Federal Judge Dismisses the Charges Against the Institute for Pacific Relations

An Epiloque to the McCarthy-McCarran Era Buried Among the Obits

As in the day's of McCarthy's glory, the charges may make page one headlines but the rebuttals, if noticed at all, are squeezed into the back pages. Buried on the obituary page of the *New York Times* April 1, unnoticed in most of the nation's press, was news of the first judicial appraisal of those charges against the Institute for Pacific Relations which provided first McCarthy and then McCarran with the material they used to terrorize the State Department, to smear Far Eastern experts who did not follow the China Lobby line, and to make impossible to this day full and sober public discussion of our relations with the new China.

Afraid to Produce Witnesses in Court?

The case was a suit by the Institute to recover back taxes paid in 1955 when its tax exemption was revoked by the Internal Revenue Commissioner T. Coleman Andrews. The latter acted on the basis of the McCarran committee report which pictured the IPR as the center of a conspiracy which reached into the State Department, subverted Chiang Kai-shek and connived at a Communist take-over in China. The government, in contesting the suit, put into evidence the 14 volumes of McCarran committee (Senate Internal Security) hearings on the IPR. The IPR challenged the government to produce for cross-examination the witnesses who had appeared against the IPR before McCarran, but the government failed to do so.

The IPR, represented by Charles Kades, of Hawkins, Delafield and Wood, submitted in evidence copies of all its publications for 1953-55 and the proceedings of all its international conferences since its establishment in 1925. Many distinguished witnesses, among them Philip Jessup of Columbia, appeared on its behalf. Judge David N. Edelstein in the Federal Court for the Southern District of New York found on March 30 that the IPR had not engaged in "the dissemination of controversial and partisan propaganda" and had "made no attempt to influence the policies and/or actions of any government or governmental officials." He issued an order for recovery of the taxes paid, and thus paved the way for reinstatement of tax exemption. The government has not yet decided whether to appeal.

The McCarthy-McCarran hearings ruined the careers of such Foreign Service "old China hands" as John Carter Vincent, John Stewart Service and John Paton Davies. It effectively smeared a whole group of Far Eastern experts who like them had been critical of Chiang Kai-shek. It subjected Owen Lattimore to what he described in a book on his experiences as *Ordeal by Slander*. But Lattimore won his battle when his perjury indictment was dismissed without trial. The IPR case was the first time the McCarthy-McCarran material had been scrutinized by a trial judge. Its rejection as unfounded deserved wider publicity.

Labor's Far Eastern Expert

One of McCarran's witnesses against the Institute of Pacific Relations was Prof. David N. Rowe of Yale. He accused the IPR of engaging in "propaganda" and called Owen Lattimore "probably the principal agent of Stalinism" among Far Eastern specialists. Prof. Rowe has been chosen to be the speaker on the Far East for the coming AFL-CIO pre-summit conference discussed on page two of this week's issue.

Text of Decision in Favor of Institute of Pacific Relations

"The issue involved in this case is the nature of the plaintiff's activity in the taxable year 1955. The only direct evidence of what actually happend in that year was presented by the plaintiff. This evidence was totally uncontradicted and utterly unimpeached by the Government in any direct way. The Government's case was presented by indirection. It offered into evidence the report and hearings of the McCarran Internal Security Subcommittee concerning the activities of the plaintiff in the years before 1950, and attempted to establish their relevance to the year 1955 by the plaintiff's admission that its purposes, practices and procedures had not changed in the intervening years. Indeed, the plaintiff not only admits, but insists, that it has not changed. The Government's position, therefore, becomes double edged. The plaintiff can persuasively argue that it is properly to be described in 1955 by the evidence it presented in court and that this description is equally applicable to years covered by the McCarran Committee Report. There is not in this case the shadow of a scintilla of evidence to meet the plaintiff's case for the year 1955 other than that which can be dragged in by the back door on the flimsy vehicle of what is in effect no more than the plaintiff's plea of not guilty to the ancient charges against it. Moreover, it is in this case that the plaintiff has for the first time had its "day in court" on those charges. The Government has not seen fit to join issue with the plaintiff, on this first opportunity for joinder, in any meaningful way. It may be conceded that evidence of operations in prior years may be relevant. But it is highly doubtful that evidence of remote years may be considered relevant in the complete absence of evidence of any recent prior years, on the basis merely of the flimsy linkage of the plaintiff's unyielding cry of not guilty to charges which it now for the first time gets the meaningful opportunity to refute. Nevertheless, a pre-trial denial of plaintiff's motion for summary judgment was bottomed on the ground of the admissibility of the report. It does not appear that the issue of relevance was argued to or specifically considered by the court, and the earlier ruling is not necessarily binding as law of the case. But because the ruling has some theoretical basis, I am reluctant to disturb it. Moreover, the ruling is slightly strengthened by the fact that the plaintiff's evidence necessarily involves the earlier years to some extent. Consequently, although I regard the ruling of the admissibility of the evidence as doubtful, I shall adhere to it.

But if the Government succeeds in introducing this report into evidence essentially in reliance on the "no change" argument, it succeeds in the same stroke in conveying its own appraisal of the weight of that evidence. Indeed, the Government's tactics in opposing plaintiff's suit speaks so eloquently about the relative weight of the evidence as almost to spare the court the burden of weighing it. By leaning on the slender thread of the "no change" argument and relying exclusively on the committee hearings and report, the Government concedes that it cannot specifically meet issues posed for the later years by the plaintiff's case; and if it cannot meet those issues, refusing even the attempt, the "no change" argument must inevitably be resolved in the plaintiff's favor. The plaintiff utilized its "day in court" to make its record in the way in which it thought that record ought to be made, as any plaintiff in any lawsuit is allowed to do."

—U.S. District Judge David N. Edelstein

On the Witch Hunt Front: Walter's New Bills to Compel Informing

J. Edgar Hoover Indicates Wide Range of Civic Groups Now Being Spied Upon

FBI Chief J. Edgar Hoover told the House Appropriations Committee in testimony released last week, "We now have 160 known or suspected Communist front and Communist-infiltrated organizations under investigation." Since there are few real Communist front organizations left in this country, the 160 must include many respectable organizations. Mr. Hoover indicated as much when he said "these various fronts exploit every susceptible segment of American society", the "major targets for infiltration being Negro, social welfare, political and labor groups." Obviously a wide range of liberal, civic and labor organizations are being spied upon.

Back the Roosevelt-Thompson Bill

ACTS TO COMPEL INFORMING: Congressman Walter introduced companion bills last week to bar from Federal employment and from jobs in the merchant marine and on the waterfront any persons who fail to answer certain questions under oath before a Federal agency or Congressional committee. The widest category of question would concern "the participation of such individual, *or any other individual*, in activities conducted by or under the direction of the Communist Party or any member thereof." Walter said the bills were framed to deal with the decisions in *Parker v. Lester* and *Graham v. Richmond* which forbade the use of faceless informers in Coast Guard and Merchant Marine security screening. Both bills are written as amendments to the Internal Security Act which means that in the Senate they would go to the Internal Security Committee. Eastland and Dodd, its chairman and vice-chairman respectively, see eye to eye with Walter. HR 8121, Walter's bill to allow faceless informers in government security hearings, is now in Internal Security and may be reported out at any time. The bill passed the House without opposition but Roosevelt (*D. Cal.*) and Thompson (*D. N.J.*) have introduced a counter-measure, HR 11151. This would amend the Administrative Procedures Act to provide that it shall apply to all Federal loyalty-security or industrial screening cases. The Act was fathered by Walter to protect propertied interests. The Roosevelt-Thompson bill would extend its safeguards to loyalty-security cases, including the right to confront accusers.

Arens on Way Out

Richard Arens, staff director of the Un-American Activities Committee for the past 14 years, is being forced out by the adverse publicity which followed his exposure as a $3,000-a-year consultant for an eccentric New York millionaire trying to prove Negro inferiority. Ronald H. May, Washington correspondent of the York, Pa., Gazette and the Madison, Wis., Capitol-Times, who exposed these links (see the Weekly, March 14) reported last Monday that Arens will take a new job after Congress adjourns.

SEEDS OF A FUTURE DREYFUS CASE: In a related field, Congressman Meyer (*D. Vt.*) challenged a bill S. 1795 which would allow boards of general officers in the armed services to determine whether any commissioned officer shall be required *"because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list."* Mr. Meyer protested (March 30) that this seemed to him "in direct opposition to American law, in which a man is innocent until he is proven guilty. He should not have to show cause for his retention, those who want to have him leave should themselves show the reasons why he should leave." Kilday of Texas, floor manager of the bill, gave the show away when he said it was framed "after a careful reading of the latest decisions of the Supreme Court with respect to security cases." These frown on faceless informers. Since S. 1795 puts the burden of proof on the accused officer, he could not demand that any witnesses against him be produced for cross-examination. "I grant you," Kilday admitted, "that it [the bill] is not entirely consistent with the principles of justice as we know it in the United States, that the man is not confronted by witnesses and is not granted the right of cross-examination." Mr. Meyer said he thought it was "going pretty far" when a man who "devotes his entire life to the service of his country does not even have a complete opportunity to defend his honor." The bill passed nevertheless without opposition. The House, like the country, has long grown accustomed to the violation of what were once considered basic American principles.

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