Conservative Jurist Sets Up Guide Lines That Would Cripple Witch Hunting

Court Reverses First Two SACB Registration Orders Against Party "Fronts"

In the long and bitter fight waged in the late 40's to prevent passage of the Mundt-Nixon bill, which became the Internal Security Act of 1950, its sponsors were forced to make one concession after another to allay criticism. A footnote to the decision just handed down by the U.S. Court of Appeals here in the case of the National Council of Soviet American Friendship recalls one of these. Nixon, then a Congressman, told the House that his bill even required that when the Subversive Activities Control Order ordered any organization to be registered as a Communist front, the Court of Appeals "must find that the decision by the board is sustained by a preponderance of the evidence, a standard which I may say," Nixon continued, "goes much further than any law on the books governing appeals from administrative bodies."

The Court Takes Them Literally

Now the Court of Appeals, in its first two rulings on Communist "fronts," is taking these and similar safeguards in the statute at their face value, and applying them. As a result the first two decisions deal an almost mortal blow to the "front" provisions of the Act. The decisions not only reverse registration orders by the Board but set up judicial guide-lines which must severely limit its witch hunting activities.

The first decision, against the defunct Labor Youth League (see box below), rules that the Board may not register organizations which no longer exist. This should lift a pall of anxiety from persons who belonged to them in the past, and remove the fears of exposure which the FBI and the Immigration Service have used to create and coerce informers. The second decision, in the National Council case, sets up such strict evidentiary standards that the Board will be unable to blacklist organizations merely because their viewpoints parallel "party line." The decisions are given added weight by the Judge who wrote them. Senior Judge Prettyman is one of the most respected conservatives on the Federal bench. He spoke for a unanimous panel of three, the other two being Chief Judge Bazelon, a liberal, and Judge Danaher, a conservative.

Judge Prettyman ruled that since, as its sponsors claimed, this was not meant to be "a punitive statute for past affairs", the government must prove that an organization is *presently* a front in order to make a registration order stick. It must also prove, as the statute requires, that the organization is "directed, dominated or controlled" by the Communist Party.

Curbing The Witch Hunters

"The theory of the statute respecting Communist fronts is that the Communists disguise their true objectives and foster organizations with declared objectives which are attractive. Thus, almost by definition, many members of a Communist front are unsympathetic to Communist aims or Communist philosophy....

"Is a person who was a member of the Communist Party in 1942 or 1944 to be presumed to remain a member in 1951-3? The former were war years, in which the U. S. vigorously sought the continued help of Soviet Russia.... To presume that merely because a person was a Party member in the years of the war he continued to be a member after 1950, paying dues and subject to Party discipline, would be unrealistic, contrary to the probable factual situation, and unjust....

"The rudimentary elements of justice deny that a person can be found formally and officially to be a member of the Communist Party merely upon the statement of one person that another person told him so. ... Finding these individuals to be Party members is not the mere assignment of a colloquial appellation. The imagination runs riot if we contemplate the results of a ruling that, if a highly placed member or officer of some organization says so-and-so is a member of that entity, such a statement relayed to the witness stand by a third person, without more, is acceptable proof. ... Promoters are notoriously optimistic about the membership of the organizations they sponsor."

—National Council of American-Soviet Friendship v Subversive Activities Control Board.

The evidence must be more than hearsay and the fact that certain persons were Communists in the war years will not support the presumption that they remained so in the changed circumstances of the 50's. In addition to reading the statute strictly, the Court regarded with astringent and skeptical eye the testimony of a whole squad of well-known FBI informers headed by Louis Budenz. Judge Prettyman found their evidence of direct Party control "insubstantial." He declined therefore to infer control from the parallel between the National Council's views and those of the Communist Party. This strict standard of proof should doom the hopes of the Act's sponsors. They hoped that, using "proof by parallelism", the Subversive Activities Control Board would be able to blacklist many kinds of radical and liberal organizations, denying their members the right to travel and to work in government or defense plants.

Why The Court Refused to Order the Registration of A Defunct 'Front'

"Meaningless in many ways though the formal listing of a non-existent organization on the register would be, the people who had in years past been members ... would be enveloped in a cloud, faced with the possibility of drastic events if some Government official, or some unneighborly neighbor, or some uncordial fellow employe should choose to accuse them of holding illegally a Government or defense plant job. The [Subversive Activities Control] Board says that if sanctions under this statute are sought against a person, alleging him to be a member of a Communist front, he can defend in any criminal action brought against him; he can show he is not a member. But the application of the sanctions does not always depend upon criminal prosecution. A discharge from a job, a refusal of a passport, or a refusal of a job applied for do not involve criminal proceeding."

—Judge Prettyman in Labor Youth League v. Subversive Activities Control Board. The reasoning by which the Court reversed the Board's order to register the defunct Labor Youth League would seem to apply also to six other defunct alleged "front" organizations against which orders to register are pending on appeal. These are the Civil Rights Congress, the Jefferson School of Social Science, the California Labor School, the Washington Pension Union, the Colorado Committee to Protect Civil Liberties and the American Peace Crusade.

AFL-CIO Goes to Bat Against Bill Allowing Discharges Without Hearing

Debate on NSA Bill Shows Diminished Fear of HUAC in The House

A declining fear of the Un-American Activities Committee may be seen in the fight waged on the floor of the House the other day against HR 334, a bill sponsored by Chairman Walter and HUAC. When this bill came up in the closing days of the last session, only 24 members voted against it. It was too late for action in the Senate and died with adjournment. This time the opposition was almost doubled: 40 members voted 'Nay' and four others were paired against it. There is a chance to block passage in the Senate.

An "Eavesdropping" Agency

The bill is a bill to regulate the hiring and firing of employees by the National Security Agency. The NSA's operations, as one sponsor of the bill put it, "are so highly sensitive that no outsider can actually describe its activities." The hearings on the bill were so secret that even members of Congress were refused access to the transcript. The NSA is, from journalistic accounts, a gigantic electronic "eavesdropping" apparatus for listening in on Soviet communications. This made it all the more shocking when two employes, Bernon F. Mitchell and Wm. H. Martin, both sex deviants, turned up as defectors in Moscow in August, 1960.

It turned out that these two men had been hired without a full field investigation, and it was obvious that NSA's internal surveillance was inefficient; a shakeup followed the news of their defection. There was no opposition to the bill's provision making full field investigations mandatory. Opposition arose to a provision giving the Secretary of Defense summary power to dismiss any NSA employe without a hearing of any kind.

Pressure from government employe organizations, which suffered from summary loyalty-security procedures, led the AFL-CIO this year to oppose the bill for the first time. Three senior Democrats, Moss (*Cal.*), Holifield (*Cal.*) and Dingell (*Mich.*) sent out a round robin against this provision. There was no evidence to show that both men could not have been fired under existing procedures if their sexual deviations had been discovered in time. These existing procedures are summary enough: employes in sensitive positions have no right to confront accusers. The fault lay with NSA slackness, not with lack of power to fire.

It is an index of the changing climate that there was no objection in either House or Senate when this same power of summary dismissal was given the Director of the CIA in 1947. Perhaps what aroused so much opposition this time was the spectacle of a Committee, which is supposed to be the watchdog of true Americanism, coming forward with a measure which denies an accused person safeguards of any kind. Even in the case of a super-secret agency, it was too much to have HUAC implying that it would somehow be un-American to allow an accused employe to know the charges against him.

Some kind of prize should go to Mr. Waggoner of Louisiana for his answer in the debate to those who objected "that people are going to be dismissed without being informed of what their crimes might possibly be." Said Mr. Waggoner, "It is my firm opinion that a man guilty of subversion need not be told because he knows full well to begin with for what he is being dismissed." If Kafka were still alive, he could sue the Congressman for plagiarism.

The 44 Who Said 'No' to HUAC

Of the 40 who voted against HR 334 the Walter-HUAC bill, four were Republicans—Lindsay and Robison of New York, Curtis (Mo.) and Alger (Tex.). Of the Democrats, 13 were from California: Brown, Cameron, Cohelan, Corman, Edwards, Sisk, Hawkins, Holifield, King, Moss, Roosevelt, Roybal and Sisk; 5 from New York: Celler, Dulski, Farbstein, Gilbert and Ryan; 3 from Minnesota: Fraser, Olson and Staebler; 2 from Oregon: Mrs. Green and Duncan; 2 from Michigan: Dingell and Nedzi; 2 from Hawaii: Gill and Matsunaga; 2 from Maryland: Long and Sickles; 2 from Wisconsin: Kastenmeier and Reuss. The others were Karsten (Mo.), O'Hara (Ill.), Gonzales (Tex.), Ashley (Ohio) and Moorhead (Pa.) In addition four Congressmen were paired against the bill: Multer (D) NY, Mosher (R) Ohio, Mathias (R) Md., and MacGregor (R) Minn. Suggestion to readers who are their constituents: Why not write and praise them for it?

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