

Any "Subversion" In This Picture Is Brownell's

Originally the Attorney General's list of "subversive" organizations was a secret list for the guidance of administrators in adjudging "loyalty". At least it did not affect persons outside the Federal government. Under Tom Clark, the list was made public and began to cast a shadow on basic rights of association and assembly. A broader purpose is avowed in Attorney General Brownell's complaint against the National Lawyers Guild. Listing, it is there stated, "makes it possible for uninformed loyal citizens to disassociate themselves from such groups at the earliest possible moment."

Thus this becomes a means of breaking up organizations by government blacklist. The listing derives from an executive order, not a statute, and the standard—"subversive"—is undefined, if not undefinable. Only one thing is clear. The standard has to do with ideas alone. The National Lawyers Guild complains in the application for an injunction, rejected here last week by Federal Judge Keech, "there is no suggestion anywhere that plaintiff at any time participated in any illegal action or even in the advocacy of any prohibited doctrine."

The determination, until now, has been made without notice or hearing. As a result of the Supreme Court's decision in the *Joint Anti-Fascist Refugee Case* (341 U.S. 123) it became clear that such procedure would be regarded as of dubious legality. But the National Lawyers Guild case shows that any change since has been of form alone. As pointed out in the *Weekly* at the time (see No. 31, September 5), the Attorney General first announced an unfavorable verdict against the Guild (in a speech to the rival American Bar Association) and then gave it notice and a chance to ask for a hearing.

An examination of the new Brownell regulation will show how inadequate is the notice and hearing provided. The organization must file notice within ten days or be held to have acquiesced in the designation as subversive. Within sixty days after an appeal, the Attorney General supplies "a statement of the grounds" and "written interrogatories."

The hearing procedure is peculiar. The hearing board or officer may decide to conduct it without taking any evidence, relying instead on the written interrogatories. The Attorney General, on the other hand, may introduce evidence "at his

election." "The ordinary rules of evidence need not be adhered to" and the Attorney General may submit his evidence "in summary form or otherwise, without requiring disclosure of classified security information or the identity of confidential informants." If witnesses are heard, they "shall be subject to cross-examination, provided that no witness on behalf of the government shall be required to disclose classified security information or the identity of confidential informants."

The interrogatories submitted to the Guild show how hazardous is the path to this Star Chamber style court. Sixty-six interrogatories were sent the Guild, some so voluminous and covering events so far back that it is difficult to see how they could be answered in the 60-day limit set by the Attorney General's order. Interrogatory No. 50 asks (a) whether the Guild knows or has any reason to believe "that any of the present or past members of any branch, local, club or chapter of the NLG is now or ever has been" a Communist and (b) if so, to identify them. No. 50 asks whether any branch ever provided information to any Communist publication. Appended to the interrogatories is a notice that any false reply is punishable by \$10,000 fine or five years in jail or both.

The interrogatories vividly illustrate the dangers to radical and non-conformist opinion. Has the Guild opposed universal military training since 1948? Why didn't the Guild support the UN action against North Korea until two and a half months after the war broke out? What position did the Guild take on the Mindszenty case? On expropriation of oil in Mexico? On admission of Red China to the United Nations? On atomic energy control, the FBI, the Smith Act and the non-Communist oath requirement of the Taft-Hartley Act? What has been its position on legalized wire-tapping? On the McCarran bill to compel testimony by granting immunity to witnesses before Congressional committees?

The Guild is appealing in its fight to enjoin the Attorney General. Can any lawyer fail to see how subversive of fair procedure and constitutional liberty is the conduct of the Attorney General? The measure of support mustered by the Guild will be the measure of the extent to which the bar has already been cowed by him.

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