

NATIONAL LAWYERS GUILD

902 TWENTIETH STREET, N. W.
WASHINGTON 6, D. C.
DISTRICT 3205

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ACC. NO. 270

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December 13, 1948



TO MEMBERS OF THE HOUSE OF REPRESENTATIVES

Dear Congressman:

We are sending to herewith a statement urging abolition of the Committee on Un-American Activities. It embodies our reasons for urging this action, arrived at after long and careful study of the Committee's power and activities, and of the relevant historical and legal precedents.

Along with millions of Americans we have reached the conclusion that the continued existence of the Committee is inimical to the validity of those democratic principles which are the very foundation of our government. We have stated these principles as the Supreme Court has interpreted them. We have shown how, in practice, the Committee violates them, and the resulting consequences for the substance of liberty.

We ask you to appraise the reasons which have impelled hundreds of distinguished individuals and groups, and two judges of the United States Circuit Court of Appeals, to hold that the Committee violates civil liberties. We ask you to have faith in the American people, to trust them to separate the good from the bad ideas and groups, without governmental interference. We ask you to have faith in our present democratic judicial processes which permit the speedy prosecution of any unlawful acts, while safeguarding the civil liberties of those accused.

Finally we ask you to make or support a motion, at the opening of the House, to amend the motion to adopt the rules by providing for the abolition of the Committee on Un-American Activities, or to support any other appropriate means to the same end.

Very truly yours,

Robert J. Silberstein
Robert J. Silberstein
Executive Secretary

In many circumstances, in addition to the obvious case of membership in the Communist Party, anonymity has been and is essential both to the safety of the individual and the success of programs designed to bring about by lawful means changes in our social, economic or political arrangements. Examples of such situations are: the abolitionist movement in time of slavery; the organization of the trade unions in the time of the blacklist, labor spies, and terror against Union organizers, and even now in some parts of our country; membership in any organization which seeks racial equality in the south, as the NAACP and the Southern Conference for Human Welfare; and membership in the Progressive Party in many parts of our country.

To compel individuals to disclose affiliation, or to permit a governmental agency to "expose" affiliation (correctly or incorrectly) under such circumstances, is to impose an effective restraint on the rights of freedom of speech and association. A person exposed to the hazards mentioned would thenceforth be inclined to dissociate from his chosen group, and hold his tongue on all controversial subjects. Others, fearing such disclosure in their own case, would not associate with the group or dissociate from it, and keep to themselves any dissent from the majority view. In fact they would join no group with controversial ideas or aims since the group might be attacked at a later date. Thus the democratic process is frustrated. Only the very brave or the very ignorant, would be undeterred from their efforts to change the prescribed orthodoxy. Even more important, the people would thus be denied the full information requisite in a democracy.

If an agency of government can thus penalize views or associations of which it disapproves, how can it be said truly that the people have the right to speak, write, assemble and persuade to action, without governmental interference, or that government may not prescribe what is unorthodox?

These Evils Cannot be Corrected by a Reform
of Committee Procedures, or by a
Re-definition of its Power

Some people, who acknowledge the harm the Committee has done to our democratic institutions, think that it can be made useful, if the Committee's procedures are reformed or if the scope of its power is more precisely defined. Careful analysis, however, shows that it will not help fundamentally if every precaution is taken against condemning people for ideas they do not hold, or if the area of ideas under attack is limited by clear definition. The evil is in the penalty placed by government upon any ideas, as distinguished from conduct. No reform of the Committee's scope or or procedures will correct that evil. Let us examine some of the proposals for reform which have been advanced in the Congress.

Bills were introduced in the 80th Congress (S. Con. Res. 44 - H. R. 4564) which would, if enacted, reform the procedures of all Congressional Investigating Committees. In general they would at the most require these safeguards:

1. One who is defamed would have the right to file a sworn statement concerning the testimony against him, to testify himself, to have the committee secure witnesses requested by him, to examine or cross-examine them through counsel.
2. Witnesses would be entitled to a transcript of their testimony on paying the cost, and to file a sworn statement or make an oral statement at the conclusion of their testimony.
3. No Committee would be permitted to publish a report unless a majority of the members approved it at a meeting called after due notice.

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H. J. Res. 264 would have defined the scope of inquiries now conducted by the Un-American Activities Committee in a manner deemed more precise. It refers to "the extent, character, and objectives of propaganda activities in the United States dealing with movements devoted to the growth and development of political ideas and of communism, fascism, nationalism, and similar ideologies, etc."

As to the suggested procedure changes it must be said that they are undoubtedly desirable insofar as Committees are concerned which function in the proper area, of conduct as distinguished from ideas. But in the area of ideas, they afford some protection only against branding individuals with ideas or associations they do not have. The Committee continues to be free to intimidate and persecute people who do have ideas and associations of which the Committee does not approve. Therein lies the essential subversion of the democratic process. No change of procedure can minimize its consequences for the nation.

The proposed re-definition of the scope of inquiry suggests that it is not possible to cure the evil in this fashion. The definition, proposed by Representative Javits, may even be worse than the present one. There are boundless conceptions of the "ideas of communism, fascism, nationalism, and similar ideologies." At best this process would only substitute one concept of what ideas are bad for another. Moreover, our law does not recognize any distinctions among ideas. All must have an equal opportunity to compete for common acceptance. It does recognize that ideas once commonly despised are now commonly accepted in the law of the land; that progress in the solution of vital national problems is made precisely in this fashion. As the Supreme Court has said: "The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance." (Black, J. in Martin v. Struthers, 319 U.S. 141, 143, 1943).

Mr. Justice Hughes made the point even more strongly when he said: "The greater the importance of safeguarding the country from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." (DeJonge v. Oregon, 299 U.S. 353, 365 - 1937).

The Activities of the Committee Have Abridged Constitutionally Guaranteed Rights

That the Un-American Activities Committee has a bridged constitutionally guaranteed freedoms is beyond doubt. As Mr. Justice Edgerton of the United States Court of Appeals for the District of Columbia said:

That the Committee's investigation does in fact restrict speech is too clear for dispute. The prosecution does not deny it and the court concedes it. The effect is not limited to the people whom the Committee stigmatizes or calls before it, but extends to others who hold similar views and to still others who might be disposed to adopt them. It is not prudent to hold views or to join groups that the Committee has condemned. People have grown wary of expressing any unorthodox opinions. No one can measure the inroad the Committee has made in the American sense of freedom to speak. (Dissenting opinion Barsky v. United States of America, 167 Fed. 2d 241)

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The same view was expressed by United States Circuit Judge Clark, when he said:

No more extensive search into the hearts or minds of private citizens can be thought of or expected than we have before us.

He continued:

If this be legally permissible, it can be asserted dogmatically that investigation of private opinion is not really prohibited under the Bill of Rights. (Dissenting opinion, United States v. Josephson, 165 Fed. 2d 93).

The Committee's search into the minds and hearts of men, its "branding" of ideas and associations in order to intimidate and punish those who do not agree with the views of the Committee, have so menaced the freedom of all Americans that twenty-two members of the faculty of Yale Law School were led to declare:

...There are alarming signs that persecution for opinion, if not curbed, may reach a point never hitherto attained even in the darkest periods of our history. With it, we may expect racial, religious and every other kind of bigotry which, if it is to run its full course, can loose such a flood of intolerance as utterly to destroy the civil liberties without which no democratic society can survive. (Letter to the President, November 26, 1947).

And the distinguished American poet Archibald MacLeish said: "To use public vilification as an instrument of government is to use terror as an instrument of government, and to use terror as an instrument of government is to strike directly at the fundamental American institution - the liberty of the individual under law."

More recently the President of the United States asserted that the Committee's espionage inquiry violated the Bill of Rights (Washington Evening Star, August 19, 1948, p. 1). Discussing the same espionage inquiry, the Attorney General of the United States declared, in similar vein, that the Committee's "attempted encroachment upon the independent integrity of a coordinate branch of government is contrary to our democratic system." (Department of Justice Release, September 29, 1948). Recently the Committee repeated its encroachment upon the sphere of the Department of Justice by making a huge publicity display over the discovery of certain microfilms of stolen State Department documents. Obviously such a theft is a matter for the FBI and the Department of Justice. The facts, under our governmental system, are to be presented before the Grand Jury by the prosecuting authorities. But the Committee, seeking to assure its continuance, leapt into the situation, which certainly has no connection with propaganda activities. It tried to beat the FBI to the pumpkin in order that it might fill the press and radio with lurid stories. Aside from the encroachment on the sphere of the Justice Department, which has greater skill and experience in such matters, and the violation of the secrecy of our Grand Jury system, this circus-like publicity may make more difficult the apprehension and prosecution of persons guilty of crime.

Mrs. Eleanor Roosevelt revealed her clear understanding of the issue when she said: "In our country we must trust the people to hear and see both the good and the bad and to choose the good. The Un-American Activities Committee seems to me to be better for a police state than for the U.S.A." (Washington Daily News, October 29, 1947).

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The Committee has spread a cloud of hysteria and intimidation throughout our land. This condition led the president's Committee on Civil Rights to report more than a year ago, that public excitement about "Communists" had engendered "a state of near-hysteria" which "threatens to inhibit the freedom of genuine democrats." (To Secure These Rights, p. 49). Somewhat later the House of Bishops of the Protestant Episcopal Church in the United States declared in a unanimous resolution:

Resolved, as bishops in the Church of God we call upon the people of our churches to be on their guard lest an hysterical fear of Communism shall lead us to fight that danger with weapons destructive of the treasures we seek to guard. The surest way to fight Communism is to work unceasingly at home and abroad for a society in which justice and the dignity of free men are in truth guaranteed to men of every race and condition.

An inquisitorial investigation of men's personal beliefs is a threat to freedom of conscience. ***
(New York Herald-Tribune, November 8, 1947).

Since then this hysteria has mounted enormously as the Committee intensified its activities, and its practices were adopted by other Congressional Committees (notably the House Committee on Education and Labor), by state legislative committees, and even by local law enforcement agencies. Individuals or organizations that have received the brand of "un-American" or "subversive" are denied access to audiences, and refused meeting places in public schools and auditoriums and in private meeting halls and hotels. And as a final and inevitable sequel, their meetings have, on occasion, been broken up and their leaders assaulted. The pattern of violence against the expression of ideas which occurred against the abolitionists in the pre-Civil War period, the socialists and radicals in 1919 and the early 1920's, is being repeated today in a more ominous setting, against those the House Committee labels as "un-American." The pattern has so far progressed that we can find the Chief of Police of our fifth largest city stating:

Teddy Roosevelt would turn over in his grave were he to know that such un-American activities and such an un-American leader as that of Wallace are now being supported by the Progressive Party of Michigan....

I have no doubt that you object to statements that were made by me, especially when I said that all those engaged in un-American activities ought to be either shot, thrown out of the country, or put in jail. (New Republic, April 5, 1948, at page 8)

The Committee has Brought Vast Discredit upon the Congress

We have no doubt that the defeat at the recent election of Representatives John McDowell and Richard B. Vail, both members of the Committee, reflects in large part at least, the mounting concern of the American people over this Committee's abridgment of justice and liberty.

We have quoted some statements of distinguished Americans which evidence their concern in unmistakable terms. The number of these recorded condemnations could be multiplied endlessly, but this would serve little purpose. They come from almost every section of American life, including editors, churchmen, and church groups, scholars, artists, scientists, trade unions, civic organizations, and a great many distinguished lawyers.

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Taken together they make it clear that millions of people regard the Committee as a menace to our democracy. Indeed, it has been correctly said, that "no other Committee of Congress, * * * has ever engendered such widespread or such bitter condemnation from varied leaders of American thought." (Alan Barth in the Washington Post, May 30, 1948, p. 2-B). Dr. August Raymond Ogden, in an exhaustive study of the Committee's work, published as long ago as 1945, said of the Committee that, "it stands in the history of the House of Representatives as an example of what an investigating committee should not do." (Alan Barth, id.)

The Committee has even evoked unfavorable comment abroad where people are led to wonder about the sincerity of the representatives of the United States when they stand forth as the champions of democracy everywhere in the world. According to an Associated Press London dispatch, "Newspapers of the left, center, and right alike used such terms as 'Hollywood witchhunt,' 'nauseating spectacle,'" to describe the Committee's investigation of Hollywood (P. M., October 27, 1947, p. 3). The Observer of London, in an editorial entitled "Star Chamber" commented: "Why then, should Americans in the film industry not enjoy that freedom of thought guaranteed by the Constitution? ... it would be a poor bargain to keep the atom secrets and lose those freedoms which are the secret of America's greatness." (October 26, 1947, p. 4). Even in far off Australia a columnist was led to say: "I have no time for Communism, but consider that this investigation is a witch hunt, a Donnybrook Fair, and a high pressure farce." (Dan Iddons Diary in the Sunday Mail of Brisbane, November 2, 1947).

It is probable, however, that nothing has brought so much discredit upon the Congress as the callous indifference to Constitutional rights and democratic judicial process exhibited by leaders of the Committee. This attitude is characterized by a recent statement of Representative Thomas, the Committee Chairman.

Addressing an attorney, present in the Committee room to represent a client called as a witness, but who the Committee demanded should himself become a witness, the Chairman said:

The rights you have are the rights given you by this Committee. We will determine what rights you have and what rights you have not got before the Committee. (Page 1310, Hearings of September 8, 1948 reported in volume entitled "Hearing Regarding Communist Espionage in the United States Government").

No member of the Committee was recorded as objecting to this view of the rights accorded citizens before the Committee.

Only by abolishing the Committee will this bitterness, this ridicule, this disgrace to the Congress of the United States, be effaced.

Conclusion

The maintenance of our democratic institutions imperatively requires an end to the Committee on Un-American Activities. By following this course we shall strengthen, not weaken, our government. The Supreme Court has correctly said:

Government of limited power need not be anemic government. Assurances that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support... To enforce those rights today is not to choose weak government over strong government. It is

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only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end. (West Virginia State Board of Education v. Barnette, supra).

A governmental committee with authority to inquire into men's minds, and to dictate to free men how they shall think and what they may hear, say, or adhere to, has no place in a democracy. In this principle far more is involved than the rights of any individual or group. As we have shown, the Constitutional right of speech, press and assembly to be free from governmental interference, goes to the heart of the entire structure of democratic government. If the opportunity for free and effective political discussion is impaired, the people will be unable to govern themselves wisely. For lack of full information, public opinion will be controlled by authority; government will not be responsive to the will of the people; and there will be no effective peaceful means by which desired changes can be made.

The longer the Un-American Activities Committee is permitted to exercise intimidation and coercion against these Constitutional rights, the deeper will be the inroads made upon liberty in all aspects of American life. The time has come when the Congress and the American people must demonstrate that they are not indifferent to invasions of civil liberties - that they do cherish in practice the sacred heritage of freedom which has made America great. Such a demonstration requires more than the abolition of the Un-American Activities Committee, but the abolition of that Committee by the House of Representatives at the first available opportunity is an indispensable part of it. This we urge, and shall strive for with all our energy.

NATIONAL LAWYERS GUILD

Robert J. Silberstein
Executive Secretary

December 1948

STATEMENT OF THE NATIONAL LAWYERS GUILD
URGING THE ABOLITION OF THE
HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES

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The shift in the control of the House of Representatives, and the mandate for an expanded New Deal given to the President, at the recent general election, make it both appropriate and necessary to give immediate consideration to the disposition which should be made of the House Committee on Un-American Activities. The main function of the Committee has been to seek to discredit those who have been identified with active support for the social and economic reforms now commonly known as the New Deal. The fact that the Committee has served in practice as a formidable obstacle to the realization of reforms, the peoples' support for which was manifested again in the election of November 2nd, is one good reason why the Committee should be terminated. But there are other reasons, even more fundamental, why the Committee should not be continued.

The National Lawyers Guild believes that no agency of the Government has or should have the power to inquire into or to compel confession of thoughts, beliefs and associations; that the existence and activities of such a Committee are inherently inimical to the most fundamental rights guaranteed by our Constitution; and that no reform of its procedures, or re-definition of its powers, could avoid the evil consequence of its authority for our democratic institutions. We set out below the reasons which compelled us to these conclusions.

The Essence of Democracy

It is the essence of our democracy that the people shall govern themselves. In the words of the President's Committee on Civil Rights, "If the people are to govern themselves, their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information, and in the fair presentation of differing opinions. The right is also necessary to permit each man to find his way to the religious and political beliefs which suit his private needs." (Report, 1947, page 47).

Because in a democracy the people must have the right to choose the good from the bad ideas, no governmental authority "can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion..." "authority ... is to be controlled by public opinion, not public opinion by authority." (Board of Education v. Barnette, 319 U.S. 624, 641, 642). Indeed the Supreme Court has said "The very purpose of the First Amendment is to preclude public authority from assuming a guardianship of the public's mind through regulating press, speech and religion. In this field every person must be his own watchman for truth, because the forefathers did not want any government to separate the truth from the false for us." (Thomas v. Collins, 323 U.S. 511, 545).

This freedom to speak, to write, to hear, to choose, without governmental interference, must carry with it the effective right to persuade to action. "The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts." (Rutledge, J. in Thomas v. Collins, supra, page 537.) And "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." (Jackson, J. in Board of Education v. Barnette, supra, page 642.)

If these democratic principles are to be made effective, the people must be free to organize into associations, whether political, religious or economic, without governmental restraint. For it is only through such associations that the will of the

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people can be brought to bear upon the market place of ideas, and upon the governmental authorities.

These then are the foundations of democratic government. Adherence to these principles has made America great - has made it possible for our country to progress in the face of gigantic trials and vast changes in the condition of life in the United States and the rest of the world. Our national interest, and the welfare of every American, requires that this heritage of freedom and democracy shall be cherished by us all, and vigilantly safeguarded against every threatened inroad whether direct or indirect. As Mr. Justice William O. Douglas of the United States Supreme Court said:

A people indifferent to their civil liberties do not deserve to keep them, and in this revolutionary age may not be expected to keep them long. A people who proclaim their civil liberties but extend them only to preferred groups start down the path to totalitarianism. * * *

(Altgeld Memorial address, December 30, 1947;
reported in Congressional Record, 80th
Congress, 2d Session of January 6, 1948)

The Power Vested in the
Un-American Activities Committee
Is Incompatible with these Democratic Principles

The statute creating the Committee does not authorize an inquiry into the acts and conduct of people. On the contrary, it authorizes a limitless inquiry solely into "propaganda" which is but another word for ideas, for expressions of thought. Indeed, this Committee is a complete and most dangerous anomaly in our legislative process. All other standing Committees of the House have well-defined jurisdictions, covering every permissible area of legislative action. Except for the Rules Committee, it is their primary task to consider bills which have been introduced, and to amend these or design others, after appropriate hearings on their merits. They also make investigations in connection with existing or contemplated bills, their inquiries being incidental to the legislative process.

The Un-American Activities Committee has no such legislative purpose. The First Amendment of the Constitution of the United States declares that Congress shall make no law abridging freedom of speech, press or assembly. That is why no bill proposed by the Committee has been enacted into law. The ideas it was created to investigate cannot be abridged by legislation. Instead of performing the usual legislative function, the Committee has branded ideas, and groups of which the Committee did not approve, as "subversive" or "un-American." It has sought to compel people to confess under oath what they think or believe. It has sought to usurp the functions of the Department of Justice and the FBI by "investigating" the commission of alleged crimes under the sought for glare of every publicity medium. It has compiled huge blacklists of individuals and groups, and demanded and secured the discharge of people from private and public employment solely on account of their alleged beliefs or associations.

We have shown that under our Constitution no governmental authority can prescribe what is orthodox in the realm of ideas; that the people must be free to speak, write, assemble and persuade to action, without governmental interference. It is undeniable that in times of widespread hysteria, as now, and in most places, at almost any time, the mere disclosure that a person holds certain ideas or associations can bring the heaviest consequences upon those affected. Many people have been discharged from employment, effectively denied the means of earning their living, and held up to public scorn merely because of their unorthodox ideas or associations.

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