemed to be an impasse.

Guessing that the FBI had searched his apartment without a warrant, Larsen contacted Sager, the manager of the building, "who was a pretty good friend of mine. . . . He always exacted a little price for every favor. He loved Southern Comfort. . . . So I went out and, broke as I was, I bought a bottle of Southern Comfort. . . .

We sat around, opened it, had a drink, and I said, 'Say, Sager, how many times did you let those FBI men in here?' "

When Sager answered "two or three times," Larsen and his lawyer appeared in the Department of Justice with a motion to quash the case on the grounds that "said evidence was obtained by and through the lawlessness of the Federal Bureau of Investigation." ²⁰ At the time, the main defendant, Jaffe, was in an adjoining room. The Justice Department attorneys felt sick. As United States Attorney McGranery put it:

"We held the one fellow [Jaffe] in our office to get the plea of guilty from him. The deal was made there. If we had not handled it in that way, I do not think we would have any case at all. None of this evidence was obtained in a manner in which we ordinarily would get it. It was very clumsily handled. That is my candid opinion of it. This one bird [Larsen] was smart enough to develop a little technique of his own." ²¹

The Tydings subcommittee did not agree with the implication that the FBI bungled the affair, but stated that the bureau had handled the investigation "with an efficiency and thoroughness in keeping with the best traditions of that agency." The United States was at war and the FBI had two duties. One was to prepare evidence for prosecution; the other was to guard the security of the nation. It is difficult to argue that the bureau should have refrained from unlawful methods—no others being available—to ascertain whether or not military data were being filched from the government and handed over to the Soviets.

On the theory that the FBI had polluted the case, the Justice Department allowed Jaffe to plead guilty and Larsen to plead *nolo contendere*. On November 2, 1945, Justice Department attorney Robert Hitchcock made the strange statement to a District of Columbia judge that "there was no element of disloyalty involved" in the case. This ensured light punishment for the culprits.

Jaffe was fined \$2500 and Larsen \$500. The penalty was trivial for a man of Jaffe's income. *At the instigation of the Department of Justice attorneys*, Jaffe paid Larsen's fine and his lawyer's fee, amounting to an additional \$2000.

The legal question was a basic one. The Fourth Amendment to the Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

Moreover, the Fifth Amendment "protects every person from incrimination by the use of evidence obtained through search or seizure made in violation of his rights under the fourth amendment." ²²

The FBI had entered the offices of *Amerasia* without warrants on six separate occasions and had inventoried and photographed the documents found there. It had made six similar entries in other places, specifically, the homes of Jaffe, Gayn, Larsen, and Mitchell. Then, armed with this knowledge, it had obtained arrest warrants, swooped down on the suspects and on *Amerasia* and seized the evidence found on the premises.

It is true that no documents were physically removed during the FBI searches without warrants. However, the Justice Department argued, "the arrests themselves, in short, were tainted, because of the tainted nature of the information on which they were based." ²³

Speaking through Mr. Justice Holmes, the Supreme Court had declared in the Silverthorne case:

"The Government now, while in form repudiating and condemning the illegal seizure, seeks to maintain its right to avail itself of the knowledge obtained by that means which otherwise it would not have had. . . . The essence of a provision forbidding acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all." ²⁴

The crucial questions in the *Amerasia* case were whether the guilty had been shielded and whether the Justice Department had dragged its feet. If this view of the law is right, there is no need to search further for sinister explanations of the fiasco. Under the rule of the Silverthorne case, any conviction partially based on an illegal search of the premises of the convicted must be set aside. This is analogous to the situation with respect to wire tapping except that

the statute on telephone interception can readily be changed, whereas the Constitution cannot.

The FBI had to choose between illegal searches to protect national security and circumspect behavior, which would have made possible conviction of the guilty. It decided on the former. As the war was almost over, it can be argued that it might have been better to gather evidence by the slow procedures of surveillance and interrogation of *Amerasia* typists, to raid and arrest only after proper warrants had been obtained and thus to put disloyal Americans behind bars. However, this is a judgment of hindsight. At the time the FBI made its choice, there was no assurance that Japan was on the verge of surrender.

Once he had escaped with a small fine, which his accomplice paid, Larsen underwent an odd metamorphosis. He became the chief denouncer of the alleged Red network in the State Department. Before a House Committee in 1946, he made this shocking statement: "These people in the State Department who are forcing a pro-Communist policy so as to enhance their own little group at the head of which I consider Dean Acheson stands as the leader."

In October, 1946, Larsen wrote a sensational article for *Plain Talk*, which was to become a fountainhead for Senator McCarthy's charges of communism in the State Department four years later. In this publication, he accused a large number of officials on the most scanty evidence of participation in the conspiracy to betray Nationalist China to the Communists. Larsen attempted to insert his characterization of Dean Acheson as the leader of a pro-Communist clique in his article, but the *Plain Talk* editor, Isaac Don Levine, refused to allow him to do so. A year later, Larsen unsuccessfully urged *Plain Talk* to launch "a pre-dawn attack" on General "Vinegar Joe" Stillwell after the latter's death.

In 1950, Senator Joseph R. McCarthy, finding that he was unable to prove his sensational charges against Dr. Owen Lattimore, decided to shift to new ground and open a fresh offensive. His advisers recommended reheating the *Amerasia* scandal and the Larsen article was disinterred.

The second metamorphosis of Emmanuel Larsen occurred in 1950 when he appeared before the Tydings Subcommittee and, strangely

enough, supported the administration. He repudiated his slur on Dean Acheson as "fantastic and ridiculous," then admitted that he had previously sworn to "unsavory hearsay" against John Stewart Service because he believed the latter was trying to "put the finger" on him.

The Tydings subcommittee majority report characterized Larsen as "a disloyal American" whose "credibility generally is open to serious doubt." It then seized on Larsen's testimony to slander an American journalist, whom Winston Churchill once credited with the greatest journalistic scoop of the century, without giving this man the opportunity, which he had persistently requested, to refute the charges.

The smoldering *Amerasia* scandal thus became a vehicle for character assassination by both sides in a partisan political fight which has scarcely ever been excelled in respect to unscrupulousness. The underlying facts of the case itself were reasonably clear. The stolen documents were merely one indication of widespread pro-Soviet infiltration within the American government, specifically beamed on a China ripe for revolution. While the Communists attempted to quash the prosecution, they were unsuccessful and the President of the United States personally intervened to ensure diligence and vigor. The culprits were protected, not by appeasers and conspirators, but by the Constitution itself and by the Bill of Rights which would be worthless if it did not shield the guilty as well as the innocent.

Chapter Fifteen

THE ATTACK ON OWEN LATTIMORE

A POLITICIAN in search of an issue, Joseph R. McCarthy, the freshman Republican Senator from Wisconsin, toyed with the idea of campaigning for the St. Lawrence Seaway. He reportedly went to Father Edmund A. Walsh of Georgetown University for advice and was told that the man who consistently attacked Communism would be re-elected.¹

On February 9, 1950, McCarthy delivered a political speech at Wheeling, West Virginia. He said: "I have here in my hand a list of 205—a list of names that were made known to the Secretary of State as being members of the Communist Party and who nevertheless are still working and shaping policy in the State Department." McCarthy implied that these 205 were also "members of a spy ring . . ." ²

These charges catapulted the Senator to the front page and he repeated them with statistical variations in a succession of denunciatory speeches. His mail grew in volume and he abandoned all other issues to become the Number One Crusader Against Communism. The State Department lashed back, charging inaccuracies, misstatements, and unscrupulous disregard for truth. On February 22, 1950, the Senate passed a resolution to investigate and a Subcommittee of the Foreign Relations Committee was set up under the chairmanship of Millard Tydings of Maryland, a staunch administration man.

Circumstances had suddenly thrust McCarthy into the limelight

and for three months he made headlines. During this period the American people were regaled with an eye-gouging contest of personal villification, slander, and outright lies which has had no parallel since the Reconstruction Era. There were few heroes in this contest. From start to finish, it was a supreme example of dirty fighting in which the prestige of the American government abroad was dragged in the mud.

In Franco's Spain and Peron's Argentina the McCarthy charges were accepted at face value by the captive press, the inference being that American antipathy toward these regimes was the result of Communist machinations in Washington. In Western Europe it was believed that the people of the United States had gone berserk and that fascism impended.

The Wisconsin Senator who lit this fuse was forty years old and a bachelor. Starting as a grocery clerk, he had gone through high school in one year and won an election as a circuit court judge. His combat record as a Marine officer in the Pacific was excellent. McCarthy volunteered for dive-bomber missions through heavy enemy flak and, at great personal danger, photographed Japanese gun positions. Severely wounded, he refused to be evacuated and carried on with his mission.

His activities as a civilian politician were less admirable. While campaigning for the United States Senate in 1946, he refused to resign from the bench and instead covered the state by exchanging circuits with other judges. The Board of Bar Examiners petitioned for his debarment on the grounds that he had chosen "to defy the rules of ethical conduct prescribed by the Constitution, the laws of the State of Wisconsin, and the members of the profession, in order to attain a personal advantage."³ The petition was dismissed.

In the Senate, McCarthy gained notoriety by his defense of a group of Himmler's SS men who faced death for having killed 350 unarmed prisoners of war in cold blood. This campaign was calculated to win German-American votes when the Wisconsin Senator came up for re-election.

McCarthy's tactics were to keep on the offensive. He moved swiftly from one charge to the next while the State Department issued voluminous corrections and refutations. At all times he retained the

initiative. A master of strategic timing and roundhouse brawling, McCarthy soon convinced a majority of the American people that where there was so much smoke, there must be a raging fire.

Senator Tydings appointed Edward P. Morgan as chief counsel of the subcommittee. Formerly chief inspector of the Federal Bureau of Investigation and one of its foremost experts on Communism, Morgan had lectured to patriotic societies for years on the Red menace. Like J. Edgar Hoover, who reportedly recommended him to Senator Tydings, Morgan might be described as a premature anti-Communist. He filled his staff with three former FBI men and Robert Morris, the nominee of the Republican minority on the subcommittee.

Morgan and his three aides were largely responsible for the final majority report of the Tydings subcommittee. Although Senator McCarthy charged that the report was a "whitewash," it is utterly unreasonable to suppose that these veteran G-men had any sympathy for Communism. Their careers were ample refutation of that particular charge.

Few politicians have ever been exposed to such an avalanche of opprobrium as McCarthy. The majority report of the Tydings subcommittee described his charges and methods as: "A fraud and a hoax perpetrated on the Senate of the United States and on the American people. They represent perhaps the most nefarious campaign of half-truths and untruth in the history of this Republic. For the first time in history, we have seen the totalitarian technique of the 'big lie' employed on a sustained basis. The result has been to confuse and divide the American people, at a time when they should be strong in their unity . . ." ⁴

Nor did the minority report, prepared by Senator Henry Cabot Lodge, Jr., make any statement in McCarthy's support. Another Republican leader, Senator Margaret Chase Smith of Maine, declared: "The greatest deliberative body in the world has been debased to the level of a forum of hate and character assassination sheltered by the shield of congressional immunity."

Life magazine bracketed McCarthy and *Pravda*, adding the interesting observation that the Senator's technique of vituperation was "one of the most elementary, least courageous and least biting." ⁵

The syndicated columnist Stewart Alsop thought that McCarthy had promoted "the suicidal illusion that the cheap pleasures of spy-hunting are an adequate substitute for the hard effort which must be made if freedom is to survive." ⁶

Despite all this, the McCarthy tornado left behind it a litter of political cripples and corpses. Even some of those who defended themselves most vigorously suffered irreparable damage. The public had neither the time nor the inclination to study the labyrinth of charges and countercharges. All that it was likely to remember about a man was that he had been accused.

An instance was the decision by a majority of the guests in a New Hampshire resort hotel that Owen Lattimore should not be allowed to give a talk there. Now the right of free speech obviously does not include the right to compel audiences to listen. However, the attitude of a large part of the guests was expressed by a Mrs. Travis, otherwise unidentified, who thought: "Anyone about whom there is any question should not be allowed to speak." ⁷

Many seemed to share this *Alice in Wonderland* view that trials should begin with the sentence: "Off with their heads!" A situation was arising in America where the mere fact of being accused was dangerous. Prudent men avoided stepping into the limelight and trading blows with a slugger who commanded the press and enjoyed congressional immunity.

McCarthy was out-generated, refuted time and time again, forced to withdraw his crucial accusation, and put in a position where he failed to keep his promises. Yet when the dust had settled, the only contestant who emerged from the free-for-all stronger than when he had entered it was McCarthy. According to the Gallup Poll, a majority of the people believed he had performed a public service. His influence in the 1950 elections was massive and he was largely responsible for the electoral defeat of his able antagonist, Senator Tydings.

McCarthy's triumph was a result of the general world situation. The American people were bewildered and angry over the easy victory of the Chinese Communists. A fourth of the world's population had suddenly fallen under the Soviet yoke and this was perhaps

the greatest political disaster which the democratic nations had suffered since Hitler's defeat of France. A sober, realistic analysis of the causes of the China catastrophe was urgently needed. While such an autopsy would have dealt with Communist infiltration of the United States government as one of the major causal factors, it would not have been confined to this and would have had the constructive purpose of preventing such policy debacles in the future.

The factual record concerning the collapse of Nationalist China is voluminous, but nonetheless confusing. According to the State Department, basic American postwar policy was: "while assisting the Nationalists to assert their authority over as much of China as possible, [to] endeavor to avoid a civil war by working for a compromise between the two sides."⁸ The official reason given for this strategy was ". . . the Communists probably could have been dislodged only by American arms. It is obvious that the American people would not have sanctioned such a colossal commitment of our armies in 1945 or later."⁹

After the war, the United States loaned or granted the Nationalist government over one billion dollars and handed over surplus property with an original cost of an additional billion dollars. A large part of this aid was military.

By contrast, the Chinese Communists did not receive direct military aid from the Soviet Union. However, after stripping Manchuria of most of its industrial and transport equipment, taking the surplus crops, and causing starvation in such cities as Harbin, the Russian military withdrew, "abandoning" the captured arms of the Japanese Kwangtung Army to the Chinese Communists. The matériel thus taken over was sufficient to equip three million Communist infantrymen.

While American aid was substantial, it was not enough to be decisive. In 1948, Nationalist generals began to surrender en masse to the Communists, turning over arms, equipment, and troops intact. By December of that year, the American military attaché at Nanking reported that "seventeen originally United States equipped divisions have been totally lost . . ." Military intelligence estimated at that time that some 75 per cent of all American matériel turned over

to Chiang's armies had reached the Chinese Red Army. Two years later, this ammunition and firepower would be used to kill Americans in Korea.

The defeat of Nationalist China was due to what Arnold Toynbee calls a failure of nerve. "Its leaders had proved incapable of meeting the crisis confronting them," Secretary of State Acheson declared, "its troops had lost the will to fight, and its Government had lost popular support. The Nationalist Armies did not have to be defeated; they disintegrated. History has proved again and again that a regime without faith in itself and an army without morale cannot survive the test of battle." ¹⁰

The Chinese Communists won, Acheson thought, because they took brilliant advantage of the "internal ferment in Asia," a ferment caused by "revulsion against foreign domination" and "revulsion against the acceptance of misery and poverty as the normal condition of life." ¹¹

Senator McCarthy and his supporters took a somewhat different view. They believed that a group of Soviet agents in the State Department, influencing tender-minded idealists in the top positions, had over a period of years created the demoralization and dry rot in Nationalist China.

Actually, these two explanations were not necessarily mutually incompatible. Obviously, the Chiang Kai-shek regime had had major internal weaknesses. Otherwise, the Soviets would not have decided to coordinate their energies toward overthrowing it, nor would they have succeeded in that task. The fact that the U.S.S.R. succeeded in riding with the current of broad social forces in China does not explain why the United States failed. There were two major questions to be asked about American policy in China:

Had the State Department contributed materially toward the disintegration of the Nationalist government by withholding urgently needed aid, by undermining the prestige of its leadership, and by driving it toward suicidal policies?

Given the dry rot, would it have been possible to rescue the military situation by providing the arms and training cadres which Chiang Kai-shek repeatedly requested and which Washington denied him?

There was, in short, no *a priori* reason to accept Dean Acheson's somewhat smug conclusion: "Nothing that this country did or could have done within the reasonable limits of its capabilities could have changed the result; nothing that was left undone by this country has contributed to it."¹²

On November 26, 1945, Patrick J. Hurley resigned as American ambassador to China, giving the following reasons:

"The professional foreign service men sided with the Chinese Communist armed party and the imperialist bloc of nations whose policy it was to keep China divided against herself. Our professional diplomats continuously advised the Communists that my efforts to prevent the collapse of the National Government did not represent the policy of the United States. These same professionals openly advised the Communist armed party to decline unification of the Chinese Communist Army within the National Army unless the Chinese Communists were given control . . .

"I requested the relief of the career men who were opposing the American policy in the Chinese Theater of war. These professional diplomats were returned to Washington and placed in the Chinese and Far Eastern Divisions of the State Department *as my superiors* [My emphasis—N.W.]"¹³

Immediately after Hurley's resignation, General George C. Marshall was appointed the President's special representative to try to restore civil peace through mediation and bring about a coalition government in which the Communists would be represented. The one consistent thread in the State Department's activities was to seek to build up a third group of liberal, democratic reformers who were non-Communist. There were a few tiny political groups of this character which, however, lacked either military or political strength. The consequence of concentrating on this mirage was that the United States helped undermine the prestige of the Nationalist government without creating a pro-Western bloc within the rising Communist group.

While General Marshall was attempting the impossible task of establishing a coalition between irreconcilable elements, the Chinese Nationalists were expanding militarily. Until the end of 1946, Chiang's armies made impressive military gains and engaged the

Communists on Manchurian soil. However, from August, 1946, to May, 1947, General Marshall imposed an arms embargo on the Nationalist government¹⁴ and in the latter year the strategic initiative passed to the Communists.¹⁵ Various Far Eastern experts had urged this action from the beginning. Thus, on November 3, 1945, Dr. Owen Lattimore wrote in *Collier's*:

"The war emergency is over. Nobody is getting ready to attack or invade China. The Chinese army does not need another plane, tank or bullet for national defense . . ."

On December 18, 1946, President Truman stated: "We are pledged not to interfere in the internal affairs of China." He added that the United States would give financial assistance to China only "as she moves toward peace and genuine democratic government."¹⁶ The \$500,000,000 Export-Import Bank loan to the Chinese Nationalist government was blocked.

Almost immediately after the United States had taken these steps to prevent unification of China under the Nationalists by military means, the Communists abandoned their seemingly reasonable and conciliatory attitude and denounced the United States "as the heir of German and Japanese Fascists."¹⁷

During the critical phase of the Chinese civil war, Dean Acheson became Secretary of State. An expert on European affairs, he was dependent on his advisers for Far Eastern policy decisions. Almost immediately, Chiang Kai-shek resigned under American pressure and was succeeded by General Li Tsung-jen, whom most Chinese had never heard of. This seems to have been the result of the State Department's belief that China needed a new *élan*, vigorous agrarian reform, and clean leadership if it was to survive. However, this change of the guard was brought about at a time when only military measures could have saved the day. Adopted during the climactic phase of a military struggle, it merely hastened the Communist victory.

The fatuous hopes entertained by the State Department and the hallucinatory character of its appraisal of the situation were illustrated in the dispatch by Ambassador John Leighton Stuart of January 3, 1949, on Chiang's impending resignation:

"But it will seem that the Kuomintang at any rate must succumb

to the dynamic purpose of the Communists and because of its shortcomings. *Once the Communists have eliminated this source of opposition they might propose some inclusive form of coalition . . .* [My emphasis—N.W.].”¹⁸

The ambassador thus welcomed the disintegration of the only massive anti-Soviet force in China in the naive expectation that this circumstance might allay the Communists’ anger and draw them toward democratic methods.

An attack on the wisdom of the State Department’s leadership would have been of little political value. The issue had to capture the public’s imagination. It had to be an unalloyed crime of betrayal.

McCarthy’s initial charge—that 205 Communist Party members “are still working and shaping policy in the State Department”—naturally made headlines. The Senator hinted that he had obtained this information from undercover government sources. The facts were that, after V-J Day, the State Department had acquired 13,000 employees from wartime agencies. On July 26, 1946, Secretary Byrnes informed Congressman Sabath that, after 3,000 investigations, “recommendation against permanent employment has been made in 284 cases” and that 79 had been “actually separated from the service.”¹⁹

All that McCarthy had done was to subtract 79 from 284 and arrive at the answer—205. His statement that these men were Communist Party members was unwarranted. Since July, 1946, most of them had either resigned or been cleared. It was wholly untrue that they were all “shaping policy” as late as 1950.

At times, McCarthy claimed there were 108 Communists on the State Department rolls; at other times 81; and, on still other occasions, only 57. As far as the 108 cases were concerned, they had been investigated by men from the House Appropriations Committee in 1947. At the time of McCarthy’s charges, over half of them had resigned. No less than four committees of the Republican-controlled Eightieth Congress had scrutinized these same files “without citing a single State Department employee as disloyal.”²⁰

The Senator opened up with buckshot charges against a motley group. He assailed Professor Frederick L. Schuman, most of whose books on international affairs had shown a pronounced pro-Soviet

slant. The main trouble with the case against Schuman was that he had never been employed by the State Department.

Dr. Philip C. Jessup, on the other hand, was indubitably a high State Department official. As United States roving ambassador, he was shaping American policy against the Soviets in Asia and being vigorously attacked by the Communist press. Here the difficulty was that Jessup was not a Communist, nor did McCarthy charge this. The Senator characterized him as "a well-meaning dupe of the Lattimore crowd" and a man with "an unusual affinity for Communist causes." The main charge against Jessup was that he had been a member of the board of trustees of the Institute of Pacific Relations between 1933 and 1946. On its operational level, Communists worked so openly within the institute that Golos ordered Elizabeth Bentley to stay away from the place lest she be exposed. However, the board of trustees was eminently respectable. When Generals Marshall and Eisenhower vouched for Jessup's loyalty without qualification, McCarthy hunted for new victims.

With his whole assault line crumbling, the Senator appeared before the Tydings subcommittee on March 21, 1950, and made the sensational charge in executive session that Owen Lattimore was the "top Russian spy" in the State Department and also "the architect of our Far Eastern policy." He said that he would stand or fall on the Lattimore case. He declared that he would not skulk behind Congressional immunity, but would repeat his charges in a place where he could be held legally accountable for slander or libel. McCarthy welshed on this promise and was probably saved from bankruptcy by doing so. He was unable to find a single witness that Lattimore was a spy and he later withdrew the espionage charge.

Equipped with a swift, subtle mind, broad knowledge, and a tongue that raised welts on his enemies, Lattimore was a dangerous antagonist. He had spent his childhood and preadolescence in China, where his father was a professor. Educated in one of the less distinguished English public schools, he returned to China to work for a British business concern. As a young man, he took his bride on a dangerous trip through the Gobi desert and into Turkestan, across bandit-infested, unknown, and savage country, an action which required not only courage, but immense self-confidence. In his

young manhood, Lattimore wrote books which firmly established his reputation as one of the world's leading authorities on Mongolia and Turkestan. In 1934, he was appointed editor of *Pacific Affairs*, the quarterly of the Institute of Pacific Relations. This marked a turning point in his career, away from scholarship and toward general writing designed to influence elite groups on over-all Asian policy.

Had Owen Lattimore never existed, it would have been necessary to invent him. The really important target, Dean Acheson, could perhaps be charged with lack of judgment, but certainly not with pro-Soviet bias. The Secretary of State was an Anglophile by temperament, training, and tradition. Reserved and aristocratic, he found his contacts with Soviet representatives distinctly distasteful. Freedom was the cornerstone of his political philosophy, not merely a catchword.

If McCarthy's attack was to stick, he had to prove two separate propositions. First, that Owen Lattimore was the unseen hand directing American China policies. Second, that Lattimore was a Soviet agent. If either proposition proved untenable, his case collapsed.

The State Department denied that Lattimore had been the architect of any policy. It stated that the professor's connection with the department had been confined to: the 1945-1946 reparations mission to Japan, an address to a group of State Department employees on June 6, 1946, and participation in a three-day departmental conference on China in 1949. It also denied McCarthy's charge that Lattimore had an office and telephone in the State Department. This last point was never adequately investigated and its truth or falsity is in dispute.

Furthermore, four Secretaries of State—Hull, Byrnes, Marshall, and Acheson—denied in writing that they had any recollection of ever having met Lattimore. Thus, if McCarthy were telling the truth, one was to believe of Lattimore: "Why, man, he doth bestride the narrow world, like a Colossus; and we petty men walk under his huge legs, and peep about to find ourself dishonourable graves."²¹ Yet the four petty men were so myopic that they had never noticed the Colossus.

In his minority report, Senator Lodge talked sense on this matter:

"It would not only be altogether natural for State Department men responsible for Mongolia to be acquainted with a man of Mr. Lattimore's expertness in that field; it might even be considered neglectful if they were not well acquainted with him . . . The issue is: Did he give them bad advice and were they so lacking in intellectual force or patriotism (or both) that they accepted bad advice and acted on the basis of it? On the question of whether Mr. Lattimore's advice was bad and on the question of whether the State Department officials accepted his bad advice, the record regrettably is of no substantial and definitive help."²²

While Lattimore's role in the State Department had been vague, his wartime White House connections had been excellent. In 1941, President Roosevelt sent Lattimore to China as political adviser to Chiang Kai-shek. Between 1942 and 1945, he was director of Pacific operations of the Office of War Information—a top propaganda position. He accompanied Vice President Wallace on the blind men's tour of Soviet Siberia and China.

After the President's death, Lattimore's official role dwindled. Immediately after Hiroshima, he was sent to Japan as part of the Pauley reparations mission. After the spring of 1946, he had only minor governmental connections. At the time of the McCarthy charges, Lattimore was director of the Walter Hines Page School of International Relations at Johns Hopkins University.

The evidence McCarthy thought he had on the espionage matter allegedly came from a former Red Army general. It was summarized thus by the FBI:

"This former General in the Red Army is *purported* to have stated to an investigator for Senator McCarthy [My emphasis—N.W.] that he had a conference with a high official in Soviet Intelligence in which they discussed the difficulty of getting good intelligence information from Mongolia and the Far East. The high official in Soviet Intelligence told the General that they had excellent sources through the Institute of Pacific Relations, which Soviet Intelligence, through Communists in the United States, had taken over. In particular, the high official mentioned Owen Lattimore and one Joseph Barnes as Soviet men."

This conversation allegedly occurred in 1935 or 1936. The FBI

did not vouch for it, but merely repeated what one of McCarthy's men claimed he had heard. It was hearsay thrice removed as recollected fifteen years later. The identity of this former Soviet General is well known to everyone who has followed the case. He is today strongly anti-Communist. It was inexcusably delinquent of both the Tydings majority and minority not to have subpoenaed this man and forced him to corroborate or deny the tales he was alleged to have spread.

The spy charge against Lattimore evaporated. With caution and seeming reluctance, Louis F. Budenz testified: "Well, to my knowledge, that statement is not technically accurate."²³ Whittaker Chambers stated he had never known Lattimore as a Communist.

The one witness who definitely placed Lattimore inside the Communist Party was former *Daily Worker* editor, Louis F. Budenz. He appeared in response to a subpoena and said he had no interest in any investigation which was partisan in its motivations. Budenz had never met Lattimore. However, he claimed that the latter had been in the confidence of the party leadership from 1937 until, at least, 1945—the year in which Budenz broke away, thus choking his information channels.

Budenz alleged that in 1937 Earl Browder told him that Lattimore was to influence pro-Communist writers in publicizing the Chinese Reds as mere "agrarian reformers." He added that in 1940 or 1941 Lattimore had been identified on secret, onion-skin documents, routed to the national committee of the Communist Party, by the code letters *L* or *XL*. During the height of the war, the party reportedly received word from Lattimore that the line on China had changed and that Chiang Kai-shek was to be attacked as "feudal" and Red China extolled as "democratic."

Finally, on two occasions in 1945, Political Bureau member Jack Stachel was supposed to have told Budenz that Lattimore was a Communist and to "treat as authoritative anything which Lattimore wrote or advised."²⁴

This was the really crucial testimony. Lattimore told the Tydings subcommittee that "the whole [Budenz] story is a plain, unvarnished lie." He added that he had never said the Chinese Communists were simply rebellious farmers and therefore could not have led a cam-

paign on that issue: "The one thing I did know for sure . . . was that they were copper-rivettted, brass-bottomed Communists and not 'just agrarian reformers.'" ²⁵

Lattimore and his supporters subjected Budenz to a barrage of personal invective and derogatory character analysis. Lattimore called him "a man who had turned a sordid past into a lucrative present of writing and lecturing . . . who had built up a morbid and almost hypnotic reputation as a kind of 'finger of doom.'" ²⁶ He said that Budenz was exhausting his "hot" inside information and "had been demoted to a secondary, or 'me too,' informer . . ." On the floor, Senator Dennis Chavez of New Mexico launched a vitriolic attack on Budenz' personal morals.

The essential facts concerning Budenz were clear. Born and bred a Catholic, he had become converted to communism, then undergone a moral revulsion and returned to the faith. He had written a vast amount about the Communist menace, denouncing about 140 of his former associates. Between 1945 and 1950, Budenz earned \$31,100 from his writings and \$8,000 from his lectures—a good return for confessions of political, as distinct from sexual, turpitude. As an ex-Communist, he was making more money than ever before in his life. His reply to the charge that he was a professional delator of the Titus Oakes stamp was that he believed he had acquitted more people than he had convicted in loyalty tests and had "no disposition to do otherwise." ²⁷

The question was not Budenz' morals or motives, but whether or not he was telling the truth. Prior to the Lattimore affair, Budenz had appeared at seven trials and investigations and volunteered thousands of hours of his time to the FBI. His testimony had never been successfully challenged. He had been partly responsible for the conviction of the eleven Communist leaders and Harold Christoffel, for the deportation of Gerhardt Eisler and John Santo, and for the exposure of Alger Hiss, J. Peters, the leaders of the United Electrical Workers, and various tools and principals in the Trotsky assassination. His testimony against Lattimore was not hearsay and would have been admissible in court.

There were nonetheless reasons to doubt the truth of his specific charges against the Far Eastern expert. First, there were various

internal inconsistencies in the charges he made. Second, although he had given the FBI information concerning scores of minor Communists—humble schoolteachers, workmen, clerks—he had not mentioned Lattimore's name to the bureau at any time prior to McCarthy's charges. In view of the fact that Lattimore had been on the President's reparations mission at the time of Budenz' political catharsis, this forgetfulness was singular. A final point is that another prominent ex-Communist, who was never called to the stand, could have testified in detail concerning the secret Communist Party membership of leading officials of both *Amerasia* and the Institute of Pacific Relations. This witness knew about party affiliations which have never come to light, but did not know Owen Lattimore as a Communist.

The evidence *for* Lattimore seemed impressive. The professionals concerned with intelligence and American internal security had apparently cleared him. Senator Tydings told Lattimore during the hearings:

"I think as chairman of this committee that I owe it to you and to the country to tell you that four of the five members of this committee . . . had a complete summary of your file made available to them. Mr. Hoover himself prepared those data . . . [and] it was the universal opinion of all of the members of the committee present . . . that there was nothing in that file to show that you were a Communist or had ever been a Communist, or that you were in any way connected with any espionage information or charges, so that the F.B.I. file puts you completely, up to this moment, at least, in the clear."²⁸

To make the significance of this perfectly plain, three points must be made. The Senators did not see the Lattimore raw file, but a summary of it. The evaluation was their own. The précis was presented to them before Budenz had talked to the bureau and prior to the intensive FBI investigation which followed the McCarthy accusations. With these qualifications, Lattimore's loyalty had been emphatically sustained.

Brigadier General Elliott R. Thorpe, the wartime chief of Army counterintelligence in the Pacific theater, testified that he had investigated Lattimore and found him to be "a loyal American."²⁹

After the professional intelligence men found no disloyalty in Lattimore, the question imperceptibly narrowed to whether or not Lattimore had expressed more or less consistently pro-Soviet views—a very different thing from allegiance to a foreign power. Although the issue was shrinking like the skull of an Ecuadorian Jibaro, the press took little note of the fact. The battle was the thing, not the stakes. Santayana once defined a fanatic as a man who redoubles his efforts when he has forgotten his end.

Dr. Paul Linebarger, Lattimore's wartime security officer in OWI and also a Far Eastern expert, made this distinction clearly.

"There is a case against Lattimore's views," Linebarger wrote Senator Tydings. "I have tried to make it as a Federal employee, as a G2 officer in Stillwell's Headquarters, as a Joint Chiefs-of-Staff Officer to the OWI, and as a post-war private scholar. But the case is one which can be made honestly against the views. To make it a charge against the man reduces our Republican and Democratic processes to absurdity."

The remaining witnesses against Lattimore were for the most part textual exegetes. They pored over the Niagara of his writings to find attitudes which convicted him of consistent Communist sympathies. Lattimore had enthusiastically approved the Soviet purges, never doubting that their victims were guilty as charged and that the whole process was democratic.

"The real point, of course, for those who live in democratic countries," he wrote in September, 1938, "is whether the discovery of the conspiracies was a triumph for democracy, or not. I think that can easily be determined . . . A lot depends on whether you emphasize the discovery or the rectification of it; but habitual rectification can hardly do anything but give the ordinary citizen more courage to protest, loudly, whenever in the future he finds himself being victimized by 'someone in the Party' or 'someone in the Government.' That sounds to me like democracy." ³⁰

Unobtrusively, the Stalin regime was identified with "the ordinary citizen." The unwary reader would be prone to assume that the purges were directed against grafters and petty officials who preyed on the Russian people. Surely, this was a curious way for a political

expert to describe the liquidation of a whole generation of Soviet leaders because its loyalty to Stalin was suspect.

Freda Utley appeared on the stand to prove that in all major crises Lattimore's writings had followed the Soviet line. A woman of intellectual gifts and a former Fellow of the London School of Economics, she had become a Communist, married a Russian, and gone with him to the U.S.S.R. where he was caught in the claws of the purges and presumably killed. She went through an emotional upheaval and emerged with a single-minded desire to destroy Communism.

Mrs. Utley said that Lattimore was not a spy but "a Judas cow," whose role was to lead the American people to the slaughterhouse. She had no direct evidence that Lattimore was a party member, but thought that by 1940 "his attitudes and actions seemed to me . . . practically indistinguishable from those of a Communist." All this made little impression on Chairman Tydings, who announced: "What we want is F-A-C-T-S."³¹

The committee was seemingly not interested in ascertaining what political and economic philosophy Lattimore stood for. It was concerned with the tangible—the onion-skin documents, the evanescent Red Army general, and such matters. Since Lattimore had influenced American foreign policy with his brain, one would have thought that an examination of its contents was in order.

Lattimore retorted that he had supported Finland against Russia in 1939 and added that he "staunchly supported Chiang Kai-shek long after the Communists had begun their attack on him." He stated on his "solemn oath":

" . . . I have never believed in the principles of Communism or Soviet form of government either within the United States, in China, in the Far East, or anywhere else in the world. I have never consciously or deliberately advocated or participated in promoting the cause of Communism anywhere in the world."³²

Freda Utley had a good deal to say about this. One of the tests used by the government loyalty boards is whether or not people shifted to a position of neutrality during the period of the Hitler-Stalin Pact. In an article published in June, 1940, Lattimore char-

acterized the war as a struggle "between the established master races and the claimant master races." He added that its causes "were the wrongs done to China, Ethiopia, Spain, Czechoslovakia, and Albania—not by Japan and Italy and Germany alone, but by Britain and France and the United States as well."³³ Mrs. Utley claimed that during the Hitler-Stalin Pact, *Amerasia* consistently opposed American involvement in the European war. "Following Germany's attack on Russia, in June 1941, it switched over to the opposite side, like all Communist organs, and urged American participation in the war against Germany."³⁴ Between 1937 and 1941, Dr. Lattimore was an *Amerasia* editor.

In 1943, when the Communists were supporting Chiang Kai-shek, Lattimore extolled Kuomintang democracy, but found it somewhat inferior to that of Stalin: "It does not have such democratic features as wide participation by non-party members in Government affairs, factory councils, and responsible functions of all kinds; wide use of the secret ballot . . . and so on, which the Russian system has been developing."³⁵ Lattimore did not explain the value of the secret ballot in a country which permits no opposition candidates.

In the postwar period, Lattimore was quick to diagnose symptoms of imperialism in the West, but nearsighted on this matter where Russia was concerned. As late as 1949, he stated that the Truman Doctrine of Communist containment originated "in out-of-date British thinking" and added that it was Winston Churchill (and not the Russians) who rang down the Iron Curtain."³⁶ Lattimore thought that "Greece is a doubtful stronghold, because it is a stronghold in which the garrison is besieged by the populace," thus identifying the Communist guerrillas with the Greek people.³⁷ He had a somewhat rosier view of the 1946 Communist dictatorship in Poland, however, and believed that "in Europe we may look to Poland, for instance, for creative and valuable thinking in the realm of political theory and to excellent methods and techniques in political practice."³⁸

Lattimore's general political books, as distinct from his earlier and scholarly works, are worth studying for all who are interested in mastering the subtle techniques of propaganda. When Lattimore discusses the Soviet Union in value terms, he generally uses the

device of the hypothetical observer. By putting opinions in the mind of this phantom, one can preserve the appearance of objectivity without dulling the impact of one's message. In his *Solution in Asia* (1945), Lattimore saw the U.S.S.R. from the vantage point of the peoples on its inner frontiers. "In their eyes," he wrote, ". . . the Soviet Union stands for strategic security, economic prosperity, technological progress, miraculous medicine, free education, equality of opportunity, and democracy: a powerful combination.

"The fact that the Soviet Union also stands for democracy is not to be overlooked. It stands for democracy because it stands for all the other things." ³⁹

In 1949 Lattimore used a different imaginary observer. After discussing the collectivization civil war, he added:

"Since then, a new kind of loyalty has gradually solidified as more and more Soviet peasants in the Ukraine, Russia, Siberia, and Soviet Asia have come to feel that their individual shares in collective farms represent a kind of ownership more valuable to them than the old private ownership under which they were unable to own or even hire machines." ⁴⁰

Since Lattimore had no means of ascertaining what Russian peasants actually thought about collectives, the mantle of objectivity was again spurious.

Lattimore was an early prophet of the downfall of imperialism and colonialism and of the rise of agrarian revolutionary forces in Asia. He assumed the existence of certain inevitable economic and social trends, and assumed that their direction and outcome were foreknown and that those nations which opposed them must go down in defeat. Unlike the Fair Deal and Point Four publicists of the Truman administration, Lattimore writes as if class struggle were the main dynamic factor of social change within nations. This is the basic differentiating element between Marxism-Leninism and other schools of historic analysis. The obsession with class struggle is not always self-evident in Lattimore's writings because he avoids Communist clichés and because he frequently talks the language of *Realpolitik* and more or less orthodox economics.

Although Secretary Acheson declared: "Mr. Lattimore, so far as I am concerned or am aware, has had no influence in the deter-

mination of our far-eastern policy,"⁴¹ Lattimore had presented a memorandum on American policy in the Orient to Jessup in August, 1949, at the latter's request. His recommendations were extraordinarily interesting:

"It is not possible to make Japan a satisfactory instrument of American policy," he wrote. He argued that sustaining the Japanese economy through "American 'blood transfusions' of raw materials and credits" would not revive Japan and would entail "overcommitment of American resources to a distant and vulnerable region." He thought that Japan would play Soviet China off against the United States to the disadvantage of both.

The unstated conclusion was the United States should get out of Japan. By 1949, Japan had revived to the point where it was again the leading industrial nation of the Far East and the bastion of the American power system in Asia. Our withdrawal would have created a power vacuum into which the Russians would sooner or later have advanced, thus ensuring Moscow domination of the Orient.

As to Korea, Lattimore proposed: "The United States should disembarass itself as quickly as possible of its entanglements in Korea."

He felt that no support should be given to Asiatic anti-Communist regimes that were not devoted to progress and democracy: "The kind of policy that failed in support of so great a figure as Chiang Kai-shek cannot possibly succeed if it is applied to a scattering of 'little Chiang Kai-sheks' in China or elsewhere in Asia."⁴²

Who were these little Chiang Kai-sheks? Presumably Lattimore referred to the chief executives of South Korea, the Philippine Republic, Siam, and Viet Nam. Two of them were former Japanese puppets. It has been said that they ran the gamut of the Seven Deadly Sins, including venality, sloth, lechery, covetousness, and murder. However, they were there. Two of them had been chosen in more or less free elections. Since it was evidently not Dr. Lattimore's thought that we should move in militarily and depose these governments, the inference is that he had simply found more reasons why the United States should refuse to help small countries faced by Communist invasion and destruction.

The gist of the Lattimore policy was scuttle in Asia. He was ingenious in finding reasons why things could not be done, why positive steps should not be taken, why resistance to Communism would result in failure. The pervasive mood was defeatism and withdrawal. The practical consequences of such a policy might have been the loss of half a continent to the Soviet alliance.

This memorandum was not analyzed in the Tydings subcommittee report. Yet it was closer to the heart of the issue than the third-hand allegations of espionage and the counterassertions of 100 per cent ideological purity which clutter up the record of this tedious and rambling investigation.

Had the inquiry been in the realm of ideas and their potentially dangerous consequences to American interests abroad, its subject should not have been Owen Lattimore. An analysis of the Asian upheaval as a whole and the policies pursued by the State Department would have been worthy of the attention of the Senate Foreign Relations Committee. This, however, would have meant forgetting hobgoblins of superspies.

The record established that in August, 1949, Owen Lattimore recommended a program of American strategic withdrawal from the Far East. Six months later, in a public address before the National Press Club, Secretary of State Acheson announced that the whole Far Eastern mainland—including Korea, China, Siam, and Viet Nam—lay outside the American Pacific defense perimeter. He added that, in the unlikely event any of these small countries was attacked, it should first rely on its own resources then appeal to the United Nations. There was little the United States could do militarily. While Secretary Acheson's patriotism is above question, it is difficult to believe that this extraordinary statement did not serve to encourage Soviet aggression in Korea and thus contribute to the heavy toll in American lives there.

There is no evidence whatsoever that Owen Lattimore inspired this speech. Secretary of State Acheson is a mature man, capable of evolving his own policies, both good and bad ones. One of the extraordinary premises underlying the inquiry—a premise that was seldom brought to light and challenged—was that the Secretary of

State should be shielded from dangerous thoughts as if he were a child. The important issue, in other words, was not what Lattimore recommended, but what Acheson actually did.

When the smoke had cleared, the charges against Lattimore's loyalty were unproved. Nor was this question important in terms of national policy. What was of vital importance was to define the ideological premises and attitudes that had helped bring about disaster in Asia. This vast area had hardly begun to be explored.

The error had been to confuse pernicious theories of history with deliberate treason. One effect was to foster the view in Western Europe that the United States was fast becoming a totalitarian state and that the difference between Soviet domination and American influence might not be worth fighting for. All the skill and diplomacy of which General Eisenhower was capable was needed to heal these wounds.

The impact of the McCarthy charges on Washington's policy makers was characterized as follows by George F. Kennan, formulator of the containment program and one of the few first-class intellectuals in the State Department:

"The strains under which our leading officials work leave them a very slender margin of physical and spiritual energy to absorb abuse and derision from the people for whom they conceive themselves to be working. I must tell you that the atmosphere of public life in Washington does not have to deteriorate much further to produce a situation in which very few of our more quiet and sensitive and gifted people will be able to continue in government . . .

"Perhaps only someone who has lived for many years in totalitarian countries can feel as strongly as I do how vitally important it is for us to preserve the spirit of tolerance and liberality in our relations with each other and the readiness to give the other fellow the benefit of the doubt where doubt exists. These things lie at the heart of our civilization. They are essential to free inquiry, to the scientific method as we know it, and to our own special form of creativeness." ⁴³

The creation of suspicion and fear tends to drive out of government those who actually love their country. It places a premium on the braying demagogues and the intransigent "crusaders." The latter

may believe themselves to be utterly unselfish idealists, dedicated to the service of mankind. Yet the record often shows that their entire lives have been dedicated to denunciation and destruction. Provided the mainsprings of hatred and destruction remain, it is psychologically unimportant whether their symbols and targets have changed. The root trouble is often self-contempt, externalized in aggression toward others.

Such people are generally sincere, frequently truthful, and seldom mercenary. As policy makers, their chief defect is that they are prone to recommend destructive programs in which they can play roles that are outlets for their internal discontent.

Chapter Sixteen

THE SOVIET ATOM SPIES

PERHAPS the outstanding accomplishment of the Communist parties in the English-speaking countries was in the field of espionage and, in particular, atomic espionage. The full story of this effort is not known and probably never will be known. Those spy rings that have been detected and rendered harmless succeeded in bringing the Soviet Union to a new threshold of military power.

The record of Soviet atomic espionage makes unpleasant reading. In a period of wartime alliance, at a time when the United States was giving Russia billions of dollars' worth of Lend Lease aid, virtually every Russian diplomatic mission was busily engaged in violating American law and conspiring against American security. Due to idealism, fanatical acceptance of a totalitarian philosophy, thirst for power or incapacity to adjust to a democratic society, Americans of outstanding intellectual gifts collaborated in the work of betrayal.

The Federal Bureau of Investigation and other counterintelligence agencies met this challenge as best they could, but operated under handicaps some of which appear almost incredible in view of the realities of the situation.

First, there are three barriers in the Constitution itself. These are cornerstones of the American liberal tradition and should not be modified unless the danger to the existence of the republic is critical.

Accused spies utilized the constitutional guarantee of a public trial to demand either that prosecution be abandoned or else that

data prejudicial to American security be produced in open court. In England, judges may take testimony in secret where the security of the country is at stake, but in the United States they cannot. At the very least, the government can be forced in most espionage prosecutions to certify that what the spy stole was the real McCoy and important to American security. Through cross-examination, collateral information of the same sort may also be elicited.

For example, in the Judith Coplon trial in Washington, the United States was compelled to produce "raw" FBI files in open court, thus smearing men in public life some of whom were blameless. Rather than submit to this, FBI Director Hoover recommended that prosecution be abandoned, but was overruled by the Attorney General.

Similar considerations apply to officials who are not disloyal, but happen to be congenitally incapable of silence. When a United States Senator blurted out information concerning the hydrogen bomb project, no action was taken against him and the Atomic Energy Commission declined to comment on the accuracy of his revelations. There was similar silence by the government when a former public relations officer for the Pentagon felt impelled to state publicly that America's A-bombs were stored in caves in the Southwest.

The second constitutional guard is the protection against illegal searches and seizures already discussed in connection with the *Amerasia* case. The third is the right to refuse to answer questions of a self-incriminatory character. When congressional committees took over the task of probing into Soviet espionage, literally dozens of witnesses refused to state whether or not they had turned over American secrets to a foreign power.

The guilty as well as the innocent are within their rights in taking advantage of that protection which the Constitution gives them. No court can draw derogatory inferences from their decision to do so.

Other restrictions have been placed on arrest, trial, and conviction of spies which are not constitutional in origin. For diplomatic reasons, Soviet espionage directors were allowed to escape the country with impunity. Court decisions on wire tapping protected foreign agents whose guilt was manifest. An ill-considered law, barnacled with ambiguous Supreme Court interpretations, has en-

abled foreign agents either to use the telephone system with complete privacy for the transaction of their illicit business or else to escape punishment because this privacy was invaded. The bizarre fact that, until January, 1951, agents of the FBI had less power to arrest law-breakers than the man on the street has already been noted.

Operating under these handicaps, some of them arbitrary and unrealistic, the Federal Bureau did its work with efficiency. Despite its puny powers, it was sometimes characterized as tyrannical.

Many scientists believed that the Manhattan Engineering District was persecuting men for their opinions and dragooning independent radicals into the Army. These scientists perhaps should not be criticized for having been quick to protest against seeming infringements of American liberties. Obviously, it was not possible to give them the facts established by counterintelligence agencies. In one of these cases, the scientist-victim was accused of A-bomb espionage for Russia and later refused to deny this charge before a congressional committee. A liberal protest followed his induction into the armed services. The record shows that the extent of his "persecution" was to allow him to serve as an officer, to advance in rank without reference to his past, and to receive a discharge at the end of the war under honorable conditions.

The concentration point of Soviet military espionage in wartime was the development of the atomic bomb. The Russian reaction to nuclear fission was swift and realistic. A House Un-American Activities Committee report states that, as early as 1940, Steve Nelson, a leader of the American Communist Party, was sent to the West Coast and was "given an underground assignment to gather information regarding the development of the atomic bomb."¹

This is almost certainly an exaggeration. It was not until the fall of 1939 that Alexander Sachs convinced President Roosevelt that an atomic energy program should be initiated, and at first the development was so sluggish that by November, 1941, "the total number of projects approved was sixteen, totalling about \$300,000."²

Two months later, in January, 1942, Nelson superseded Paul Crouch as director of Communist activities in Alameda County, California. This seemed a rather small post for a man of Nelson's experience and abilities, but it covered jurisdiction over the Uni-

versity of California at Berkeley, which was engaged in a uranium separation project.

Nelson belonged to the hard core of American Bolsheviks whose loyalty to the U.S.S.R. was unflinching. He had entered the United States from Yugoslavia by fraud, obtained passports by forgery, and probably acquired citizenship by deceit. A leading combat officer of the International Brigade in Spain and a Lenin School graduate, he was linked in sworn testimony to the Russian secret police. Before the House Un-American Activities Committee, Nelson was asked:

"Mr. Nelson, in the event of war between the United States and Russia, to which country would you owe your allegiance and loyalty in such a conflict?"

His reply was: "I refuse to answer that question."³

The simplest explanation of why Nelson was sent to Berkeley was that his predecessor, Crouch, was fired for incompetence and a replacement was needed immediately. Whether this or a more sinister reason was the correct one, Nelson inherited a Communist cell of a half dozen scientists at the radiation laboratory of the university. If Crouch is to be believed, strict conspirative methods were the rule:

"... all the entire party apparatus was maintained on what was virtually readiness to go underground at any moment. . . . For example, we had a special section in Berkeley. . . . Now, this was guarded so closely that . . . I as county organizer was not permitted to know the names of the members of the branches. I was taken when I went to these branches. I was driven in a car. I don't know whose home I went to . . .

"There were one or two branches composed exclusively of university professors and scientists and research workers. This work was all guarded with the greatest precaution at all times."⁴

Steve Nelson had excellent access to the physics department and radiation laboratory at the university. His roommate and associate in Communist organization was Dr. Kenneth May, the son of the dean at Berkeley. Moreover, while in Spain, Nelson had fought by the side of a volunteer in the International Brigade and this man was killed in action in Nelson's presence. His widow married Dr. J. Robert Oppenheimer, who was later to direct the atomic bomb

project at Los Alamos. Nelson made purely social calls at the Oppenheimer home on several occasions.⁵

The loyalty of Dr. Oppenheimer is not only above question, it was to be conclusively proved by subsequent events. A second group was apparently independently interested in the uranium separation project at Berkeley. According to the testimony of Louis J. Russell, senior investigator of the House Un-American Activities Committee, Peter Ivanov, the Soviet vice consul in San Francisco, offered money to a certain Charles Eltenton in return for "information regarding the secret work which was being conducted at the University of California at Berkeley in its radiation laboratory." ⁶ Allegedly, Eltenton approached Professor Haakon Chevalier at the university and the latter went to Dr. Oppenheimer, telling him "that Eltenton had a source through which he could relay the information to the Soviet Government." ⁷

After listening to this barefaced proposition, Dr. Oppenheimer "said that he considered such attempts as this to secure information a treasonable act and that he certainly would not have anything to do with such a thing." ⁸ Oppenheimer reported the alleged plot to the proper intelligence authorities, thereby putting the Manhattan Engineering District on guard against further Soviet espionage attempts. It is only fair to add that both Chevalier and Eltenton have denied the episode in statements to the press.

Meanwhile, Steve Nelson, who knew better than to approach Oppenheimer with disloyal proposals of this sort, was working through entirely different channels.

In January, 1943, James Sterling Murray, in charge of counter-intelligence for the San Francisco area of the Manhattan Engineering District, received disturbing news. A highly confidential informant reported that a scientist at Berkeley had given secret data on the aims of the radiation laboratory work to a member of the Communist Party in San Francisco. The data were reportedly forwarded to the Soviet embassy in Washington and finally left the country in the Russian diplomatic pouch.⁹

Murray knew that the accused scientist had a wife from Wisconsin, was very young and recently out of college and that he worked in a specialized branch of physics. With this information and a few

other clues, the field was narrowed to three men. One of them was Joseph W. Weinberg, a research physicist who had joined the project in January, 1943.

According to a subsequent government intelligence report, Weinberg was instructed to give Nelson "information concerning the atomic bomb project so that Nelson could, in turn, deliver it to the proper officials of the Soviet Government." Nelson believed that "collectively the Communist scientists working on the project could assemble all the information regarding the manufacture of the atomic bomb. Nelson told Weinberg that all Communists engaged on the atomic bomb project should destroy their Communist Party membership books, refrain from using liquor, and use every precaution regarding their espionage activities."¹⁰

Nelson's appraisal was wrong. The bomb itself had not been designed in early 1943. However, the Communist scientists at the radiation laboratory did have data of great potential value to the U.S.S.R.

In March, 1943, "a scientist at the University of California who identified himself as 'Joe'" met Nelson at the latter's home and gave him "highly confidential information regarding the experiments conducted at the radiation laboratories."¹¹ Several days later, Nelson held a surreptitious meeting with Peter Ivanov, the inquisitive Soviet vice consul, in a public park in San Francisco, handing him an envelope or package. Shortly thereafter, another Soviet official paid Nelson ten bills of an unknown denomination.

This was the evidence against Nelson and Weinberg. In 1948 the pair were haled before the House Un-American Activities Committee. Nelson was defiant and refused even to give the first names of his sisters on grounds of self-incrimination. Joseph Weinberg answered questions freely, denying under oath that he was acquainted with Steve Nelson or with Nelson's secretary, Bernadette Doyle. He also swore that he had never been a member of the Communist Party.

Now it happened that James Sterling Murray and two other Manhattan Engineering District agents had shadowed an evening meeting at Weinberg's home on August 12, 1943, attended by about half a dozen radiation laboratory employees. They swore that Wein-

berg, Nelson, and Doyle had all been present. According to their testimony, Weinberg had some difficulty in opening a window, Nelson went over to help him and the two men were observed in conversation. To make the identification airtight, when the meeting broke up Murray "accidentally" collided with Nelson in the street and the two men apologized to each other.

Joseph Weinberg has not been indicted for either espionage or perjury. In cases of this sort, government agents habitually tap telephone wires to block international traffic in military secrets. The law impales them on the horns of a dilemma. If the United States decides to punish, it must be negligent in prevention. A more ingenious device for shielding the disloyal could scarcely have been invented. In 1951, the House Un-American Activities Committee strongly implied that the reason Weinberg could not be prosecuted was that his telephone wires were tapped to get evidence against him. The committee characterized the legal protection granted to criminals by this device as "foolhardy and inexcusable."¹²

Meanwhile, separate Communist groups were active on other phases of the A-bomb project. One of the most important of the Russian operatives in the field was Arthur Alexandrovich Adams, a veteran Bolshevik who had been partly crippled by beatings sustained at the hands of the czarist Okhrana during the 1905 revolution. He had been in and out of the United States frequently, working as a Soviet technician, engineer, and purchasing agent.

In 1938 Adams returned to this country for a seven-year stay. He gained admission by means of false statements made by a certain Samuel Novick, president of the Electronics Corporation, an organization which did a \$6,000,000 a year wartime business and produced highly secret items essential to radar systems. Novick was also one of a group of five businessmen and professionals which the Un-American Activities Committee described as "a Communist echelon even higher than the highest echelon of the open Communist Party in the United States."¹³

Adams was given a respectable "cover" and a supposed job by his friends and political cronies. This facilitated his work as a Soviet spy and it was not until after Pearl Harbor that he was placed under surveillance. In 1944 Adams' room was searched by government

agents and secret information concerning the Oak Ridge plant, together with other data on atomic weapons development, was discovered there. He made contacts with Pavel Mikhailov, the Soviet vice consul in New York, and was observed carrying a briefcase into the consulate. Finally, in February, 1945, Adams realized that he was suspect and made a desperate effort to flee the country. He crossed the continent and attempted to board a Soviet vessel at Portland, Oregon, but was blocked by FBI agents. For reasons which have never been publicly explained, Adams was not arrested. Returning to the east coast, he vanished and is believed to be in the Soviet Union at present.

Arthur Adams' principal known contact among American physicists was Clarence Francis Hiskey, a nine thousand dollar-a-year physicist at the Metallurgical Laboratory in Chicago, which was engaged in work on the gaseous diffusion process of U-235 separation.

According to an intelligence report, Hiskey had urged young radicals to take ROTC training for "possible penetration of the Communist Party in the armed forces of the United States." He was described as an active Communist and was alleged to have said that "the Russian government is a model and that Russia can do no wrong."

At Chicago, he contacted Adams. In 1948 Hiskey was brought before the House Un-American Activities Committee, shown a photograph of Arthur Adams, and asked: "Did you ever turn over any information concerning the atomic bomb or the development of the atomic bomb or any scientific research relating to the discovery of the atomic bomb to the individual whose picture I show you?"

Hiskey's reply was: "On the advice of counsel, I refuse to answer that question on the grounds that it may tend to degrade and incriminate me."¹⁴

James Sterling Murray, the intelligence officer who built up the case against Weinberg and Nelson, was transferred to the Chicago region of the Manhattan Engineering District in April, 1944, and was put in charge of security. The MED intelligence directors rapidly became convinced that Hiskey was "a subversive agent." The question was what to do with him. "We had had trouble with scien-

tists when we tried to move one," an MED intelligence colonel recalled.¹⁵

In order to avoid arousing the liberal atomic scientists on a supposed persecution issue, Hiskey was quietly called up for active duty as a reserve officer. The scientists nonetheless did protest and there was "a great furore that we were doing it deliberately."¹⁶ The record does not reveal why some physicists considered that there was anything outrageous in requiring an American reserve officer to fight for his country in time of war.

Hiskey was shipped off to a remote outpost in Alaska where his chief duty was to count laundry. En route his luggage was searched. Murray testified: "In such belongings, Agent Clark found written matter which General Groves himself classified as top secret. There was later information from another agency to the effect that Hiskey was to meet a man known to be a Soviet agent some place in Alaska. To this day, in violation of security regulations, to the best of my knowledge, Hiskey has not reported the loss of papers which General Groves himself classified as top secret."¹⁷

Hiskey was ordered to active duty on April 28, 1944. As this left Adams without any American contact in this particular area of A-bomb development, Hiskey approached his friend and fellow physicist, John Hitchcock Chapin, and asked him to meet Adams, whom he described as "a Russian agent." Chapin later testified that the purpose was "to discuss whether or not I should hand out any information to Adams on my work."¹⁸

Chapin gave Hiskey a key, which the latter turned over to Arthur Adams as an identification sign. In the fall of 1944, the Russian agent phoned Chapin, presented the key and arranged a secret, hour-long meeting in a hotel room. In his testimony, Chapin said that, during the interview, he decided not to pass information.

These two groups were supplemented by the Canadian spy ring, by the vastly more important activities of Klaus Fuchs and probably by still other apparatus. General Groves, the wartime director of the Manhattan Engineering District, thought that Nazi espionage in the A-bomb field was "very slight." However, he was sufficiently worried about Russian activities to take up the matter with President Roosevelt just before the latter left for Yalta. Shortly after the

President's death, Groves discussed the situation with Mr. Truman and gave him a memorandum, which the latter read in the general's presence. Groves states: "I have no hesitancy in saying that there was continued and persistent and well-organized espionage against the United States, and particularly against the atom bomb project by a foreign power with which we were not at war, and its misguided and traitorous domestic sympathizers, or perhaps stooges would be a better word . . . beyond that I will go no further."¹⁹

The general's lips were sealed by a presidential directive, dated August 5, 1948, which bars government officials from revealing data concerning loyalty, espionage, or counterespionage within the federal service. This order is still in effect.

The activities of the alleged atomic spies at Berkeley and Chicago were picayune in comparison with those of Dr. Fuchs. There can be little doubt that Emile Julius Klaus Fuchs was the most dangerous and successful spy in history. As director of the chief atomic research center in England and one of the outstanding intellects in theoretical physics, Fuchs was probably as well informed concerning both the atom bomb and the projected hydrogen bomb as any American scientist. As early as 1942, Fuchs decided to give the Russians all the information he could get on atomic military developments. Between 1943 and 1947, he transmitted data of the utmost importance to Soviet agents in England and America without arousing suspicion. His accomplishment has been authoritatively described as advancing the Soviet A-bomb schedule by at least one year. The end result of his work may be the destruction of British and American cities in a third world war.

The fact that Fuchs was not suspected earlier is remarkable. As a student in Germany, he had been one of the militant leaders of the Communist youth and had shown courage and determination in resisting the Nazi hordes that sought to terrorize the German universities. After Hitler took power, Fuchs emigrated to England. With other scientists who were enemy aliens, he was sent to Canada during the first phase of World War II for security reasons. Although Fuchs had admitted he was a Communist before the Alien Tribunal, the British assigned him to atomic bomb research.

When the Canadian spy ring was smashed, a notebook with a list

of about 150 names was found on one of the suspects. Both the FBI and the British authorities received copies of this list which included a Dr. Fuchs of Edinburgh University.

The way in which Fuchs was finally caught is still highly classified information. Despite a widely circulated story to the contrary, the Canadian spy notebook had nothing to do with the matter. Another and equally false yarn is that captured Gestapo documents revealed Fuchs's role as a Soviet espionage informant.

According to Attorney General McGrath, "it was Mr. Hoover's organization that got the leads which resulted in the capture and arrest and conviction of Mr. Fuchs."²⁰ The FBI regards its work in the Fuchs-Gold case as one of the high-water marks in its history as an organization.

In the fall of 1949, the Federal Bureau forwarded information on Fuchs to London and the British security officials proceeded with an "exhaustive inquiry." When Fuchs was approached by the authorities, he promptly confessed. His story was a terrifying one. He had begun his espionage work in Birmingham, England, in 1943. Sent to the United States later that year with a security clearance by the British government, Fuchs was first assigned to the gaseous diffusion process of uranium separation at Columbia University and then, in 1944, was sent to Los Alamos to work in the atomic weapons laboratory where the bomb was actually built. To make matters worse, Fuchs's immediate superior was Dr. Hans Bethe, discoverer of the hydrogen-helium fusion theory of solar energy and hence the chief pioneer in the theory of the H-bomb. Fuchs was at Los Alamos in July, 1945, when the first atom bomb was exploded. With an American spy courier, he continued his espionage work in Cambridge, New York, and New Mexico. Returning to England, he made his last contact with a Russian agent in 1947 in Berkshire.

Fuchs pleaded guilty. His trial lasted less than one day and provided the public with a bare minimum of information. The spy's character and motivations are shadowy and blurred. He described himself as "a controlled schizophrenic" who used his Marxist philosophy to separate his mind into two compartments, enabling him to work as a scientist for Britain and simultaneously as a spy for

Russia. Then, Fuchs alleged, he discovered the inherent decency of ordinary conservative Englishmen and his control mechanism began to weaken. Finally, he reached a crisis:

"In the post-war period, I began to have doubts about the Russian policy. During this time I was not sure I could go on giving the information I had. It became more and more evident that the time when Russia would expand her influence over Europe was far away.

"I had to decide for myself whether I could go on for many years continuing handing over information without being sure in my own mind whether I was doing right. I decided that I could not do so." ²¹

Fuchs's confession was so worded that it was not clear whether his "doubts about the Russian policy" were based on ethical considerations or expediency. Certainly, a motivating factor was a growing doubt that he was on the winning side. His self-description as a "controlled schizophrenic"—presumably of the Dr. Jekyll and Mr. Hyde variety—was far from accurate, but it served to make him appear an interesting psychological anomaly rather than a mere traitor. The newspaper-reading public was happy to munch on this psychological bone. In fact, schizophrenia is characterized by personality disintegration and loss of contact with the environment. Dr. Fuchs's success in his chosen avocation of espionage seemed to reveal a sure grasp on the world of external reality.

The agent came from a deeply religious, Protestant nonconformist background and issues of morality and guilt were doubtless important in his formative years. Although thirty-eight years old when arrested, Fuchs had never married, nor was his name publicly linked to women. His emotional drives seem to have been concentrated on the goal of limitless power in a unified Soviet world and all his actions appear to have been coldly calculated. Until the arrest and full confession of his confederate, Harry Gold, Fuchs's cooperation with the authorities left much to be desired.

The next task confronting the FBI was to find Fuchs's courier. The espionage ring had been organized with extraordinary circumspection—much more than that used in run-of-the-mill spy work. Fuchs had not been told the name of his American courier, but

described him to FBI agents as about forty years old, five feet eight inches tall, 180 pounds, thickset, round-faced, of Slavic appearance and with a receding forehead.

The bureau knew that it was looking for a highly intelligent man with sufficient scientific training to understand atomic physics. He was an engineer, chemist, or bacteriologist. It was known that he had contacted Fuchs in New York in 1944, in Cambridge, Massachusetts thereafter and, finally, in Santa Fe in September, 1945.

Special agents went to Santa Fe with Fuchs's description of their quarry and made inquiries at airports, hotels, tourist camps, travel agencies, and garages. Other agents checked at the apartment where Fuchs had lived while working in New York. Still others interrogated several thousand firms which had permits to purchase chemicals.

Meanwhile, the bureau was working over a list of some twelve hundred potential suspects—people of Communist sympathies or affiliations with scientific training and with physiques not dissimilar to that Fuchs had described.

The list of suspects was rapidly narrowed down—finally to only three names. Soon the FBI was convinced that its man was Harry Gold, a 39-year-old chemical research assistant who worked in a Philadelphia hospital.

Photographs of Gold were rushed to London and shown to Fuchs, who was beginning his fourteen-year sentence in Brixton Prison. Fuchs stated positively that Gold was not the man.

The FBI, however, was unimpressed and special agents began interrogating Gold. He more or less fitted the physical description Fuchs had given. He had a firm grasp of nuclear physics and was unquestionably brilliant, having graduated *summa cum laude* from Xavier University. The seemingly fatal weakness in the case was that Gold claimed he had never been west of the Mississippi in his life and there was no evidence whatsoever to the contrary.

After several interviews, the Philadelphia chemist suggested to the FBI agents that he take a whole day off and that they get the interrogation over with. He was cheerful and self-confident.

Meanwhile, a new batch of photographs of Harry Gold had been sent to London. Fuchs was now qualifying his denials, admitting a

certain resemblance, but still refusing to say that Gold was the courier.

The interview was about over and Harry Gold believed he had weathered the storm. With vaunting self-confidence, Gold suggested that the FBI agents might as well search his apartment to be absolutely sure they had overlooked nothing. The search was unrewarding except for one small item: a Santa Fe Chamber of Commerce leaflet carelessly stuck behind some books. The G-men waited for the psychological moment, then suddenly produced it and asked for an explanation.

"Wait a moment," Gold said. Then, his self-assurance shattered, he added quietly: "I am your man."

Meanwhile, intelligence officers in England were showing Fuchs motion pictures of Harry Gold leaving his home, walking to work, doing chores on the lawn of the two-family, brick building where he lived. Fuchs recognized the fat, round body, the peculiar, slouching walk, the absorbed, frowning face.

Three hours after Harry Gold had confessed, Fuchs identified him positively. The short time gap spelled the difference between a voluntary admission of guilt and arrest solely on evidence. It may have saved Harry Gold's life.

The Soviet courier had grown up as an outcast in the Philadelphia slums. He was a small, strange-looking Jewish boy who was chased and hounded by his more robust schoolmates. One day, he tried to join the gang, but the others said: "Go on home, Goldie. You can't play baseball." After that, he never came back.²²

Rebuffed by his group, Harry worked long hours at night studying chemistry and playing chess with his father. By the time he was a high school senior, he was appreciated sufficiently so that his classmates asked him to do their homework for him. "I am happy that someone needs me," Harry Gold said.²³

His family was too poor to help him, but the stubby, soft-looking adolescent was determined to become a great scientist and make some contribution to the world. He reached manhood during the depression at a time when brilliant young brains were rusting in small routine jobs.

A chemist named Black helped him out during the worst part of

the slump, gave him a job and saved him from the relief rolls—a fate which seemed ignominious to the fiercely proud Gold family. Gold testified later that Black put pressure on him to join the Communist Party. The chemist refused, believing that Communists were “a lot of whacked-up Bohemians.”

For a while, he remained a solitary outcast, belonging to no group, with no mission in life. Then, in November, 1935, he began to pass industrial data to Soviet agents. Three years later, he had saved up enough to go to college and tried to make a clean break. A Russian, identified only as “Fred,” threatened that if he didn’t do as he was told, they would denounce him to the college authorities as a spy. This was ridiculous, as the Soviets had no intention of publicizing the existence of their espionage apparatus, but Gold evidently believed it.

The chemist became increasingly valuable to the Soviet espionage apparatus and in 1944 was assigned a “big job.” During the next two years, he carried six packets of atomic information from Klaus Fuchs to his Russian superiors in the United States. These six deliveries were probably the most important espionage operation in modern history.

When he was arrested, Harry Gold explained his motives to the FBI in these words: “I thought that I would be helping a nation whose final aims I approved, along the road to industrial strength. Particularly was I taken with the idea that whatever I did would go to help make living conditions far more advanced along the road as we know them here in the United States.”²⁴ He believed that, as a wartime ally, the Soviet Union was “entitled” to atomic secrets.

Like Klaus Fuchs, Gold was single. He used to say that he was married to his work. His emotions were concentrated on what he considered to be great causes; he needed to belong to some group and he suffered under a burden of anxiety and guilt.

“When I went into custody,” Gold said, “it was as if a mountain was in front of me. The mountain began to disappear after I talked to my father and brother, and disappeared completely after I pleaded guilty.”

Gold cooperated with the authorities and enabled the FBI to round up all his espionage associates. His attorney, John D. M.

Hamilton, former chairman of the Republican National Committee, described his client as "the most extraordinarily selfless person I have ever met in my life." The trial judge in the case was James P. McGranery, who had been connected with the ill-starred prosecution of the *Amerasia* case while in the Justice Department. This old scandal was now being revived and officials involved in it were being smeared by innuendo. McGranery sentenced Harry Gold to thirty years' imprisonment, which was five more than the prosecution had demanded. He added that this severe penalty would "deter others in the future from the commission of similar offenses." A more probable effect would be to deter others from turning state's evidence and cooperating fully with the government.

Seven men and women were arrested on charges of espionage or obstruction of justice on the basis of information which Gold furnished. The indictments and trials cast light on the mechanisms of the Soviet spy nets. The first to be convicted were Abraham Brothman, head of a New York firm of consulting engineers, and his partner, Miriam Moskowitz.

As early as 1938, Brothman began to turn over data on industrial processes, some of it militarily significant, through couriers to Semen M. Semenov, an official of Amtorg Trading Corporation and also a top Russian spy director. Brothman's first two contacts were Golos and Bentley. In September, 1941, he complained that Elizabeth Bentley was scientifically ignorant and incapable of understanding the material he gave her. The new courier he was given was Harry Gold.

Semenov was known to Gold only as "Sam." To prevent the informant and courier from knowing each other's identity, Gold was instructed to wait at a New York street corner until a car with a certain license number pulled up to the curb. Gold got in and gave the password: "I bring regards from Helen." Helen was Bentley's pseudonym in espionage work.

Thus Gold's anonymity was guarded. As a disciplined Communist, the courier would obviously not discover Brothman's real name by checking his license number. Nonetheless the two soon became friends and in 1946 Gold went to work for Brothman's firm.

When Elizabeth Bentley testified against them before a federal

grand jury in 1947, Gold and Brothman fabricated a story and rehearsed it as they paced back and forth near Brothman's house until dawn. Miss Moskowitz joined in this conspiracy of deception, which was to retard American investigation of atomic bomb espionage for over two years.

The legend was that the pair had merely turned over economic data—most of it already published—in order to get contracts for the Brothman firm. Before the grand jury, Gold worked hard and apparently successfully to create the impression that he was merely “a small, timid, frightened man who in some manner was involved on the fringe of espionage but who never had committed an overt act and who now was completely aghast at what he was on the brink of.”

In reality, the information had not been innocuous. A Russian official told Harry Gold that Brothman's “work for the Soviet Union was equal to the efforts of one or two brigades of men.”

A New York jury refused to believe Brothman's story that he and Miss Moskowitz were being framed by a psychopath, motivated by “insane hatred” and a desire “to save his own rotten neck because his life is at stake.” The jury believed Harry Gold and the pair went to prison.

Another arrested spy was Alfred Dean Slack, a Syracuse chemist, who seemed a quiet, likeable, humdrum person with a pleasant home and a devoted family. Slack admitted to having turned over the manufacturing process of RDX, a highly concentrated explosive, to Gold in 1943 and 1944. It is worth noting that the Canadian spy ring independently stole data on RDX production.

During the depression, Slack had become sympathetic with Russia and with communism and had given industrial data to an agent. He tried to withdraw but, threatened with exposure, reluctantly continued to work as a spy.

In 1944, when Soviet Vice Consul Yakovlev took over as Harry Gold's new espionage boss, the biochemist moved high up on the ladder of the apparatus and worked on atomic bomb information. The following year, according to the FBI, Julius Rosenberg, a tough, American-born engineer, recruited his brother-in-law, David Green-

glass, a technical sergeant at Los Alamos. Rosenberg allegedly gave him detailed instructions as to the sort of information Russia wanted and handed him an irregularly cut top of a Jello box. In June, 1945, Harry Gold took the other half of the box and five hundred dollars in Soviet funds to New Mexico. The matching of the two parts of the box cover was the recognition signal. The five hundred dollars was the payoff to Greenglass for betraying his country's military secrets.

The arrest of Gold on May 23, 1950, threw the others into a panic. The government claimed that Rosenberg ordered Greenglass to obtain a passport, go to Mexico, sail from there to Europe and then report to the Soviet embassy in Prague. Although Rosenberg gave the former GI a large sum of money, the latter wavered in indecision. When he was finally arrested, Greenglass said that only responsibility for his wife and two children had prevented him from "running away or committing suicide." Rosenberg's attitude, according to the FBI, was that he had done "the work he felt he was slated for" in order to "directly help Russia."

The last arrest was that of Morton Sobell, a former General Electric engineer, accused of conspiring with Rosenberg to commit espionage between 1942 and 1947. Six days after Greenglass' arrest, Sobell had flown to Mexico. Deported from that country, he was taken into custody at Laredo, Texas.

In March, 1951, Julius Rosenberg stood trial in New York for the capital crime of wartime espionage. His codefendants were Morton Sobell and his wife, Ethel, who was also Greenglass' sister. Greenglass turned state's evidence and told a story which, if true, marked Rosenberg as one of the most dangerous espionage agents in American history.

According to Greenglass, Rosenberg stole the highly secret proximity fuse and turned it over to the Russians. Eight months before the test explosion at Almagordo, he had known about the Hiroshima bomb and had described its construction to Greenglass. In September, 1945, Greenglass furnished Rosenberg with sketches of the trigger mechanism of the Nagasaki bomb. Previously, he had given Gold data on the high-explosive lens which detonated it by imple-

sion. In addition, Greenglass reported on a projected man-made satellite, which was to be rocket-propelled beyond the earth's gravitational field and used either to direct or launch guided missiles. As Greenglass' motives were ideological, he was paid only seven hundred dollars for this invaluable information.

Of the nine persons accused of being part of the Fuchs-Gold apparatus, five had been employed during World War II by the United States government. None was so employed in 1947 when the loyalty program was launched. Even under the comparatively slipshod procedures of prior years, Julius Rosenberg had been removed from the Signal Corps in 1945 as disloyal by order of the Secretary of War.

The most dangerous espionage organization in the history of the United States was not broken up until five years after V-J Day. There was no evidence that any of the nine had served as spies for Russia subsequent to 1947. In some instances, this was due to a change of heart. Others were rendered useless to the apparatus when Elizabeth Bentley testified against them before the 1947 federal grand jury investigating Soviet espionage.

Despite the fact that every echelon of Russian officialdom in the United States was implicated in hostile acts against this country under cover of diplomatic immunity and despite the intricate organization of informants, couriers, and secret communications channels, the chief strength of the apparatus was ideological. Klaus Fuchs towered over the others and what he did was far more important than the aggregate activities of all the rest. As long as communism could win over men of Fuchs's position and intellectual stature, the most vital secrets of the nation would not be safe. In recent years, systematic exposure of the chasm between the myth and the reality of the Soviet dictatorship has made espionage recruitment of men of this stamp difficult.

Recently, the emphasis of the American Communist Party has shifted from espionage toward sabotage. This was revealed by material allegedly from party files and national committee directives which the New York *Herald Tribune* published in November and December of 1950. Specific technical instructions on sabotage, des-

tinued for either Spain or Latin America, were found in sardine cans in an American vessel docked at Philadelphia.

With the increase in international tension, atomic espionage becomes less important because time is lacking for the installation of basically new production processes in Soviet war factories. However, these deterrents do not necessarily apply to the broad field of biological warfare.

Whereas espionage is an activity for specialists, sabotage can be perpetrated by all intelligent and capable members of the Communist rank and file. They must, of course, be trained in this activity. The incendiary pencils, cigar bombs, and demolition blocks, used by Imperial Germany in 1915 and so faithfully copied by the unimaginative Nazi destroying agents of 1943, can be coped with provided proper precautions are taken. However, six months after the outbreak of fighting in Korea, no Executive Order had been published instructing the FBI to supervise protective systems in war plants and military installations.

Sabotage will become most serious if entirely new methods should prove feasible. Probably, radioactive particles, concentrated disease germs, and highly toxic substances can be introduced into the water systems of buildings such as the Pentagon or Rockefeller Center. Unless swift and sure methods of detection can be installed, drinking fountains and wash basins could become carriers of death. The mechanical elimination of the entire directing groups of vast war organizations is a tactic of underground struggle which has not heretofore been possible.

Whereas atomic weapons are best adapted for use by highly integrated military organizations, the new, concentrated, quick-acting and deadly biological and radioactive poisons would seem peculiarly suitable for small, determined groups of enemy agents.

In the light of these dangers, the tendency of Congress is to pass additional laws against Communism, some of which are foolish, pernicious, and possibly unconstitutional. One of the things that Congress can and should do is to authorize the FBI to tap telephone wires in internal security cases and to use the evidence in court. The provisions of the McCarran Act excluding Communists from defense

plants seem wise and necessary despite President Truman's statement to the contrary in his veto message. Finally, the McCarran law empowers the United States to intern Communists and suspected sabotage and espionage agents in wartime. Provided American counterintelligence work is thorough, internment may serve to destroy the entire potential sabotage network in case world war occurs.

Chapter Seventeen

CONGRESSIONAL COMMITTEES OF INVESTIGATION

NINETEEN-FIFTY was the year of the Great Red Hunt on Capitol Hill. The pulp of the *Congressional Record* was impregnated with sulphurous speeches of denunciation. Gentlemen rose to warn, to expose, to excoriate, to unmask hidden plots directed at the very heart of the Republic. Never before in American history was the storm cellar of congressional immunity against suits for slander and libel so overcrowded.

The record was mixed, but on the whole distasteful. Some congressional committees made thorough investigations of aspects of the Communist conspiracy which had not previously been aired. Others slaughtered the reputations of public men over a 365-day hunting season.

Much of this investigative activity can be described shortly with John T. Flynn's pungent phrase—the smear terror. This is quite simply the process of destroying men's reputations by presenting partial, one-sided, misleading, and sometimes downright false statements. It must be done in such a way that the detractor escapes the legal consequences of his act. When private citizens resort to the smear terror, they use innuendo and see to it that good libel lawyers scan every page they write. When Congressmen or Senators use this technique, the only precaution they are obliged to take is to print their detractions first in the *Congressional Record*.

In refusing to turn over "raw" FBI files to a congressional com-

mittee of investigation, J. Edgar Hoover made a few impromptu comments which are well worth thought:

"To publicize their names, without an explanation of their associations, would be a grave injustice. Even though they were given an opportunity to later give their explanation, the fact remains that truth seldom, if ever, catches up with charges. I would not want to be a party to any action which would smear innocent individuals for the rest of their lives. We cannot disregard the fundamental principles of common decency and the application of basic American rights of fair play in the administration of the Federal Bureau of Investigation."¹

Congress has every right to investigate Communism. As the policy-formulating organ of the United States, it has broad investigative powers and it has the duty to find the facts before making decisions. Congressional committees are not courts of law. Their purpose is not to acquit or convict, but to develop pertinent information on controversial matters so that the public will know the facts and so that the laws enacted will correspond to the realities of the situation.

All this is obvious. Since the legislature must have access to information, it has been given sweeping powers to probe, to issue subpoenas, and to compel witnesses to testify. These powers should carry with them a corresponding responsibility. Among these duties are those of not prostituting national morale to narrow political purposes and not blasting the reputations of innocent men in order to get headlines. It is difficult to legislate decent behavior. The theory is that Congress, as a whole, will operate with fairness and good sense and that Congressmen who depart from these standards will be thrown out by the electorate.

Marquis Childs and other liberal columnists have drawn invidious comparisons between American congressional probes of Communism and the brilliant Canadian Royal Commission Report on Soviet espionage, already referred to. The Canadian Commission consisted of eminent jurists and experts who were not running for office. The report it issued was an extraordinarily wise document, which avoided sensational charges and protected the identities of persons innocently involved. In contrast to the publications of American congressional committees, the Canadian Royal Commis-

sion Report analyzed the psychological motivations of the Soviet agents, the processes by which they were drawn into the ring and corrupted, and the anatomy of the espionage apparatus. It is therefore a document which has greater permanent value in protecting the internal security of democracies than all of the reports that our Congress has issued on Communism.

The Canadian Royal Commission, however, started with a treasure house of espionage files, stolen from the Soviet embassy by cipher clerk Igor Gouzenko. The suspects were arrested secretly and held for interrogation without the privilege of habeas corpus. Even the fact that they were detained was kept secret. Appearing before the commission without counsel, the accused spies were compelled to answer questions which incriminated them. No American congressional committee could resort to these methods as long as the Bill of Rights stands.

When this has been said, the difference between the caliber of the Canadian inquiry and American congressional efforts in the same field still remains. The Royal Commission dealt with a broad, yet clearly defined, subject—Soviet espionage. Its purpose was to find out how this system operated and what dangers it presented. Nobody had any interest in using publicity to blast the reputations of those accused. The spies were punished later by being indicted, convicted, and sent to prison.

The second point of difference was that the smear testimony of irresponsibles is kept secret in Canada. It is safe to assume that if the men who plotted the cowardly attack on Anna Rosenberg had appeared before a Canadian Royal Commission, their statements would have been publicized only if some of them were brought to trial on charges of perjury or fraud.

Finally, the Canadian commission consisted of able and eminent men, trained in the judicial process and above partisan politics.

The investigation of totalitarian forces in the United States was started by the McCormick Committee, which began to probe the German-American Bund in 1935. It had, however, a short life.

Three years later, the Special House Committee on Un-American Activities was created by a group of diehard Southern Democrats. In 1938, during the epidemic of sitdown strikes in American heavy

industry, Vice President John Nance Garner suggested to his fellow Texan, Congressman Martin Dies, that such a committee be established. Over strong New Deal opposition, this was done. Every year, the Special Committee had to fight for a new lease of life and, despite large pro-administration majorities in the House, it was invariably successful. Regardless of the many changes in Russo-American relations, the public opinion polls registered an overwhelming popular demand to probe Communist activities from 1938 on. As a result of a slick parliamentary maneuver, the Special Committee in 1945 became a standing committee of the Congress.

During its first decade, the House Un-American Activities Committee operated under klieg lights, lapped up publicity, often made reckless charges, and disregarded elementary rules of fair play. One of its more sensational achievements was to get Congress to force three officials off the public payroll as disloyal. Two of the three were neither Communists nor fellow travelers and the Supreme Court invalidated the entire action as unconstitutional.² Perhaps its most incredible act was to probe a hair tonic company because of "a similarity between the words 'Kreml' and 'Kremlin.'" ³

The administration tried to infuse new and calmer blood, and a few New Dealers joined the committee's ranks, among them Jerry Voorhis of California. Voorhis was responsible for the law which forced the American Communist Party to go through the sham of disaffiliating with the Communist International.

The committee became a thorn in the side of the White House. In 1940, President Roosevelt called in Martin Dies and told him that Attorney General Jackson "was strenuously accusing the Committee of premature exposures that imperilled national security."⁴ This warning fell on deaf ears. The goldfish-bowl methods of the House investigators tipped some Nazi and Japanese agents off, enabling them to flee the country. Later, during the war alliance with Soviet Russia, the administration strongly opposed the committee's exposés of Communists on the theory that this was a wet blanket to national morale.

Soon the House Un-American Activities Committee faced almost as virulent smear attacks as those which it indulged in itself. For example, in 1938, ex-Communist J. B. Matthews gave the committee

a long list of Hollywood notables who had sent greetings to the French Communist newspaper *Ce Soir*, among them the child actress, Shirley Temple.

"No one, I hope, is going to claim that any one of these persons in particular is a Communist," Matthews said. "The unfortunate fact, however, remains that most of them unwittingly serve, albeit in this slight way, the purposes of the Communist Party. Their names have definite propaganda value which the Party is quick to exploit."

This drew a stinging and misleading riposte from Secretary of the Interior Harold Ickes:

"They've gone to Hollywood and there discovered a great Red plot. They have found dangerous radicals there, led by little Shirley Temple. Imagine the great Committee raiding her nursery and seizing her dolls as evidence!"⁵ Ickes' version was the one that stuck in the public mind.

Again, in 1940, the committee was almost polished off by a clever ruse. Representative Frank E. Hook read into the *Congressional Record* the photostat of a letter, supposedly from Silver Shirt Fuehrer William Dudley Pelley to committee Chairman Dies, stating: ". . . as you told me in your office, my organization has nothing to worry about, as we are close friends."

Committee investigators discovered that this letter had been forged by David Dubois Mayne, a Pelley henchman and small-time fixer, and bought, presumably innocently, by a prominent New Deal politician. Mayne confessed and went to prison for forgery.

The Un-American Activities Committee concentrated on communism rather than fascism. During the first decade of its life, about one-fourth of the 19,651 pages of its testimony dealt with the activities of fascists, Nazis, and Japanese—a low ratio considering the realities of the world situation at that time. However, the Dies group was instrumental in sending a few unregistered Nazi agents to prison, and in convicting the Japanese agent Ralph Townsend and the native North Carolina fascist leader William Dudley Pelley.

Delving into passport fraud, the committee helped convict Nicholas Dozenberg and the financial boss of American communism, Robert W. Weiner. Although a deportable alien, the latter remained in

the United States because the U.S.S.R. refused to accept him. He could not be jailed for his offense because of a medical verdict that he might die if incarcerated.

The committee accumulated vast dossiers. More than 300,000 items of information were added to its files in 1950 alone. By January 1, 1951, the committee had heard some 1,300 witnesses and published 71 pamphlets and reports.⁶

The quality of this material was variable. A few of the witnesses were would-be conspirators from the Greenwich Village pink belt and former officials of Soviet-controlled governments whose desire to cooperate was disproportionate to their actual knowledge. Some of the repentant Communists who appeared before the committee exaggerated and imagined events either to increase their sense of self-esteem or for publicity reasons. The bulk of the firsthand data, however, came from the leading deserters from the Communist underground: General Walter Krivitsky, Louis Budenz, Elizabeth Bentley, Whittaker Chambers, and others. No comparable source of published data on American Communism exists anywhere else in the world.

Until recent years, the committee was in the habit of making its charges first and only then examining the accused. Reputations were damaged before the evidence was heard. Since the committee had already staked its reputation on demonstrating their guilt, the accused had little chance of a fair hearing. Thus, in 1948, a preliminary report of the committee branded Dr. Edward U. Condon, director of the Bureau of Standards and a leading government science official, as "one of the weakest links in our atomic security."⁷ Condon vigorously denied this charge in the press. While he is free to appear voluntarily before the committee, he has not been invited and no specific evidence has been published for him to rebut.

In 1948, the chairman of the House Un-American Activities Committee was J. Parnell Thomas, a blustering, apoplectic New Jersey Republican, who bullied witnesses and roared at those who refused to answer incriminating questions. Ironically enough, Thomas was to shelter himself behind the same constitutional bulwark when he was indicted—and later convicted and sent to prison—for the sordid felony of extorting "kickbacks" from subordinate employees. Another

luminary was John Rankin of Mississippi, a man who had aged without mellowing and whose mind was clouded by obsessional hatred of Jews, Japanese, and Negroes. At the hearings, Rankin used every opportunity to inject anti-Semitic queries and was rebuked for this even by such pro-committee witnesses as Elizabeth Bentley.

The committee was rescued from a surrender to the forces of bigotry and irresponsibility by two Republicans and a Democrat—Richard M. Nixon of California, Karl E. Mundt of South Dakota, and John S. Wood of Georgia. These three were respecters of facts. They considered the Communist underground in the United States too serious a matter to be used for irresponsible, politically motivated charges.

When Whittaker Chambers accused Alger Hiss of secret membership in the Communist Party, a majority of the committee was swayed by Hiss' emphatic denial. The mood was panic—fear that an irreparable political blunder had been made. Rankin at first sided with Hiss against Chambers. The latter was associated with the *Time-Fortune* magazine empire which had again and again characterized the Mississippi representative as a disgrace to the Congress.

Nixon took the position that one of the two men had lied and that it was up to the committee to find the perjurer. A singularly effective probe into one of the best-concealed apparatus in the history of the American Communist underground followed. To the extent that credit for pursuit of the "pumpkin papers" belongs to the House Committee at all, Nixon deserves it. The Hiss inquiry marked the high-water mark of the Un-American Activities Committee. Its results are too well known to require restatement.

The Democratic electoral victory in 1948 brought a needed reorganization. Membership on the committee was restricted to lawyers, a device to jettison the bigoted Rankin. With Parnell Thomas prison-bound, the chairmanship passed to Wood, a far more conscientious and honest man. On the debit side of the committee's ledger, Mundt was elevated to the Senate in 1949 and Nixon in 1951.

The committee adopted the policy of permitting witnesses to appear with counsel. Press and television cameras were kept out

unless the witnesses consented to being photographed. The new procedure was to hold initial investigation in executive session and to publicize charges only after they had been fairly well substantiated. Those who were attacked were given the privilege of a hearing.

Between 1948 and 1950, the committee contributed to making the nation aware of the conspirative character of the American Communist movement. Although Whittaker Chambers had told his story to Assistant Secretary of State Berle as early as 1939, no action against Hiss and no public disclosure occurred until the House Un-American Activities Committee took up the case. Despite Elizabeth Bentley's charges against William Walter Remington, the latter remained in the government service and was cleared by the Loyalty Review Board. It was only after the House Committee again took up the trail and found fresh evidence in Tennessee that Remington was indicted for perjury and convicted. The reports and hearings of the House Committee on Soviet atomic espionage are, with one exception, particularly valuable.

On the negative side, some of the recent reports of the Wood committee have dealt with matters of only minor importance—for example, the Communist connections of an obscure Hawaii paper with less than \$10,000 of paid-in capital.⁸ The committee, moreover, has not thoroughly probed areas of Communist activity about which the public is ignorant, for example, methods of infiltrating the armed forces, the financing of American Communism, underground organizations among merchant seamen which serve as an international courier apparatus.

The House Committee has gone to considerable effort to publicize long lists of people accused of present or former membership in the Communist Party or even of close affiliation with it. Much of this belongs to the remote past. Obscure people, whose views have long since changed, may find themselves victimized or discharged from their jobs as a result. While the FBI needs this sort of information, there is no good reason that the House Committee should publish it. It has no bearing on legislation and policy—the true function of Congress.

The future of the House Un-American Activities Committee will

probably be less spectacular than its past. The public does not need additional proof that the Communist movement is directed by Russia. The tasks of counterintelligence involve secrecy and conflict with the work of Congressional committees. The House Un-American Activities Committee does not receive official Government cooperation and raw FBI files are naturally closed to it. With its comparatively small staff and budget, it often fails to follow the leads it is given with thoroughness.

A recent example was the investigation of American links in the assassination of Leon Trotsky. The House Committee acquired important new evidence. Since the Soviet government deemed the destruction of Trotsky to be of major political importance, it deployed some of its best international agents in the venture. A comprehensive probe would have revealed a great deal about the illegal Communist apparatus and its working methods. This was not made. The reasons were presumably lack of funds, personnel, and interest.

In 1942 and 1943, after the former War Commissar had been assassinated, the United States Office of Censorship intercepted correspondence between Communist letter drops in Mexico City and New York. Laboratory examination revealed secret-link messages in cipher, showing that American Communists were being sent across the border to rescue "Frank Jacson," Trotsky's murderer, from prison. In February, 1944, Mrs. Helen Travis, a former *Daily Worker* employee, allegedly remitted \$3,700 to De los Rios, the money drop in Mexico. Soviet Vice Consul Pavel Klarin, a close associate of the former head of the NKVD in the United States, was sent to Mexico at about this time and had numerous conferences there with one of the alleged American conspirators.

The House Un-American Activities Committee put nine Americans on the stand, all of whom refused on grounds of self-incrimination to answer questions concerning either their Communist affiliations or their role in the plot. This left the committee with merely the ghost of a conspiracy. It made no investigations in Mexico and did not follow any of the other international trails in the case. Yet the Spanish refugees and Mexican Communists, who were in cipher communication with the New York group, might well have been induced to talk.

The Trotsky assassination and its various preludes and sequels involved a more ramified international organization than any other murder in history. Frank Jacson, the bogus Belgian count and authentic assassin, is not identified in the House Committee report. There is strong evidence that he is the son of Caridad Mercader, a brilliant Catalan Communist leader and former mathematician from the wealthy class. When she went to Moscow after the Loyalist defeat, Señora Mercader allegedly reported directly to Lavrenti Beria, head of the Soviet secret police.⁹ In view of the role of the Mercader family in world Communism, the rescue attempt was important and those directing it could not have been minor figures. By contrast, some of the letter drops and American intermediaries were not clearly aware of what they were doing.

Like grand juries, Congressional committees can generally compel citizens to furnish information. For a while it appeared that the House Committee would be able to interrogate Communists and Soviet agents, forcing them to choose among three disagreeable alternatives: To tell the truth and reveal the secrets of their organization. To testify falsely and be prosecuted for perjury. To refuse to testify and be arraigned for contempt of Congress.

After probing the various legal recourses open to them, accused Communists checkmated the committee by refusing to answer key questions on grounds of self-incrimination. Whole volumes of testimony are filled with monotonous refusals to reply to even the most simple queries. The committee has been driven to imply what it would like to disclose by the questions asked, rather than the answers given.

Thus Frederick Vanderbilt Field, the millionaire Communist, appeared before the Tydings subcommittee in mid-1950 to defend Owen Lattimore. When he was asked whether he knew eight other persons, all of whom had worked with him openly on *Amerasia* or in the Institute of Pacific Relations, he refused to reply on grounds of incrimination. He was glad to say that he had "different political views" from Lattimore and to add: "I frankly disagreed with him." When asked by Senator Hickenlooper to define these areas of disagreement, Field swiftly withdrew behind his carapace of self-incrimination.

Queried concerning an article which was published in *Political Affairs* under his signature, Field explained: ". . . a question such as this, in my opinion, begins to draw me into an area in which I do not wish to be drawn, for the reasons that I do not want to; I might incriminate myself and it is for that reason I do not want to engage in this."¹⁰

When asked to explain how a seemingly innocent question could possibly incriminate him, Field retorted: ". . . it is quite obvious to me that if I were to give my reasons to you, the privilege which I have claimed would be destroyed."¹¹ Less sophisticated Communist witnesses simply explain their recalcitrance with the phrase: "I am not a lawyer."

The legal issues are worth brief comment. The Fifth Amendment to the Constitution states that no person "shall be compelled in any criminal case to be a witness against himself. . ." In short, confessions cannot be extracted on pain of punishment. If a man is to be forced to testify, he must be given immunity.

To ensure that the legislature gets access to the facts, Congress, as early as the 1850's, passed a law, the present version of which is: "No testimony given by a witness before . . . any committee of either House . . . shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony . . ."¹²

In 1892 this was tested before the Supreme Court. The tribunal pointed out that the immunity granted by the law merely prevented use of a man's actual testimony before Congress in a court proceeding against him. It did not guarantee that this evidence would not be used in forging a chain of guilt. Since the statute gives less protection than the Constitution, a man is free to stand on his right to be silent when interrogated by Congress concerning his criminal activities.¹³ This common-sense interpretation was reaffirmed by the Supreme Court in its 1950 opinion in the Bryan case.¹⁴

The immunity statute has thus "become a shield to the criminal and an obstruction to justice." Does it cover queries concerning Communist affiliations? In a unanimous decision, rendered December 11, 1950, the Supreme Court held that it did. Communists have a right to be silent concerning their political affiliations because

these might "have furnished a link in the chain of evidence needed in a prosecution of petitioner for violation of (or conspiracy to violate) the Smith Act." The Supreme Court opinion added: "The attempt of the courts below to compel petitioners to testify runs counter to the Fifth Amendment as it has been interpreted from the beginning."¹⁵ However, in a later case, Chief Justice Vinson, speaking for the majority in a sharply divided court, whittled down the protection. He held that the self-incrimination plea must be sincere and not a patent subterfuge for defiance of the Congress. Refusal to answer questions which have only a remote bearing on criminal activities, he ruled, is not protected by the Constitution.¹⁶

The Un-American Activities Committee may be defied with impunity by the guilty. Events, moreover, are pushing it onto narrower ground. The new crop of apostates from Communism tend to go directly to the Federal Bureau of Investigation with their data. The FBI is conducting a silent, counterintelligence war and, except when needed for court prosecutions or loyalty hearings, it keeps its information secret.

The committee still has two possible roles to play:

Testimony before it can convict those Communists whose usefulness to the party depends on an absolutely impeccable reputation of patriotism. These men must deny flatly all Communist associations if they are to remain useful to the underground. Suspected agents, who could not be convicted of espionage, may be subpoenaed and drawn into a predicament which results in their conviction for perjury.

The committee can also play a role in exposing Communist-inspired ventures in the propaganda field. Recently, it attempted to unveil the Communist origins of the Stockholm peace campaign. Its publication on this subject is a lengthy correlation of names and associations which makes dull reading. Highly incriminating evidence on the links between the so-called Partisans of Peace and the Soviet underground was available, but was not used.

Such exposés label Communist fronts as such and enable liberals to avoid entrapment. There is some reason to believe that American Communism is launching a new type of propaganda front beamed

on conservatives and is employing more subterfuge than it has shown in the past. The emphasis is on strident American nationalism, freedom of the seas, defending our own frontiers, and letting the rest of the free world sink or swim. This entails opposition to the United Nations, to "hand-outs" to foreign countries, to high taxes levied for military aid abroad. Simultaneously, the Communists continue to agitate for peace and their species of internationalism. These logically inconsistent propaganda lines both serve the same purpose of leading to confusion and defeat of the democratic world. Connecting links between organizations of this sort and the Kremlin can be exposed by Congressional committees. The permanent cure for confusion and retreat, however, is not exposure, but leadership.

At a time when the House Un-American Activities Committee has become a responsible body, new inquisitorial groups have cropped up, some of which are devoid of restraint or decency. The smear attacks of Senator McCarthy have already been discussed. Even more flagrant was the attempt to destroy the reputation of Anna M. Rosenberg—a venture in which irresponsibles and retreads from the fascist and Communist movements cooperated.

A close friend of the late President Roosevelt, Mrs. Rosenberg is generally considered to be the chief expert on manpower mobilization in the United States. She came to the United States as an immigrant and rose to one of the top positions in business held by a woman. In World War II she rendered distinguished service to the government. During the height of the Korean struggle, General of the Armies Marshall urged her to sacrifice a staggering salary and come to Washington as Assistant Secretary of War. Mrs. Rosenberg accepted and was immediately subjected to a smear attack. The campaign against her is in some respects comparable to the activities and methods of General LaFayette Curry Baker during the Reconstruction Era.

A man who figured in this campaign was J. B. Matthews, a former leader of Communist-front organizations who had seen the light in the 1930's and become chief investigator for the House Un-American Activities Committee. Subsequently he had furnished informa-

tion about Communists and alleged Communists to groups willing to pay for it. Testifying under oath before the Senate Armed Services Committee, Matthews declared emphatically: ". . . it had never occurred to me to connect Mrs. Rosenberg with the Communist Party as a member."¹⁷ He also alleged that, when a man called Benjamin H. Freedman called on him to build up the case against Anna Rosenberg, his response was: "I wanted no part of the matter whatsoever in any way. . . ." ¹⁸

Freedman saw Matthews on December 2. The former claimed that they talked for twenty to forty minutes and that Matthews said in effect that "the country was finished if Mrs. Rosenberg was confirmed." Matthews denied all this under oath, claimed that his conference with Freedman had lasted only five minutes and added: "I have done my best for these past 5 years not to have associations with Mr. Freedman. . . I consider Mr. Freedman rabidly anti-Semitic."¹⁹

Freedman admittedly broke a confidence by citing Matthews as authority for his charge that Anna Rosenberg was communistic. He later testified that Matthews was furious and told him: "I don't need you to make statements for me. . . I am going down there [to Washington] and I will discredit you."²⁰

Whatever Matthews' association with Freedman actually was, it was in his interest to minimize it. A self-described excommunicated Jew, Freedman had once wished the Grand Mufti of Jerusalem "continued vision, courage, strength, struggle, behalf justice his people."²¹ The Grand Mufti was a former ally of Hitler who had been implicated in a scheme to massacre all the Jews in the Near East.

In Washington, Freedman met with "the professional anti-Semite and tinpot amateur fascist, Gerald L. K. Smith."²² Smith's role in the attack against Anna Rosenberg is not entirely clear, but it is significant that he long-distanced Freedman to tell him that two investigators were coming up from Washington. One of the sleuths heralded by Fuehrer Smith was Don Surine, chief investigator for Senator McCarthy.

Hallam Richardson, attorney for the rabble-rousing American

Nazi leader, Joe McWilliams, was brought into the scheme. His role was to produce an ex-Communist, Ralph de Sola, who signed an affidavit that he had sat next to Anna Rosenberg at a meeting of the Communist-controlled John Reed clubs in the late 1930's and that he had then been told that she was a member of the Communist Party.

Freedman took De Sola's story to Senator McCarthy and to the perpetually peeved radio commentator, Fulton Lewis, Jr. The next port of call was Representative John Rankin of Mississippi. A circular letter was concocted in Rankin's office protesting the Rosenberg appointment. Rankin's motives are best illustrated by his description of Mrs. Rosenberg as a "little Yiddish woman."

Star witness Ralph De Sola, a former Communist of the frenzied sort, claimed that he had known Anna Rosenberg as an activist in the John Reed clubs and as a party member. He identified her unequivocally and under oath. Having done so, De Sola launched into a turgid peroration concerning Mrs. Rosenberg's "ability to pack the Pentagon with her Moscow-indoctrinated mob" and excoriated "the so-called welfare state, which if applied in full, would soon reduce America to the shambling status of England and with its sneak attack against individualism and free American enterprise, would bring us to socialism, which is the main corridor to communism and chaos." ²³

Despite his eloquence, two of the persons De Sola named as possible corroborators of his story repudiated it as falsehood and his former wife, Helen Winner De Sola, characterized him as irresponsible and his testimony as "incredible" and "untrue."

Realizing that Anna Rosenberg is about as common a name in New York as John Kennedy, the FBI made a thorough investigation. This established that the Anna Rosenberg of the John Reed clubs was an entirely different person. Even if De Sola's accusations were true concerning an Anna Rosenberg, they had contributed to a display of intolerance that shocked many citizens.

The case appeared tarnished by falsehood and prevarication. The disgusted Senators refused to ascribe the glaring discrepancies of testimony to honest error and the transcript of the hearings was

turned over to the Justice Department for possible perjury prosecution. Some of the would-be hunters found themselves unexpectedly in the ranks of the hunted.

After being dragged through the mud, the lady was at last vindicated. Senator McCarthy expressed "confidence" in her loyalty and commended the Senate committee for the thoroughness of its investigation. This was not precisely the view of other legislators. Thus Senator Lester Hunt of Wyoming considered the episode "would do more than anything so far to discredit Congress." Senator Harry P. Cain of Washington spoke out even more bluntly:

"Among the chief witnesses," he observed, "were some who sought to inflict deep injury on Mrs. Rosenberg and further divided the nation by giving false testimony under oath. . .

"These witnesses call themselves men, but they were cowardly, dishonest and traitorous in their conduct and testimony before the committee. I have urged the committee to seek to prefer perjury charges against these individuals." ²⁴

This alliance, in which ex-Communists and former fascists played such a prominent role, failed in its purpose. However, the wounds remained. Lies, Mark Twain once observed, travel around the world while the truth is putting its shoes on. During a period of military struggle, a small group of men with bizarre pasts had taken a course of action which would operate to lessen the confidence of the armed forces in their leadership. If their sole motive had been the elimination of subversives from the government, they could have taken what they pretended they knew to the Federal Bureau of Investigation. The fact that De Sola may have been guilty of nothing worse than a mistake in identification does not excuse what he did.

While Anna Rosenberg was exonerated, other distinguished Americans might hesitate to serve their government in wartime, being prepared to sacrifice their incomes but not their reputations. Joseph and Stewart Alsop summed up as follows:

"The Senators were frankly afraid to let the matter drop, because of the power that the cry of 'Communist' now has. The lesson is simple. Just because we caught a glimpse of the Communist lower depths in the Hiss case, we really need not yield to blackmail by the lower depths at the other end of the political spectrum." ²⁵

In the wake of the McCarthy charges and the stiletto attack on Anna Rosenberg, Senator Lester C. Hunt of Wyoming proposed that the laws be amended to permit people slandered and libeled under Congressional immunity to sue the government. This would at least give the victims financial compensation and a tribunal where they could defend themselves. The immunity of Congressmen from suit for what they say on the floor or in committee is guaranteed by the Constitution. The purpose was to guard freedom of debate, not to provide sanctuary for character assassins. The Constitution, however, does not shield witnesses such as De Sola and Freedman and there seems to be no good reason why the laws should not be amended to force them to accept the legal consequences of their sworn testimony.

Following the political triumph of McCarthyism in the 1948 elections and afterward, the Senate established its own committee to investigate both Communism and the administration of the Internal Security Act of 1950 and gave it a \$75,000 appropriation. The chairman of the new group, Senator McCarran of Nevada, had distinguished himself by levying guerrilla war against refugees from totalitarian oppression who sought freedom in the United States. McCarran was the author of the immigration, deportation, and naturalization provisions of the Internal Security Act, which are perhaps the worst features of that measure.

Finally, the President appointed a Commission on Internal Security and Individual Rights, under Admiral Nimitz, to consider the balance between freedom and security. This commission will study the large problems of public policy confronting the United States and will not attempt to duplicate the work of the FBI.

The proliferation of Senatorial and Congressional committees to probe into the disloyalty of individuals and the ideological purity of federal agencies may have various unfortunate effects.

The first is to sidetrack Congress from its real job of policy making. Two comprehensive Congressional investigations of the *Amerasia* affair have occurred and a third may be brewing. It is, of course, too late to punish the culprits in this reprehensible business. The time spent in scrutinizing the loyalty of Dr. Owen Lattimore could have been more profitably devoted to surveying American policies

in Asia and checkmating the attempt within the government to engineer an American withdrawal from Korea in late 1950. Congress does not have time for research into history unless that history sheds brilliant light on the problems of the present and future.

The second effect is to repel top men from government careers. Nobody in his right mind would invite the ordeal to which Anna Rosenberg was subjected. There was no excuse for this campaign of public defamation. If De Sola's charges had been true, Mrs. Rosenberg would have been forced out of the government under the loyalty program.

Finally, the American people's confidence in their government can be undermined. Scandals have a momentum of their own. Communist influences that are currently significant should be destroyed. This is not necessarily accomplished by raking up the dead past. In France in 1940 Communists and fascists launched a combined operation to show that the government was corrupt and the military leadership traitorous. In the test of battle, the French Army collapsed. Those who make wild charges of treason within the government during the present emergency assume a heavy responsibility before history.

Congressional exposés of Communism have been paralleled by amateur Red hunters, operating on a local or industry-wide level. Born out of public fear and lacking expert knowledge of the field, these groups often lack real jurisdiction, fixed purpose, or competence.

The basic issue here is whether trade unions, business corporations, and universities should set themselves up as tribunals on political matters. In 1950, a small band of teachers in the University of California chose to be dismissed rather than sign an oath that they were not adherents of Communism. Most of those who jeopardized their livelihood had never been fellow travelers. They acted in the belief that a great principle was at stake.

Academic freedom means the right of the teacher to propound the truth as he sees it and to be judged solely on competence. Obviously, teachers are fired for other reasons. In fact, they have to live under a strait-laced sexual code which government or business enterprise would consider ridiculous. Moreover, the principle of academic

freedom does not prevent stiff loyalty investigations of men working on university research projects with a security classification.

The obdurate group of professors and instructors at California agreed that no Communist can teach the truth as he sees it where this conflicts with party orders. Therefore, they would presumably agree to the instant dismissal of a Communist teacher on the social science faculty. Such a man must teach doctrines he knows to be false and, to that extent, the doctrine of academic freedom cannot protect him.

But how about the Communist geology professor. Since the Kremlin has no special theory to propound on orthogenesis, he can be a capable, honest, and useful pedagogue in his own field. If he is convicted for Communist activity under the Smith Act, the University will, of course, fire him. The question is whether, failing prosecution, the university should punish him by dismissal.

The traditional American answer is a rather emphatic "No." Our theory is that men should not be blacklisted for political reasons, that people should not be punished unless they commit crimes, and that it is up to the courts to determine guilt according to due process of law.

In 1950, a book called *Red Channels* made its appearance. Edited by former FBI men, it was an *index expurgatorius* of everyone of any prominence in the radio-television field with alleged former Communist connections. The book was a paste-and-scissors job, compiled from correctly identified sources, which repeated charges without evaluating them.

Various patriotic groups took up the hunt and used *Red Channels* as their book of exorcism. Demands were manufactured to push actors and actresses off the air because they were listed. A well-known Hollywood star was banned from the Henry Aldrich program. In short, people were being given an economic death sentence without semblance of a trial.

The countermove was an announcement by the Columbia Broadcasting System that it was instituting a loyalty program of its own, complete with questionnaires and evaluation machinery. The issue still remained whether voluntary, private organizations should indulge in this sort of thing.

Since this trend is a faint highway marker on an essentially totalitarian road, the Communists have been pathbreakers in launching it. During World War II, they advocated boycotts of Nazi orchestra conductors and opera singers. A small conservative minority took the view that it was up to audiences to judge musical proficiency and up to the courts to judge crime.

The borderline between legitimate and illegitimate voluntary action against Communism is not easy to define. What is said in defense of the employment of Communists as musicians and actors would not apply to news commentators who twisted the facts to suit Soviet policies. It can be urged, of course, that pro-Communist actors in Hollywood are heavy financiers of the party, but surely the answer is that this, in itself, is illegal under the Smith Act. Again, the proper prosecuting agency is not the industry or the public, but the Justice Department. One can defend the right of a Communist to retain union membership and yet agree with the provisions of the Taft-Hartley Act which in effect bar him from any leadership position.

Senator Lodge of Massachusetts has suggested a compromise between the American congressional committee and the British Royal commission. He has urged the appointment of a standing committee of eight, two of them Senators and six private citizens. Three of the latter would be named by the majority leader and three by the minority leader of the Senate. All six would have to be approved by the Senate as a whole.²⁶ A commission of this sort could combine expert knowledge and ability to rise above narrow political considerations with responsibility to the Senate.

Congressional investigations are most useful when they deal with broader questions than the loyalty of individuals. Even today, a thorough and comprehensive inquiry into Communist influences on American Far Eastern policy would be of major importance. The sort of commission which Senator Lodge urges would be capable of doing the job.

Chapter Eighteen

COMMUNISM AND CLEAR AND PRESENT DANGER

THROUGHOUT THE 175 YEARS of its national existence, the United States has been extraordinarily tolerant of both sedition and disloyalty. No modern state has ever defined the crime of treason so narrowly. No nation has ever surrounded the man accused of betraying his country with such a formidable barrier of constitutional protection or been so reluctant to punish conspiracies directed at its very existence. During most of America's wars, rebels and dissenters have been free to agitate against the military effort. The tradition of freedom of speech and of the press is embedded in the Constitution. The struggle against bigotry and suppression of opinion runs like an arterial stream through American history.

Yet in more recent periods of real or imaginary crisis, Americans have not hesitated to resort to vigorous suppression of disloyalty. Copperhead sedition during the Civil War was smashed with military arrests. During World War I, although national security was not actually threatened by the pro-German, pacifist, and socialist minorities, an epidemic of persecution raged.

After World War II, the United States government began to take increasingly stern measures against Communism, designed to shatter both the underground apparatus of espionage and infiltration and the open party which propagandizes for revolution. The government conducted this offensive while aware of the fact that, at each stage of the process, major constitutional issues were at stake.

The trial of the leaders of the American Communist Party in a New York federal court in 1949 was, by all odds, the most important step taken against the Soviet conspiracy. Lacking the personal drama and mystery of the Alger Hiss case, it nonetheless overshadowed it.

On July 20, 1948, twelve men were indicted for conspiracy to organize the Communist Party of the United States, an association of people "who teach and advocate the overthrow and destruction of the Government of the United States by force and violence."¹ The twelve were the members of the national board, or Politburo, of the Communist Party. One of them, William Z. Foster, the 68-year-old chairman of the party, was severed from the trial because of illness.

The starting point of the conspiracy was placed at April 1, 1945, when the American Communist leadership, on instructions from Moscow, abandoned its wartime policy of supporting the Roosevelt administration and reverted to its pristine revolutionary doctrine of class war and violent overthrow of American "imperialism."

There was nothing remarkable about the appearance of the eleven leaders on trial. No outside observer would have thought these drab, unimpressive men were political figures of importance. Without exception, their backgrounds and early lives were obscure. Virtually all of them had been sent to the Soviet Union for political work or leadership training. For the most part, they had been professional revolutionaries within the Communist movement since adolescence. They knew no other life and no other faith. They were fit for little else and their unwavering loyalty to the Soviet Union could be counted on.

These men functioned as a machine and none stood out as having any personal spark or fire. The character of the composite leadership was the result of Stalin's iron discipline over the Communist International. Two decades before, he "had squeezed out the men who had independent minds, the rebels, the theoreticians, the radical *literati*, the leaders of . . . communism in its period of revolutionary spontaneity."² Had the American Communist leadership of 1919 stood before the court, it would have cut a more impressive figure.

While the leaders appeared to be a phalanx, they were split into

two contending groups of "reformists" and "revolutionaries." The reformists urged continuing emphasis on agitation, propaganda, and a battle for the legal existence of the party. Their nominal leader was general secretary Eugene Dennis, a puffy giant with an incongruously squeaky voice, and Jacob Stachel, the one man of real intelligence and capacity in the group. Stachel had come up through the party machine during the years of internecine struggle and factional intrigue. A political manipulator of great coldness and cynicism, Stachel had gained power in the movement during the 1930's because of his ascendancy over the Communist furriers, who always carried knives and were quick to use them as a means of settling political or trade union disagreements.³ A labor man and a revolutionary machine politician, Stachel had almost lost his position on the Politburo in 1936 because he was dilatory in placing Communist agents inside other left-wing groups in connection with the conspiracy to assassinate Trotsky. At one time, a Soviet agent ordered Stachel removed and replaced by Budenz who was more capable at this sort of thing.⁴

The revolutionary wing was led by the inveterate old doctrinaire, Foster, the Negro lawyer, Ben Davis, and Robert Thompson, a veteran of the Spanish Civil War.⁵ Its policy was to emphasize conspirative methods, underground organization, and the placing of the party in readiness to serve the Soviet power through sabotage and treason in the event of war. After the trial, the Foster group came out on top and Dennis was replaced as general secretary by Gus Hall, a plodding, pedestrian character who had grown up in a little Communist enclave in Minnesota, the son of Finnish-American parents, both of whom had been charter members of the American Communist Party. At nineteen, Hall was being trained in the Lenin School in Moscow to devote his life to the revolution.

None of these internal struggles became apparent during the trial. The Communists were united in declaring that they were being denied a fair hearing, tried before a "kangaroo court," and framed by FBI informers whom Dennis characterized as "a judas parade" of "paid provocateurs." The Communists compared trial judge Medina with Adolf Hitler and likened the devoutly Catholic prosecuting attorney, McGohey, with Judas Iscariot. Communist pickets

outside the court house gently suggested to Medina that he follow the example of the late Defense Secretary, James V. Forrestal, and commit suicide.

The defense attorneys jumped up in relays to make objections or to launch into long-winded speeches designed to goad the judge into committing a reversible error. Sneering, snickering, turning their backs on the court, interrupting Judge Medina, disregarding his questions, the Communist lawyers were engaged in a calculated campaign to batter down the authority of the judge and transform the trial into a circus. A higher tribunal later described their deportment as "abominable" and "far exceeding the bounds of professional propriety."⁶

While Judge Medina resorted to sarcasm and counterattack and at times made plaintive comments laden with pathos, he did manage to hold the trial together and neither died nor went into a nervous breakdown. The Circuit Court of Appeals commented: "The record discloses a judge, sorely tried for many months of turmoil, constantly provoked by useless bickering, exposed to offensive slights and insults, harried with interminable repetition, who, if at times he did not comport himself with the imperturbability of a Rhadamanthus, showed considerably greater self-control and forbearance than it is given to most judges to possess."⁷

The Communists, before launching this extraordinary psychological campaign, had studied the 1944 trial of thirty men and women accused of seeking to establish a Nazi-type dictatorship in the United States. The men indicted for fascist conspiracy had resorted to essentially this strategy of harassment, had trampled the majesty of American justice in the mud for seven and a half months, and had bedeviled an aged and ailing trial judge until he ended his personal torment by dying. The fundamental political purpose of the Communists was to convince the American people that the trial was a rank outrage and that due process of law and equal justice for all were mere capitalist shams. Although the case was not before him, an Indiana Circuit Judge, Norval Harris, was quoted as saying: "The Communist trial is a farce. . ."⁸ Others, who were supposed to be American liberals, took up the refrain.

Let us look at the facts.

The trial was one of the longest in American criminal history. The government presented evidence for forty days. The defense took twenty-three days in a vain effort to prove that the jury panel had been drawn up in a discriminatory fashion and another seventy-five days to present its case. While Judge Medina refused to allow the Communists to reproduce virtually all their publications in the trial record, that record finally comprised five million words, or *forty* books the length of this one. Most of these words were uttered or submitted by the defense. Thus the Communists were neither muzzled nor hustled off to prison.

The Communists depicted Judge Harold R. Medina as a monster of prejudice with profascist proclivities. They sought to manufacture a case of discrimination against Jews and Negroes. The facts were that, as a boy, Medina had been taunted by his playmates and called a "greaser." He was quick to resent and resist any effort to inject racial issues in his court.

A pro-Communist book describes Medina as "an affluent former corporation lawyer" and expatiates on the luxuries of his country home and cabin cruiser.⁹ What was more to the point was that Judge Medina was a great authority on civil rights and treason law. While a lawyer, Medina had conducted the appeal to the Supreme Court of Anthony Cramer, an accomplice of the Nazi U-boat saboteurs. The case was so unpopular that some of Medina's friends cut him socially. Working without retainer, Medina submitted a brief which the Supreme Court majority characterized as uncommonly able and reversed the conviction of his client.

In short, the trial judge had shown that he had the courage to stand against the tides of public prejudice. In the field of disloyalty and sedition, he had battled for a strict interpretation of the constitutional rights of the accused. If the Communists had had a tenable case, they could scarcely have found a potentially more favorable judge. The Circuit Court of Appeals later observed that Medina had "favored them (the Communists) more than he need have."¹⁰

The Communists were also fortunate in having their case go on appeal to the United States Circuit Court of Appeals for the Second Circuit. The presiding genius of this court is Judge Learned Hand and few men have waged a more effective fight for the preservation

of American constitutional liberties in time of crisis. During World War I, Judge Hand directed a verdict of acquittal in a treason case because he refused to stretch what the Constitution said.¹¹ He did much to scotch virulent prosecutions under the Espionage Acts of 1917 and 1918. His basic philosophy on sedition was:

"Political agitation, by the passions it arouses or the convictions it engenders, may in fact stimulate men to the violation of law. Yet to assimilate agitation, legitimate as such, with direct incitement to violent resistance, is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government. The distinction is not a scholarly subterfuge, but a hard-bought acquisition in the fight for freedom."¹²

Thus, during a time of great public alarm, the leaders of a revolutionary organization, directly linked to and controlled by a hostile foreign state, were given a scrupulously fair trial and abundant opportunity to present their defense. Despite goading and disorder by the defendants and their counsel, the trial judge was at least fair and conceivably partial to them. The trial and the appeal were conducted before men who had won distinction in upholding the Constitutional rights of unpopular minorities. Far from being a blot on American justice, the trial of the Communist leaders showed that courts and juries could act dispassionately in the midst of public passion.

The roots of the conspiracy traced to the 1917 Bolshevik Revolution in Russia, but a convenient starting point is 1940. On October 17 of that year, Congress passed the Voorhis Act, which would have required the American Communist Party to register with the Attorney General as "an organization subject to foreign control which engages in political activity."¹³ To escape the claws of this statute, the party forthwith voted to disaffiliate from the Communist International. It drafted a new constitution which pledged the organization to defend the "Bill of Rights against its reactionary enemies." Any Communist who "conspires or acts to subvert . . . any or all institutions of American democracy" was supposedly to be punished by instant expulsion.

This was the appearance, but far from the reality. Nineteen-forty was the same year in which Communist leader Eugene Dennis

ordered party echelons to prepare for civil war in case the United States government became a belligerent on England's side. In this year, Dennis ordered the Allis-Chalmers strike, which tied up a vital defense plant for seventy-six days, in order to "halt Roosevelt's war and hunger program."¹⁴ At least one of the Communist defendants, John Williamson, disappeared into the underground. Stress was placed on infiltrating the armed services with Communists for purposes of insurrection and mutiny. Despite the sham of disaffiliation from Moscow, Comintern representative Gerhardt Eisler remained in New York and directed Communist policies as usual.¹⁵

The defense tried to refute these facts by citing the soothing and democratic phrases of their official party pronouncements. When the truant Communist and government witness Louis Budenz characterized this as "Aesopian language," the Communists retorted that Budenz was a moral leper who had invented both the phrase and the imputation of deceit. In reality, the phrase was Lenin's. A year before the Russian Revolution, Lenin wrote his monograph *Imperialism* "in a guise acceptable to the censors . . . in that Aesopian language—in that cursed Aesopian language—to which tsardom compelled all revolutionaries to have recourse whenever they took up their pens to write a 'legal' work."¹⁶

The invasion of Soviet Russia by the Nazis resulted in an immediate *volte face* by the Communist Party. General secretary Earl Browder operated on the assumption that permanent cooperation between Soviet communism and American capitalism might be possible, with the Communist Party of the United States operating as a harmonizing force. For this heresy he was ousted in 1945 on the orders of Moscow transmitted through Jacques Duclos, the French Communist theoretician. The party was ordered to revert to the strategy of class war and to recognize a new situation in which the United States and the U.S.S.R. were the two rival contestants for world power.

An earthquake in the American party ensued. Communists penitently asked themselves how they had been deceived into following the treacherous Browder all these years. Communist Party treasurer Charles Krumbein explained the error thus: "In our servility to him, we thought we were honoring the leader of the proletariat, Com-

rade Stalin, because Browder was supposed to convey Stalin's ideas and his magnificent judgment to us comrades here." ¹⁷ These were indeed manly words. They provided a yardstick of the extent to which the Communist Party was, as it claimed, an American organization free of any scintilla of foreign control.

The evidence against the Communists came in part from their own publications. A large revolutionary organization must inductrate its cadres and to that extent must reveal its true aims. Thus, the program of the Comintern, adopted at the Sixth World Congress in Moscow in 1928, hailed the U.S.S.R. as "the only fatherland of the international proletariat" and ordered that, in the event of war between the Soviet Union and capitalist states, "the international proletariat must retaliate by organizing bold and determined mass action and struggling for the overthrow of the imperialist governments. . ." ¹⁸ This perspective applied especially to the United States, where Communism was a puny force in the heart of the citadel of capitalism. According to Budenz, the top American Communists became convinced as early as 1945 that they would be able to take power in the United States only in the event of war and invasion of American soil by the Red Army. ¹⁹

The documentary evidence of insurrectionary intent was abundant. The writings of Lenin, Stalin, and Foster and the programs of the Comintern reiterated monotonously the need for mass action, culminating in armed risings to destroy capitalism.

The Communist leaders were faced with a fearsome dilemma. If they accepted the truth of their sacred writings, they stood convicted under the Smith Act. If they repudiated them, they faced excommunication as heretics.

They chose the middle course of claiming that the frequent appeals to violence and revolution were to be considered largely as exuberant metaphor. They alleged that the use of force and violence formed no part of their program. Sooner or later, they would be elected by a majority of the American people. When that day came, the ousted capitalists would rise in arms, whereupon the Communists, as the lawful American government, would use force to preserve the republic.

This ingenious interpretation, however, was disproved by the

evidence of FBI informers within the ranks of the Communist Party. Some of these men were truants from Stalin's world movement who had seen the light. Others, such as Angela Calomiris, claimed that they had never been sympathetic to Communism, but had been recruited by the FBI to enter the ranks of the party and report on its activities. Undercover people of this sort had spent as long as five years inside the Communist movement, leading a life of duplicity not dissimilar to that of the Soviet spies within the government. They met their FBI contacts in dummy offices and by telephone appointments at out-of-the-way restaurants, using the conspirative techniques of the Red underground. As a rule, they were reimbursed for their out-of-pocket expenses, but not paid.

The parade of FBI informers shook the aplomb of the Communist leaders on trial. Indeed the point was that the party was already going underground. This meant turning over authority to new leadership cadres not publicly identified with Communist activities and hence presumably unknown to the FBI. It meant new forms of organization, communications, and rallying of the membership in emergencies. This process had been observed by those FBI informers who testified at the trial and doubtless by other secret agents whose true role remains unknown to the party high command.

Thus in Boston, according to Herbert A. Philbrick, an FBI source within the Communist Party, a Communist club of about seventy members had been split into groups of five for security reasons in 1947-1948. Comrades used only their first names, and no rank-and-file member of any group was allowed to have contacts with members of other groups. Practice mobilizations were held to ascertain whether, under this "illegal" form of organization, the whole party could rally swiftly in time of crisis.²⁰ In the same period, national committee member Elizabeth Gurley Flynn directed the Ohio Communist Party to destroy all master lists of membership, send no incriminating documents through the mails, issue no receipts, and refrain from using the names of party members over the telephone.²¹

Through these undercover agents, the government proved that the American Communist Party was not only preaching the theory of

armed revolution, but preparing for it. The main instrument in developing a steel-hard leadership element, steadfast in its loyalty to the Soviet power, was the network of secret party schools. The most important of these was the National Training School, usually held at Camp Beacon, New York. Its students were hand picked as potential professional revolutionaries from every part of the nation. The main criteria were intelligence, loyalty, and demonstrated courage in mass action. During their six to ten weeks of training, they were not permitted to leave the school premises or communicate in any fashion with the outside world. They were known to each other only by their party pseudonyms and any student who asked personal questions of his colleagues was instantly expelled. At all times the school premises were under armed guard.

"Pop" Mindel, the director of the school, was a harsh, sick doctrinaire with a strong sadistic streak. He had been an associate of Lenin, and his teaching methods had the approval of Moscow. Any student who questioned the dogmas taught was pulverized, not by answering his arguments, but by ascribing them to rotten, petty bourgeois influences. The student body as a whole was taught to turn on the dissenter and rend his flesh. A wall newspaper, in which all who deviated from the prescribed norm of revolutionary comportment were publicly pilloried, was an essential part of this process. Those with enough intellectual independence to ask questions were expected to make humiliating confessions, not only of error, but of corruption. The psychological strategy was one of breaking down personality, destroying independence of character, and eradicating the entire impact of environment and formal education. When the process of nihilism was complete, the professional revolutionary emerged—a man with total psychic dependency on the party, who would invariably obey directives and turn on heretics and deviationists with implacable fury.

As to the political doctrines taught, National Training School instructor George Siskind explained why Communists love American democracy in these terms: "Under the bourgeois democracy, it is easier to prepare the working class for the seizure of power."

The government witnesses to all facets of the party's activities were a motley lot. Two of them, Frank Meyer and Louis F. Budenz,

were men of high intellectual caliber who could testify on both the theory and practice of international Communism. On the medium echelon level, the young Boston executive, Herbert A. Philbrick, impressed newspaper reporters with his sincerity and patriotism. Others, such as Balmes Hidalgo, Jr., Thomas A. Younglove, and Angela Calomiris, were able to describe the Communist rank and file, that bizarre hybrid of idealism, hallucination, and sado-masochistic character distortion. One of the government witnesses, William O. Nowell, had been associated with the profascist agitator Gerald L. K. Smith and should not have been used to testify for the United States.

The picture that emerged at the trial was both monotonous and repulsive. The entire Communist movement seemed to have a maniac root. Its echelons of leadership were hate-seared and warped by destructive impulses. For years the party membership had been fed on the manna of future revolution, on the prospect of rivers of blood, on visions of devastation. These frantic images of cataclysm were recreated by men whose ignorance seemed as boundless as their frustrations. In time of crisis and in conjunction with powerful external allies, however, this paranoid movement might succeed in inflicting severe blows on the nation.

Even the humble privates in the ranks of American Communism had been exposed to violent revolutionary fulminations and incessant appeals to future acts of treason.

Younglove, for example, told of a party educational class in 1945 at which the instructor said: "Don't kid yourself . . . Socialism will never come about by the ballot box. You have to fight for it."

Party section leader Marty Kamen boasted: "With 10,000 good Communists we can rule New York City. We don't need a majority; we only need to tell the majority what to think."²²

In Maryland, Communist speaker Al Lannon allegedly urged sabotage of American arms production in the event of war. The Communists would be joined by the Red Army, Lannon thought, which would invade through Alaska.

At the National Training School in 1945, an armed revolution was predicted in which, as in Russia, "the streets in America will run red with blood."

The Communist leaders made the mistake of testifying in their own defense. Under cross-examination, they were trapped in inconsistencies and lies and forced to admit their advocacy of armed uprising—the very crime with which they were charged. The jury convicted and the case went to the Circuit Court of Appeals in New York.

The great legal question was whether or not the Communist Party was protected under the First Amendment to the Constitution which guarantees freedom of speech. Throughout American history, there has been conflict between those who emphasized individual liberty as the supreme political goal and those who stressed national security as a categorical imperative.

In his First Inaugural Address, Thomas Jefferson gave a classic statement of the American faith in freedom. He observed that the United States, having banished religious persecutions, would have “gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions.” Then Jefferson expressed his positive faith in freedom of inquiry and utterance:

“If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments to the safety with which error of opinion may be tolerated where reason is left free to combat it.”

This identical faith in the outcome of any fair contest between “reason” and “error of opinion” had been voiced more than a century earlier by John Milton in *Areopagitica*:

“And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting her to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?”

However, the purpose of the Communist movement was to deprive the people of the United States of any possibility of “a free and open encounter” between truth and falsehood. Power was to be seized by the insurrectionary effort of a strategically placed minority aided by a foreign enemy. Having attained it, the Communists proposed to establish the dictatorship of the proletariat—the applica-

tion of naked and unlimited force by the party against all who opposed its will. Lenin commanded that political dissenters be treated as follows: ". . . we shall turn you into pariahs and mercilessly suppress you; we shall do more than that, we shall not give you any bread, for in our proletarian republic the exploiters will have no rights, they will be deprived of fire and water . . ." ²³ On another occasion, Lenin said: "The Soviet Socialist Democracy is in no way inconsistent with the rule and dictatorship of one person . . ." ²⁴

These were the people who appealed to the ghost of Thomas Jefferson. Jefferson, however, had always been clearly cognizant of the distinction between freedom of speech and the crime of conspiracy. In 1806, Aaron Burr attempted to subvert the American Army, plotted to dismember the United States with the aid and financial support of a foreign power, and used "Aesopian language" to win influential adherents. When he was arraigned for treason and acquitted on a technicality, Jefferson exclaimed angrily:

"The framers of the Constitution certainly supposed they had guarded, as well their government against destruction by treason, as their citizens against oppression under pretense of it . . ."

James Madison, Jefferson's greatest disciple, took the same attitude toward conspiracies against liberty. He wrote in *The Federalist*: "In a confederacy founded on republican principles and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations . . ." ²⁵

The right of freedom of speech is not absolute. In the nature of the case, it could not be. No man has a right to shout fire in a crowded theater. Five Americans were convicted of treason after World War II for broadcasts delivered over enemy radio systems for the purpose of subverting American troops. "Nobody doubts," Judge Hand observed, "that when the leader of a mob already ripe for riot gives the word to start, his utterance is not protected by the [First] Amendment." ²⁶

Multiple rights and duties are set forth in the Constitution and there is inevitably a large area where they collide. Congress has the right and duty to raise armies, to wage war, and to protect the

existence of the nation. The task of the Supreme Court is to chart the contours of the vast area of conflict. "The provisions of the Constitution," Mr. Justice Holmes once observed, "are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil."²⁷

The protection of the First Amendment covers the expression of opinion. The doubtful cases all arise where the utterance is political and where it is, at the same time, an exhortation to illegal action. The reason for this tolerance in the political area is that: "Those who won our independence . . . believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile . . .; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government."²⁸

The prevalent truancy from the Jeffersonian faith during and immediately after World War I disturbed the two giants of the Supreme Court, Brandeis and Holmes. Speaking for a unanimous court in upholding the conviction of a man named Schenck for incitement to resist the draft, Holmes enunciated the standard of "clear and present danger."

"We admit," he declared, "that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done . . . *The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.* [My emphasis—N.W.] When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right."²⁹

Again, in his dissenting opinion in the Abrams case, Holmes ex-

pressed his belief that the American people, left by itself, would in calm times reject the fool's gold of totalitarian dogma: "... I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." ³⁰

The standard of clear and present danger was not a *carte blanche* for revolutionary incitement, but a two-edged sword. The probability of success determined the constitutionality and expediency of suppression. Holmes voted for the conviction of Schenck and wrote the Supreme Court opinion which upheld the imprisonment of Eugene Victor Debs for antiwar agitation. The Holmesian criterion moves away from the shadowland of the speaker's intent to the more tangible realm of probable consequences. In a vigorous dissent against the conviction of Benjamin Gitlow, a founder of the Communist Labor Party, Holmes observed:

"It is said that this manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at its birth . . . Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration." ³¹

If it was to be useful, the clear and present danger doctrine had to be more than mere exhortation. It had to serve as a sort of litmus paper in political cases. Mr. Justice Brandeis attempted a precise definition:

"Those who won our independence by revolution were not cowards," he said. "They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning *applied through the processes of popular government* [My emphasis—N.W.], no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is an opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to

avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”³²

The Brandeis test would apply with full force to the great movements of dissent in the American heritage. Quakers, Fourierists, Abolitionists, and Socialists, all proclaimed their views openly in the teeth of public prejudice, hatred, and persecution. Believing in the truth of their creeds, they sought to persuade the majority to that truth. They asked merely for the right to be heard. They welcomed discussion and debate.

The Communist Party operates in entirely different terms. It masks its true program in order to seize pivotal levers of social power. For its revolutionary purposes, it needs only a minority, strategically placed and resolutely determined, ready to support the Soviet Union by treason in the event of war. This is not a battle of ideas in the arena of honest discourse. The purpose is not to convince the majority, nor is there any willingness to abide by the majority's verdict. The test proposed by Mr. Justice Brandeis is therefore inapplicable. Time is on the side of truth where the majority decides. But it would be fatuous to believe that full debate and free discussion will deter bands of conspirators from organizing. Judge Hand made crystal clear the distinction between heresy, which the Constitution allows, and conspiracy, which it forbids, in his opinion on the guilt of the leaders of the American Communist Party:

“One may reasonably think it wiser in the long run to let an unhappy, bitter outcast vent his venom before any crowds he can muster and in any terms that he wishes, be they as ferocious as he will; one may trust that his patent impotence will be a foil to anything he may propose. Indeed it is a measure of the confidence of a society in its own stability that it suffers such fustian to go unchecked. Here we are faced with something very different. The American Communist Party, of which the defendants are the controlling spirits, is a highly articulated, well contrived, far spread organization, numbering thousands of adherents, rigidly and ruthlessly disciplined, many of whom are infused with a passionate Utopian faith that it is to redeem mankind. It has its Founder, its apostles, its sacred texts—perhaps even its martyrs . . . The violent

capture of all existing governments is one article of the creed of that faith, which abjures the possibility of success by lawful means . . . Our democracy, like any other, must meet that faith and that creed on its merits, or it will perish; and we must not flinch at the challenge. Nevertheless, we may insist that the rules of the game be observed, and the rules confine the conflict to weapons drawn from the universe of discourse." ³³

After observing that, while particular revolutions may be "right," "a 'right of revolution' is a contradiction in terms," Hand turned to the basic issue:

"The question before us, and the only one, is how long a government, having discovered such a conspiracy, must wait. When does the conspiracy become a 'present danger'? The jury has found that the conspirators will strike as soon as success becomes probable, and obviously, no one in his senses would strike sooner. Meanwhile, they claim the constitutional privilege of . . . preparing increasing numbers to pledge themselves to the crusade, and awaiting the moment when we may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that the chance seems worth trying . . . Nothing short of a revived doctrine of *laissez faire*, which would have amazed even the Manchester School at its apogee, can fail to realize that such a conspiracy creates a danger of the utmost gravity and of enough probability to justify its suppression. We hold that it is a danger 'clear and present.' " ³⁴

The signal new contribution of Judge Learned Hand in this opinion was to substitute the test of probability for that of imminence in assaying the danger to the nation represented by disloyal organizations. "We have purposely substituted 'improbability' for 'remoteness,'" Hand observed, "because that must be the right interpretation. Given the same probability, it would be wholly irrational to condone future evils which we should prevent if they were immediate; that could be reconciled only by an indifference to those who come after us." ³⁵

As a result of Judge Hand's opinion (and barring its possible reversal by the Supreme Court), active membership in a political party has become a crime for the first time in the history of the

United States under the Constitution. The Smith Act, under which the Communist leaders were convicted, makes it a felony to:

(1) "willfully advocate . . . or teach the duty . . . of overthrowing or destroying any government in the United States by force or violence . . . ;"

(2) with this purpose "to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter" which advocates armed uprising;

(3) to organize or help to organize any society for that purpose.³⁶

The Department of Justice deliberately tried the case in a manner which put the narrowest possible interpretation on this statute. Instead of merely proving that the Communist leaders taught the duty of revolution, the prosecution convinced the jury that they actually incited, prepared, and conspired for a future armed rising. The Justice Department did not want a law which stifled the expression of revolutionary opinion; it wanted a law which could destroy revolutionary conspiracies.

The talons of the Smith Act are nonetheless sharp enough to rend the humblest active member of a Communist cell, the militant fellow traveler who serves the parent organization in some seemingly innocent league, and the zealot who spends his free evenings hawking Communist literature among indifferent crowds. No man can be convicted unless he works for an organization, knowing that its purpose is to overthrow the American government by force. After the trial and conviction of the Communist leaders, however, no literate party member could successfully claim ignorance of that purpose. It would be presumed that he had read about the trial and the jury's verdict. Knowing that the Communist Party had been branded by the courts as a seditious conspiracy, if he nonetheless continued to work for it, the presumption of his guilt would be strong. Thus, all of the 54,000 members of the party became subject to possible indictment and conviction under this statute.

The government will not take action under the Smith law unless the Supreme Court affirms the conviction of the Communist leaders. In January, 1950, Raymond P. Whearty of the Department of Justice told the House Appropriations Committee that "extensive suits to prosecute" individuals under the act were being planned and that

the FBI had collated evidence against 12,000 Communists. Despite this, it is believed that the government has no present intention of indicting the small fry of American Communism, although it is free to do so.

In theory, but only in theory, the Communist Party is still a legal organization. While the American public was slow to recognize the sweeping implications of the decision in the Dennis case, the Communists were not. Within two weeks, all teaching of the necessity for armed revolution was suspended and new party texts were issued. This strategic retreat came too late. All who had been active Communists between April 1, 1945, and August 17, 1950—the period covered by the conspiracy indictment—might face prosecution. Nor was it probable that any jury would believe that the belated revision of Communist textbooks represented any change of heart or fundamental purpose.

The Smith Act is the first peacetime sedition law in the United States since 1798. It imposes drastic curbs on speech and political activity. Yet its constitutionality was upheld by a judge whose entire life had been devoted to championing American traditions of civil rights and political liberty.

The decision of the courts must be measured against the dire and substantive dangers the United States faces as the leader of an international alliance beset by Soviet aggression. The American Communist Party cannot be equated to those liberal rebels and visionaries of the American past who withstood storms of villification and whose right to express unpopular views was most staunchly defended by those who utterly disagreed with them.

The organization which the courts in effect outlawed concealed its true aims, was dedicated to the destruction of democratic institutions, and constituted the concealed forward echelon of a hostile foreign state. Its basic apparatus was underground, conspirative, and extralegal.

The open Communist Party is a propaganda vehicle and a central, directing headquarters for sympathetic mass organizations. It is also a vestibule through which recruits pass and where they are indoctrinated, hardened, and prepared for the serious business of illegal work. A revolution by its nature is an illegal act. A party dedicated

to the violent conquest of power must contain a formidable underground apparatus. The nine-tenths of the iceberg which is submerged corresponds to the Communist conspirative organization.

The development of the half war between the United States and the U.S.S.R. highlighted this danger. In part, the underground organization infiltrated policy areas of the government so that decisions would be taken inimical to American interests and favorable to Soviet aggressive expansion. In part, it indulged in espionage. There has never been a period in history in which the development of new weapons played such an overshadowing role in world politics and in the balance of power. The Soviet spies provided the U.S.S.R. with the technical knowledge necessary for atomic warfare and shortened the time during which the United States could feel secure against direct attack and invasion. While the Criminal Code punishes espionage severely, it cannot be used to suppress a political organization which prepares the cadres for espionage.

It is often supposed that judges are bound by the chains of precedent and insulated by the precise logical processes of their craft from the real world. Here, in the case of *Dennis v. United States*, the courts had to deal with something which was both a criminal conspiracy and a crusading faith. In respect to power, territorial empire, and fanatical fervor, it had been matched only by Islam of the seventh and eighth centuries. The courts might have believed that this was merely a variant of the old issue of the right of the agitator to propound unpopular views. Instead, they recognized the new, and decisively important, aspects of the Communist movement within the contemporary danger setting and branded it as an unlawful conspiracy not protected by the First Amendment.

Chapter Nineteen

THE McCARRAN ANTI-COMMUNIST LAW

ON A RIP TIDE of public anxiety and alarm, the Eighty-first Congress passed the McCarran Internal Security Act of 1950 over a stinging presidential veto. The vote was taken immediately before the Congressional campaign at a time of general public demand for drastic curbs on subversives.

The McCarran Act covers fifty printed pages and its detailed provisions have to be charted and cross-referenced before they can be understood. The voters had no precise knowledge of what the law contained. The issue, as they saw it, was whether Communism should be coddled or stifled. While the House Un-American Activities Committee published hearings on the registration features of the law, which gave a clear and comprehensive picture of the constitutional and policy issues at stake, these received only small circulation. Both the congressional debates on the act and the President's veto message were efforts at political oratory, rather than elucidation. They were good pyrotechnic displays, but they provided a poor reading light.

The way in which this law passed both Houses illustrates how democratic processes sometimes break down in time of crisis when the nation lacks firm, commanding, and responsible leadership. Jefferson's theory was that democracy brought to high office that "natural aristocracy of virtues and talents" which is "the most precious gift of nature."¹ This was the case in his time, but apparently not in ours. Where the executive leadership is inadequate to a

national crisis, the extremists tend to take over. Policy is made by politicians who pander to prejudice and fatten on dread.

The McCarran Act was one of the djinns that Senator McCarthy released when he charged that the government was riddled with Communists and fellow travelers. When wounded soldiers returned from the Korean battlefronts in 1950, the people at home demanded stern action against the domestic fifth column. Highly developed newspaper, magazine, and radio networks made people aware of a situation about which they could do nothing effective at the moment. This awareness carried a concentrated emotional charge. In this uneasy atmosphere, the lawmakers competed with each other in devising the most comprehensive sedition bill possible.

The real issue was not the McCarran law, but very simply whether or not known Communists were to be put in prison here and now. The administration had had the power to do this for over a decade.

The Foreign Agents Registration Act of 1938 compels "anyone who, within the United States, acts at the order, request, or under the direction, of a foreign principal" to register with the government. The Voorhis Act of 1940 strengthens this requirement insofar as organizations dedicated to the overthrow of the American government are concerned.

In November, 1940, the American Communist Party disaffiliated from the Comintern "for the avowed purpose of removing itself from the terms of the so-called Voorhis Act . . ." ² However, the evidence presented at the trial of the eleven Communist leaders demonstrated that this disaffiliation had been fictitious and that the party and its members were still foreign agents.

The Smith Act of 1940 also provides an effective legal weapon against Communists. This law makes it a crime 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." ³ Once the Supreme Court upheld the constitutionality of this statute, the entire membership of the party would be liable to prosecution.

In the fall of 1950, the jaws of this trap were almost ready to spring as the two-year process of testing constitutionality was at its last lap and all that was wanting was the verdict of the Supreme

Court. The law covered all Communists. It made no difference whether they were leaders or the minnows of the rank and file. Anyone who knowingly joins a conspiracy is responsible for all action taken in its furtherance by his co-conspirators during the period of his membership. Once he has been shown to have been part of the conspiracy, the burden of proof is on him that he ever abandoned it.

The McCarran Act blocked this approach. It requires members of the Communist Party to register with the Attorney General. As long as the Smith law made mere membership a crime, it was obvious that Communists could refuse to register on grounds of self-incrimination. The McCarran Act therefore provides: "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."⁴ While this left intact those provisions of the Smith Act which make it a felony knowingly to distribute Communist literature or do other types of work for the party, it checkmated the long struggle of the Justice Department to establish that the Communist Party is illegal and membership in it is a crime.

Congress kept passing more and more drastic laws against Communism in the belief that the government was dilatory in enforcing those it already had. There were at least two reasons for executive caution—concern for American liberties and expediency.

The prosecution of forty to fifty thousand Communists in peacetime would be the most massive act of repression in American history. It would create an anti-Red obsession of dangerous proportions. Snooping for concealed Communists would become the favorite leisure-time occupation of millions of citizens. Punitive measures on this scale would transform conspirators into apparent martyrs and divide the nation. In peacetime it seemed quite unnecessary.

Moreover, a very real problem of tactics was involved. The government's main emphasis was on quiet counterintelligence work, designed to gain as complete and detailed knowledge as possible about the entire Communist organization. It was plain that large-scale sabotage could not be anticipated unless war broke out with Russia. Should that occur, the task of the FBI would be to round up virtually the entire organization and, at one blow, destroy it and make its resurrection impossible. There was thus a direct con-

flict between the duty of the Department of Justice and the desires of the public. Wholesale prosecution of Communists was demanded in the light of the Korean conflict. If Communists were to be convicted by the courts, however, testimony would have to be presented as to their membership, associations, and activities. This meant producing FBI undercover informers on the stand and destroying their future usefulness.

The party had already gone underground. This meant that it was exceptionally difficult for the FBI to penetrate its ranks. Once exposed on the witness stand, informers could not readily be replaced by new undercover operatives.

Unlike previous periods of Communist "illegality," the cold-war situation was dead serious and practically irreversible. No "diplomatic revolution" (such as the change brought about by Hitler's invasion of Russia in 1941) was in the cards. American Communists were a forward echelon deep inside enemy lines. They were operating within the command area of the hostile forces and only a highly improbable new era of Soviet-American amity or Russian victory in a world war could bring them back to respectability.

The party went into illegality by perfecting its underground apparatus and decentralizing its operations. The number of Communist clubs more than tripled, not because of any membership growth, but because the size of each unit was sharply curtailed for conspirative reasons. No party membership cards were issued in 1949 and maintenance of membership records was discontinued. Communists developed an Aesopian jargon as protection against eavesdroppers and wire-tappers. The underground courier system was perfected.

As J. Edgar Hoover summarized the situation in February, 1950:

"Public meetings are maintained at an absolute minimum. Party records have been destroyed or removed to clandestine hiding places. Secret printing facilities and supplies have been secreted for future underground operations. Transfers of party members from one district to another are now controlled through the use of an elaborate identification system.

"The party today is in the process of selecting individuals for secret leadership of its underground apparatus. To counteract the

FBI's penetration of the Communist Party, its leaders have established a far-reaching and vigorous loyalty program of their own . . . Each member of the party is being gone over thoroughly by the various investigating committees. The executive committee, itself, which consists of 13 members, is being investigated by a subcommittee of 3 members to make certain that they are loyal . . .

"Now, I state these things because these steps tending toward security within the party have made more difficult the Bureau's maintenance of confidential informant coverage of the activities of the party." ⁵

American Communism, in short, was preparing efficiently for a showdown. The Justice Department had decided to rely primarily on the Smith Act as a punitive measure and on continued counter-intelligence work as a prophylactic. In this situation, Congress passed the McCarran Act, which dictated a radically new approach to the problem.

The act makes it illegal knowingly to conspire "to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship" controlled by a foreign power. This is a sweeping provision. It would presumably cover, say, a lawyer who detests the opinions of Communists, but will defend to the death their right to utter them. As a practical matter, the Justice Department would never consent to indict liberals of this sort and the courts would surely prevent their conviction on the grounds that they are protected by the First Amendment. The fact that we have sane appellate judges does not, however, justify passing bad laws.

The McCarran Act bars members of Communist organizations from seeking or acquiring either passports or nonelective government jobs. Passports are denied to subversives in any event. It is not clear why a man should be imprisoned merely for applying for a passport, provided there is nothing fraudulent in the application.

No Communist Party member may seek to obtain work in a defense plant. Fellow travelers are merely required to disclose their affiliations. Any government or defense plant official who aids job applicants in circumventing the law is equally guilty.

To implement this, the Secretary of Defense must publish a list

of war plants—a requirement which President Truman characterized in his veto message as issuing a manual for spies. Since the list will cover thousands of installations and need not tell what they produce, one doubts that it will be of much value to Soviet agents.

The meat of the McCarran Act consists of three separate attacks on Communism. First, registration provisions which are probably unconstitutional. Second, provisions dealing with immigration, deportaton, and naturalization, which are ill-considered, unjust, and a denial of the whole American tradition of tolerance to the oppressed of foreign lands. Third, a plan to intern Communists during wartime which may prove singularly effective in guarding American security.

Agitation for the compulsory registration of Communists was started by Senator (then Congressman) Karl E. Mundt of the House Un-American Activities Committee. The underlying theory was that the public had a right to know if propaganda was coming from a tainted source. The aim was to compel Communist organizations to identify themselves in all printed matter and radio programs. By analogy the investor has the right to know the facts behind a corporation prospectus and the consumer is entitled to know what harmful ingredients go into the groceries he buys.

The law went considerably beyond this in requiring that the Communist Party lay bare its devious financial transactions and that all party members and officials of fellow-traveler groups register on rosters available for public inspection.

The McCarran Act distinguished between Communist-action and Communist-front organizations. Broadly speaking, the former is the Communist Party under whatever alias it chooses to assume and the latter are the party-controlled Red-front groups.

The law compels all Communist organizations to register with the Attorney General, submitting a complete statement of receipts and expenditures and a listing of officers, including their aliases and last-known addresses. The Communist Party must supply in addition a full listing of all persons who were members at any time after October 22, 1949.

The procedure is for the Attorney General to serve a petition on suspect organizations requiring them to register. The evidence is

then heard before the Subversive Activities Control Board, a bipartisan panel of five members chaired by Seth W. Richardson, the former head of the government loyalty program. In late 1950, the Attorney General submitted a brief demanding that the Communist Party register as a Moscow-controlled Communist-action organization.

In public hearings before the board, the accused organization can subpoena witnesses in its defense. The procedure is similar to that of the courts with the salient difference that the board cannot punish disorderly witnesses and rambunctious attorneys. Chairman Richardson predicted that the Communists will "try to keep us against the hot pipes as much as they can . . . They know that the more turmoil they can create . . . , the more they can bring the law into disrepute." ⁶

There are about 130 organizations on the Attorney General's subversive list, most of them defunct. The large majority can dissolve at a moment's notice and then reappear under new names. The problem before the FBI, as Richardson saw it, was: "If you 'blow' a confidential source once, you've not only lost him for good but you've also prejudiced the whole system by which you get this confidential information." He predicted that there would be times when the Federal Bureau would prefer safeguarding its undercover men to prosecuting "some little piddling front outfit."

When Congress passed this law, it was predicted that the Communist Party would immediately dissolve and that a substitute group would be created—possibly a "left-wing caucus" within the Progressive Party. This strategy was checkmated by the provision in the McCarran Act which requires registration of all who were Communists eleven months before the law was enacted. The party was asked to lay bare its entire conspirative apparatus in the United States. Understandably, it refused to do so.

The strategy of the Communist Party before the Subversive Activities Control Board will probably be one of defiance and delay. It can use these hearings for propaganda purposes, alleging that a democratic and peace-loving organization is being persecuted by fascists in high places. It can point to the fact that the law requires that all Communist Party members be registered within sixty days of

a final determination that the party is a Communist-action organization. The maximum penalty for failure to do so is five years imprisonment for each day's delay in failing to register after the deadline is passed.

Thus delay of a fortnight could theoretically result in life imprisonment. Since the McCarran Act alleges that mere Communist Party membership is not a crime, the offense, on the surface at least, is merely failure to provide the government with statistical information.

However, it is highly improbable that any Communist will have to spend a single day under duress because of these registration provisions. After the board goes through its cumbersome inquiry into the facts, the courts must rule on constitutionality. There are various reasons for believing that the registration provisions will be voided and at least one of them appears to be decisive.

This is the guarantee against self-incrimination. In the *Blau* case, a unanimous Supreme Court decided in October, 1950, that a witness could not be punished for refusing to reveal her Communist affiliations. It seems clear that Communists will be within their rights in refusing to register under the McCarran Act. Possibly the Communist Party can be ordered to register for them, but even this is doubtful. These intricate provisions look like a dead letter and the efforts of the government to enforce them seem a waste of talent and time.

Until the Supreme Court speaks, and it will probably be at least two years before it does so, the Subversive Activities Control Board must continue to hold hearings and the FBI and Justice Department assign personnel to the futile task of attempted enforcement. Even if the Supreme Court should affirm the constitutionality of this part of the law, it would be useless. The board will not be able to force individuals to register until the law has been upheld. Accordingly, during two years of legal argument, Communists will be free to carry on without regard to the registration requirement. All this was perfectly clear when Congress passed the McCarran Act by overwhelming majorities over the President's veto.

If the registration provisions are useless, those dealing with immigration, deportation, and naturalization are pernicious. The law prevents anybody who was ever a member of a totalitarian organization

from entering the United States as an immigrant. As soon as it became effective, the Justice Department began detaining distinguished Italian, German, and Eastern European artists at Ellis Island. Their offense was that they had once belonged to fascist or Communist groups, generally in their youth or under duress, and they were therefore turned back.

The law excludes those men and women who lived in totalitarian countries and showed the moral stamina and intellectual strength to break away from their poisoned environment. A few years ago, a Soviet General Staff courier risked his life by crossing the Iron Curtain to turn over to American counterintelligence the minutes of a meeting of the Political Bureau of the Communist Party of the Soviet Union at which Stalin and his top advisers discussed when to declare war on the United States. Under the McCarran Act, this man could not enter the United States because he was once a member of a totalitarian organization—the Red Army. He is considered less desirable than the sort of native American who has no convictions and would become a fascist or Communist if either group took power.

The immigration provisions exclude from the United States a large group of former Comintern leaders and Soviet officials who possess knowledge, experience, and intelligence which this country needs in its cold-war strategy. They are punished for what they once believed in and have since cast off. By this reasoning, the early Christians should have stoned St. Paul and denied him the right to preach.

In a dispatch from Munich, appropriately entitled "The McCarran Pro-Communist Law," David J. Dallin, the expert on Soviet forced labor, gives a number of examples.

At his trial in Paris, David Rousset declared: "I have invited a group of Russian former DP's from America to testify on Soviet slave labor, but because of the new American laws they are unable to appear." ⁷ The effect on French public opinion can be imagined.

Dallin states: "I know of a number of Soviet refugees who are barred from the United States because they belonged to a trade union while they were in Russia. The U. S. authorities regard Soviet trade unions as 'affiliated' with the Communist Party; consequently, a great many staunch, intelligent anti-Communists are rejected. I

know of people who, already cleared and equipped with an American visa, sold out their meager belongings and went to a German port of embarkation, only to be turned back in a last-minute reversal of the decision.”⁸

Another case was that of a 60-year-old philosopher and scientist who was rejected because he had been a professor in the Soviet Union. “You could not have obtained such a position without being a member of the Communist Party,” he was told. This happens to be quite untrue, but the stupidity and political ignorance of American emigration officials in Europe is often matched only by their lack of moral courage. Another refugee was rejected because at fourteen he had belonged to the Pioneers, the Communist children’s organization. As late as the winter of 1950, immigration officials were rejecting Russian and Latvian socialists because “there is no essential difference between Socialists and Communists.”⁹

Section 25 of the law actually bars naturalization of any alien “who knowingly circulates, distributes, prints, or displays . . . any written or printed matter” advocating the overthrow of the American government by force. Note that it is not necessary that the alien should believe in these ideas. He may distribute Communist literature in order to refute it; he may display it because he owns a bookstore; he may circulate it because he teaches classes in government; he may print it because he owns a print shop. Regardless of his motives, he is guilty.

By contrast, during World War II, Reynal and Hitchcock printed and sold tens of thousands of copies of an English translation of *Mein Kampf*. The book was published so that Americans could find out for themselves what the Nazi philosophy was. In the more anxious times in which we now live, a newsdealers’ association had the impertinence to decide not to sell *The Daily Worker*, the circulation of which is less than 22,000. The newsdealers thus appointed themselves censors of the press, a role for which their education did not fit them. Despotisms assume that people are children who must be protected from dangerous ideas. The American system is based on the contrary assumption that the public can distinguish gold from dross and does not need wardens to do it for them.

The McCarran Act broadens the definition of espionage and

stretches the Statute of Limitation for peacetime, nonatomic spying from three to ten years—a needed change. Wartime spies and atomic spies are not covered by any limitation as to prosecution, since both offenses can be punished by death.

The most effective portion of the law is Title II, or emergency detention. This provides for the internment of men suspected of intending to conspire to commit sabotage or espionage in time of war, invasion of American territory, or armed insurrection.

Arrests must be made with warrants based on probable cause. Within forty-eight hours of incarceration, each detainee is to be brought before a preliminary hearing officer and advised of his legal rights. In this hearing he can cross-examine the witnesses against him—unless their identity has to be concealed for security reasons. He may be represented by counsel and can summon witnesses in his favor. If the evidence against him is thin, he is to be released. If not, he can demand trial within forty-five days by the Detention Review Board, a bi-partisan tribunal appointed by the President. The board also adjusts claims for loss of income due to detention.

Hearings before the Detention Review Board follow the usual court procedure except that the government may, in its discretion, present partial evidence “the full text or content of which cannot be publicly revealed for reasons of national security. . . .”¹⁰

There are three standards which the board is to use in determining whether or not men are potential spies and saboteurs. The first is training in espionage or sabotage by Communist organizations or foreign governments. The second is a record of sabotage or espionage activities. The third is membership, since January 1, 1949, in the Communist Party or any other organization “which seeks to overthrow or destroy by force and violence the Government of the United States . . .”¹¹ The fact that such evidence exists “shall not be construed as a direction to detain any [such] person . . .”¹²

The general intention is to intern the entire membership of the Communist Party after the 1949 cut-off date, except for those who are old, feeble, and harmless and the small minority that saw the light and forsook the cause during the latter phases of the cold war. The provision concerning training in sabotage or espionage by a Communist organization singles out an extraordinarily dangerous

group—the graduates of the Lenin School in Moscow and of the Communist Party National Training School in the United States. These men and women are trained professional revolutionaries, selected because of their leadership potential and thoroughly indoctrinated.

The internment provisions are rather cautiously drafted and there is a group of rather dangerous individuals who are not covered by its provisions. These are the intellectuals—professionals, scientists, and technicians—who are drawn directly into the Soviet apparatus without ever joining the Communist Party and against whom neither sabotage nor espionage can be proved. The confessed atom spy, Harry Gold, was ordered by his Soviet superior never to join the Communist Party and never to read *The Daily Worker*.

The stress on actual membership is even less relevant in the present period of Communist "illegality." The law, as it now stands, prevents the internment of people who are in close and habitual contact with Soviet agents, who are known to be pro-Communist, and who hold such high positions that they would under no circumstances be permitted to join the party. Such men can be detained only if there is evidence that they were guilty of espionage or sabotage in the past.

Where the registration provisions are punitive, the detention plan is preventive. The regulations are reasonable and humane. Those detained cannot be compelled to work, nor can they be confined with criminals. At the end of the Internal Security Emergency, they must be released.

The act permits detained persons to appeal to the courts for writs of habeas corpus. The constitutional issue therefore is not one of military arrest, but whether they are being deprived of liberty without due process of law and, if so, whether the war powers of the government justify doing so. The issue is a grave one. The entire American tradition is to the effect that men cannot be imprisoned because the authorities suspect that they may commit a crime in the future.

The problem of the legality of preventive arrests assumed sharp form during the American Civil War. In a very real national emergency, when a third of the nation had seceded and armies were locked in battle across the heart of the nation, Lincoln decided to

institute martial law. In 1864, a military tribunal in Indiana tried and convicted the Copperhead conspirator, Lambdin P. Milligan, of treason. Two years later, with the war over and Lincoln dead, the Supreme Court reversed the verdict on the grounds that both the military tribunal and the suspension of habeas corpus had been unconstitutional. The Constitution says:

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

The meaning of habeas corpus is that, when arrested, any prisoner can serve a demand on a court that he be charged with crime or else freed. In a five-to-four decision, the Supreme Court held in the Milligan case:

"Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present; the invasion real, such as effectively closes the courts and deposes the civil administration . . . Martial law can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is . . . confined to the locality of actual war." ¹³

The fact of civil war or invasion *some place* in the territories of the United States did not justify suspending habeas corpus *everywhere*. Proof was needed that the civil machinery of justice had actually disintegrated. To forestall any appeal to the jeopardy which the nation faced, the Supreme Court added:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers . . . all classes . . . No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence." ¹⁴

During World War I, the only people interned were dangerous enemy aliens. They owed allegiance to a hostile power and could obviously be incarcerated whenever expedient.

In the months following Pearl Harbor, Congress authorized the

military to establish defense zones where necessary and exclude persons of Japanese race from them. The action taken followed a sordid campaign motivated by greed and bigotry. Western and Southern Congressmen joined in demanding the same harsh treatment to all persons of Japanese extraction, regardless of their citizenship or loyalty.

The ineffable Congressman John Rankin of Mississippi declared:

"Once a Jap always a Jap! . . . You cannot regenerate a Jap, convert him, change him, and make him the same as a white man any more than you can reverse the laws of nature . . . These Japs who had been there for generations were making signs, if you please, guiding the Japanese planes to the objects of their iniquity in order that they might destroy our naval vessels, murder our soldiers and sailors and blow to pieces the helpless women and children of Hawaii. Damn them! Let us get rid of them now!" ¹⁵

West-coast American Legion groups chimed in with statements that this was "no time for namby-pamby pussyfooting" or considering what they chose to call the "minute constitutional rights of those enemies . . ." ¹⁶ Even the fact that Japanese-Americans had committed no acts of sabotage was taken by the racists as conclusive evidence that they were holding back their strength in order to let loose a nationwide tornado of destruction. ¹⁷ The demagogues and the twisted, hate-seared politicians were aided in this campaign by decent Americans who should have known better.

The FBI worked quietly and systematically interning individual aliens believed to be subversive. The Attorney General, Francis Biddle, supported this selective approach, then inexplicably caved in to the chorus of prejudice. The Army took over and proceeded with mass evacuation. Command of the west-coast zone was assigned to General John De Witt, who believed: "We must worry about the Japanese all the time until he is wiped off the map." ^{17a}

About 112,000 people of Japanese extraction were evacuated from the Pacific defense zone, of whom some 70,000 were American citizens. The internment and incarceration occurred about four months after Pearl Harbor at a time when the American Pacific Fleet had been shattered and Singapore, Corregidor, and Wake Island captured by the enemy.

A Japanese-American, named Hirabayashi, was sentenced for violating one of General De Witt's curfew orders and appealed to the Supreme Court. His conviction was sustained. The court held that there was sufficient evidence to justify the general's belief that enemy invasion of the Pacific coast was probable, that the Japanese-Americans were the most probable nucleus from which sabotage and insurrection might spring, that there was insufficient time to separate the loyal from the disloyal and that therefore the curfew order was a proper exercise of military judgment.¹⁸ Under the circumstances it is hard to see how any other opinion was possible.

In December, 1944, the Supreme Court ruled six to three on an entirely different and far more dubious case—that of *Korematsu v. United States*. Mr. Justice Black, for the majority, defined the issue as the right of the military to exclude Japanese-Americans from the west-coast defense zone. He held that this decision was a legitimate exercise of military discretion in wartime, but added:

"Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice."¹⁹

Mr. Justice Roberts saw the "stark realities" of the affair in an entirely different light. General De Witt had issued "two diametrically contradictory orders," one of which made Korematsu "a criminal if he left the zone in which he resided; the latter made him a criminal if he did not leave."²⁰ The only way he could avoid imprisonment for violating one of these orders was to submit to confinement in an assembly center.

Mr. Justice Roberts held the orders to be unconstitutional and Mr. Justice Murphy added that they were "utterly revolting among a free people . . ." ²¹ In a third dissenting opinion, Mr. Justice Jackson said:

"Now if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable . . . But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign."²²

The Korematsu case is clearly not parallel to the emergency detention provisions of the McCarran Act. The Supreme Court assailed

the procedure of branding an entire racial group as subversive; it spoke in a strong and undivided voice against racial prejudice. A minority castigated the indirection and legerdemain by which a loyal American had been deprived of his liberty. Not one of these issues arises in the detention plan covering Communists. The procedure is straightforward; no racial issues are involved; guilt is individual and there is a procedure for sifting the loyal from the subversive.

No case has yet come before the court which presents in unalloyed form the question of whether or not a man can be imprisoned in time of war on evidence that he may intend to commit a crime, but before he has taken any steps to do so. The subtle opinion of Mr. Justice Jackson in the *Korematsu* case, however, gives a hint for the future. He points out that "The armed services must protect a society, not merely its Constitution." The conclusion Jackson draws is that the Supreme Court should not hamper the exercise of war-time decisions but should, like Hegel's owl of Minerva, express its disapproval after the crisis has passed.

"A military commander may overstep the bounds of constitutionality and it is an incident," Jackson declared. "But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has generative power of its own, and all that it creates will be in its own image."²³

The war powers of the government of the United States are vast, though ill-defined. Never since the unsuccessful attempts of Chief Justice Taney to compel President Lincoln to act within the strict bounds of the Constitution has a Supreme Court interfered with the exercise of military authority on a broad issue of safeguarding national security in time of war. Pure liberals sometimes scoff at the court and charge it with cowardice, alleging that it protects civil rights only when they are not seriously endangered.

This is an oversimplification. The framers of the Constitution were unable to foresee the exigencies of atomic warfare and they made no claim to infallible or timeless wisdom. While the Supreme Court has the duty of upholding the Constitution, it will not risk the existence of the nation in the process.

Chapter Twenty

AMERICAN FREEDOM AND AMERICAN SECURITY

WE HAVE now traced the main measures that the United States government has adopted in order to penetrate, check, and suppress the Communist movement. Clearly the pendulum has already swung far toward a preoccupation with national security at the cost of abridging liberties that would be taken for granted in calmer times.

Throughout American history, statesmen have fought for the right to voice heresies, but have been quick to stifle seditious conspiracies. None have believed that a free government need tolerate treason and thus destroy its freedom.

The Communist Party, unlike other political organizations, exists for the specific purpose of committing treason against the United States. It is pledged both to armed revolution and to giving aid and comfort to the U.S.S.R. in the event of war. These are the only two ways in which an American can betray his country under the Constitution. The free-speech amendment need not protect the preparatory steps toward treason and it was probably never intended that it should.

The test of clear and present danger prevents the reckless suppression of impotent radical groups, even if their purpose is treasonous. The two criteria of traitorous intent and actual menace distinguish Communists from all other radicals. There is no real danger that illegalization of the party would be followed by similar

moves against Anarchists, Socialists, and other dissenters. Under the Holmes doctrine, the courts would not permit this extension.

Dangers to freedom do arise, however, in the process of detecting Communists. Since the movement is a conspiracy, it masks its purposes and conceals its membership. There is no clear-cut test of Communist affiliation. Communists do not necessarily carry party cards, pay dues, or attend meetings. All Communists are, to be sure, subject to rigorous discipline, but this may include the right to oppose certain Soviet policies at certain times. Obviously, no Communist would survive within the government service if he followed every tortuous twist of the party line.

Counterintelligence and loyalty agencies are being increasingly driven into an area of inference and personal judgment. Where the case against a man is primarily in the realm of ideas, even experts may disagree as to what he actually is and what he represents. Trial by publicity is no solution to this problem because the public is far less able to reach sound conclusions than the counterintelligence specialists.

The dangers inherent in trying men because of their ideas, writings, and tendencies, rather than their actions, were expressed a century ago by John Stuart Mill.

"A State which dwarfs its men," he wrote, "in order that they may be more docile instruments in its hands, even for beneficial purposes, will find that with small men no great thing can really be accomplished."

The American battle against disloyalty is very simply a struggle for the preservation of freedom on the earth as a whole. The American Revolution carried into practice on a continental scale, for the first time in history, certain untried liberal doctrines of the Enlightenment. It was held that governments exist to serve men and rest on the consent of the governed. An intricate machinery was evolved to prevent majorities from stifling political opposition and thus short-circuiting the democratic process. It was held that men must find freely the values by which they intend to live—that the state must not impose values upon them. All this implied that there could be no established creed and no superimposed dogmas in the realm of social organization, but rather that uncensored thought,

speech, and agitation were the sovereign means of arriving at truth and furthering progress.

Almost two centuries ago, the American Colonies moved toward revolution to establish these principles. The revolution having succeeded, the new doctrine was tested in the laboratory of history. The result has been an almost uninterrupted advance in wealth and power for the nation and in security, opportunity, and leisure for the people. On this foundation, science, art, and education have flourished. The democratic system has proved flexible enough to permit a maximum of social change with a minimum recourse to war and revolution.

While Europeans sometimes choose to speak of the political naivete of Americans, the comparative evolution of the two continents since 1775 speaks for itself. The people of the United States may have shown themselves naive in appraising the psychotic mentality of European totalitarian movements, but they have been far from simple-minded in running their own affairs. Despite criticisms of the functioning of American democracy, the totalitarian states have shown superiority chiefly in such fields as the use of deception, the chaining of the intellect, the creation of irrational fanaticism, and the swift application of force.

The struggle against Communism is quite evidently not a contest between the "right" and the "left." The old political landmarks have been largely swept aside. We are all liberals because we believe in the principles of a revolution which set off the chain reaction of democracy throughout the Western world. We are all conservatives to the extent that we wish to guard and cherish this particular heritage. We are radicals in believing that the American tradition from Jefferson through Lincoln and Roosevelt has pierced to the roots of the great problems of the organization of man's political life. We are revolutionaries in considering that the only profound and constructive revolutions in social life are those that further the liberty of man and the democratic process.

The challenge of Soviet Communism is probably the most serious one that the United States has ever faced. Armed with nuclear weapons and with an insidious philosophy which deludes the down-trodden in all countries, international Communism is stronger than

the Nazi alliance it displaced. It is led by men who take a longer-range view of political developments and is committed to the unification of the world by revolution and war.

It is to be hoped that the struggle against Communism will be the last of the successive clashes between democratic and totalitarian systems which have characterized the first half of the twentieth century. The defeat of Communism may, for the first time, make it possible to realize Wilson's dream of a world order based on freedom and enjoying durable peace.

The suppression of the pro-Soviet conspiracy within the United States is only one aspect of this larger struggle. A test of the validity of Western civilization is our ability to cope with this danger while living under the Constitution and by due process of law. Resort to vigilantism and other totalitarian measures destroys the inner strength of a free society in the false guise of contributing to its self-defense.

The founders of the American republic lived in an era of storm and trouble. They believed in the guiding principle of freedom, not as a luxury suited only to quiet times, but as an invigorating force which would create a nation capable of surviving in a mesh of hostile intrigue and aggression. They believed with Jefferson that liberty was both a source of strength and a faith for the strong. They held that the nascent American free society was "man's best hope" in a world torn by despotism, revolution, and war.

Events confirmed these assumptions. In our age, the hope for man's freedom has been extended to cover the world as a whole, and, as Jefferson predicted, the United States has become the dynamic, organizing force in this struggle.

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