

## The Old Case of the Recalcitrant Railway Auditor Is Challenged

### The Fight to Save the 5th Amendment from The New Immunity Law

In the 1890's an auditor for the Alleghany Valley Railway Company pleaded the Fifth amendment when asked whether his employer had violated the Interstate Commerce Act by giving rebates to the Union Coal Company. The Interstate Commerce Act provided that a witness could be compelled to testify if granted immunity from prosecution. The auditor challenged the constitutionality of that provision but the Supreme Court in 1895 rejected his plea 5 to 4 in *Brown v. Walker* (161 U.S. 591). This is the precedent which must be reversed or by-passed if the new Immunity Act is to be overturned in the courts, and the Fifth amendment saved for political heretics.

The issues have just been argued before a 3-man appeals bench in New York in the case of William Ludwig Ullmann, one of those named by Elizabeth Bentley as part of an alleged Soviet espionage ring in the Treasury during the last war. Ullmann was taken before a grand jury last Fall, just before election, and ordered to talk on proffer of immunity. He declined and was sentenced to six months for contempt. His appeal was heard by two U.S. Circuit Court judges, both liberals, Jerome Frank and Charles E. Clark. Sitting with them was District Judge Clarence G. Galston. Ullmann pleaded in an affidavit (see excerpts below) that he was the victim of political persecution; that he had several times denied the espionage charges under oath; and that the grand jury proceeding was a "fishing expedition" to "get" him for perjury or to expose him as a radical if he could not be frightened into informing on the promise of immunity for himself.

The government argued that the Supreme Court had already decided in *Brown v. Walker* that immunity legislation was constitutional. Defense counsel, Nathan Witt and Leonard B. Boudin, set out to "distinguish" (as the lawyers say) the older case from this one. The heart of their argument is that "running through the majority opinion" in the old *Brown* case "is open skepticism as to how the auditor could himself have been involved in any crime and how his admissions could lead to any personal odium and disgrace." Rebates were a common practice; the auditor was not personally responsible; he would not have been hurt by the revelation of illegal rebates. The majority said they could not see where the auditor would suffer any "legal detriment" from being compelled to testify.

Ullmann's defense counsel in a brilliant brief contrast what happens to a radical today who is compelled to testify about his political views and associations. Even if the witness is granted full immunity from Federal or State prosecution, it cannot be said that the radical will not suffer "legal detriment" of other kinds.

#### Sen. George on the Immunity Law

"... underlying our whole concept of jurisprudence is the personal right of a witness, not only to refuse to testify or to answer a question which would tend to incriminate him, but it is also the right of the witness to refuse to testify when his testimony would necessarily bring into public contempt and disrepute the members of his immediate family. It is a much broader right than the mere right of the defendant himself to escape punishment for a criminal offense."

—Sen. George, opposing passage of the McCarran bill to compel testimony on grant of immunity, 99 Con. Rec. 4742 (1954).

These are summarized by the defense. "Subversives" are barred from employment in the government or in defense facilities. Under the Internal Security Act it is unlawful for them to apply for or use passports. In the event of an emergency, they may be interned in detention camps. Employment as a longshoreman, in the merchant marine, or as a radio operator is subject to political screening. Dishonorable discharge from the Army is provided for subversives. Teachers and many other types of profession or occupation are now subject to loyalty oaths and political interrogation. "Only the most menial and low-paying occupations," the defense argued, "are now available to many persons who have been branded as subversive..."

In addition to such governmental sanctions—none covered by the proffer of immunity—there are all kinds of private sanctions: expulsion from labor unions, loss of private employment, discrimination in housing and schooling, and public opprobrium.

"These sanctions," the defense argued, "are not generally regarded in the United States as reason for invoking the constitutional privilege. However, it is significant that in an analogous period of religious oppression, the 18th century, the English equity courts allowed witnesses to be silent where admissions of papacy would result in property loss, or where ecclesiastical censure would follow, or where a parliamentary seat was at stake. Where the effect of political heresy is as serious as it is today the dissenter is subject to penalties and forfeitures which, if anything, are more drastic than even criminal prosecution."

So the defense concludes that the purpose of the Fifth amendment "cannot be achieved unless it is interpreted and applied in the light of the dangers today confronting the witness in a political case."

#### Ullmann's Own Story of His First "Harry White Spy Ring" Interrogation by the FBI

##### "Not Foreign Riff-Raff That Came Over on a Boat a Few Years Ago"

"On April 15, 1947, about a month after I had left the Treasury, two agents of the Federal Bureau of Investigation came to my home at about 5:30 p.m. . . . Although I said I preferred to talk to them at my home, they prevailed upon me to go to FBI headquarters . . .

"I am prepared at any time to testify in detail about the character of the questioning and the insults and threats which went with it, but I merely summarize here so as not to burden this affidavit unduly. I was asked the questions about espionage which were based on what I later learned, in 1948 as I have said, were Miss Bentley's charges. When I answered such questions in the negative, the agents accused me of lying, as they did also from time to time when I denied that I knew this or that friend or acquaintance or Government associate of mine was a 'red' . . .

—Affidavit of William Ludwig Ullmann, U.S. District Court, Southern District N. Y., Nov. 17, 1954

## They Would Repeal the First Amendment to Get the *Daily Worker*

### A Bill to Prove (Positively) That Sens. Johnston and Smith Are Not Reds

The Postmaster General in a letter to Johnston of South Carolina, chairman of the Senate Post Office Committee, complains that the Post Office is subsidizing the *Daily Worker* to the tune of \$40,000 a year, this being the estimated difference between the second-class mail rates it pays (along with other publications) and the cost of carrying such mail. The Senator and Mrs. Smith, the Republican lady Senator from Maine, thereupon introduced a bill (S. 1508) last Tuesday to bar the *Daily Worker* from the mails altogether.

If this is meant as economy, it doesn't make sense. At present we are spending roughly \$80,000,000 a year on the FBI and no one knows just how many millions more on the other political gumshoe agencies of the government. Were the *Daily Worker* put out of business, the government would have to spend several times as much to do the same job. It is obvious from the kind of evidence dredged up in countless hearings that the FBI and the other snoopers get most of their information by reading the *Daily Worker*, the Communists if conspirators being the only ones who oblige the police by publishing a daily bulletin on their activities. That \$40,000 is less than one half of one-tenth of one percent of the FBI budget and perhaps one of the few intelligence expenditures of the government which pays off.

It is not only the FBI which would be hurt by putting the *Daily Worker* out of business. On this frail foundation, barely kept in existence by constant appeals for help and an underpaid staff, has been built a major new American industry—our private experts and consultants on Communism. What would *Counter-Attack* do for copy? Where would the Jenner-Eastland committee find its source material? How would Philbrick know what was going on in the Red Underground if he could not read about it in the *Daily Worker*?

When the profits of these private agencies are taken into account, \$40,000 is chicken feed. The *Daily Worker* could probably blackmail the lot of them into paying the \$40,000—and its constant deficit—by threatening to leave them all high and dry by going out of business . . .

This bill is another example of the tendency of our "liberals," such as they are, to cancel out any good they do in the fight against the witch hunt by hastily sponsoring repressive measures of their own lest they themselves be suspected. To prove that they are not soft on Communism, they are ready to demonstrate that they are soft in the head. Mrs. Smith tried to atone for her anti-McCarthyism last year by sponsoring the Eisenhower-Brownell measure for making stateless persons of native-born American radicals.

#### Fascists Are Exempt

Perhaps Senator Johnston is trying to atone for his activities in protesting injustices to civil servants under the loyalty-security program. The method he has chosen is to tear a propitiatory hole in the Bill of Rights. The First Amendment says Congress may make no law abridging freedom of the press. This bill would not only deny 2d class mail privileges but forbid the mails altogether to "written or printed matter, designed to promote, or the circulation of which may reasonably be expected to promote" the establishment "eventually . . . in any one or all of the countries of the world" of a "Communist totalitarian dictatorship." This carefully excludes Fascist material and is broad enough to cover a friendly attitude toward Communist China.

This bill would do more than establish postal censorship. It would make it unlawful for any private person to transmit such literature "in interstate or foreign commerce." The distributor would have to read all the periodicals or books he distributed to see whether he "has reason to believe" that the material "might reasonably be expected to promote world communism." The penalty would be a fine of no more than \$10,000 a year or five years in jail or both. This is enough to scare the average distributor, already timorous, into handling nothing to the left of the *Ladies Home Journal*.

The chances that this monstrosity will pass the Congress are slim, but it is the kind of measure which sometimes slips through (like the Eisenhower-Brownell denaturalization law) in the closing days of a session. In the meantime it is worth a million dollars to anti-American propagandists abroad anxious to show the world just how wacky we are getting to be.

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