1991

Truman administration's approach to civil liberties, 1948--1950

Paul Louis Hansen
The University of Montana

Let us know how access to this document benefits you.
Follow this and additional works at: https://scholarworks.umt.edu/etd

Recommended Citation
https://scholarworks.umt.edu/etd/3954

This Thesis is brought to you for free and open access by the Graduate School at ScholarWorks at University of Montana. It has been accepted for inclusion in Graduate Student Theses, Dissertations, & Professional Papers by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.
THE TRUMAN ADMINISTRATION'S APPROACH TO
CIVIL LIBERTIES, 1948-1950

by

Paul L. Hansen

B.A., University of Michigan, 1986
Presented in partial fulfillment of the requirements
for the degree of
Master of Arts
UNIVERSITY OF MONTANA
1991

Approved by:

Chairman, Board of Examiners

Dean, Graduate School

Date
This thesis examines the Truman administration's approach to civil liberties from 1948-1950, particularly with respect to legislative proposals to tighten internal security, which found their embodiment in the McCarran Act, or Internal Security Act of 1950. Truman and his aides, most specifically but not exclusively Stephen Spingarn, Charles Murphy, and George Elsey, made their top priority political advantage, rather than the maintenance of civil liberties.

As the Cold War intensified during the post-war period, conservatives in Congress sought to outlaw the Communist Party. These attempts at repression threatened the individual's right to speak and associate freely. Aside from the constitutional issues, congressional attempts at anti-subversive legislation could be turned on New Deal Democrats, including Harry S. Truman. While the Truman administration initially adopted at least a strong rhetorical defense of civil liberties, the position of the White House softened as events both at home and abroad led America toward a more repressive atmosphere. The administration's failure to adopt a strong position in defense of civil liberties was actually consistent with earlier actions by the President, such as the creation of the federal loyalty program and his decision to turn over the State Department's loyalty files to a congressional committee. Throughout his struggle with Congress over the issues of internal security and civil liberties, Truman remained true to his background as a machine politician; he saw the conflict primarily in partisan terms. His use of the rhetoric of civil liberties was more a political expedient than a reflection of genuine concern.

The first part of this thesis examines the repressive elements of the President's own loyalty program and his surrender of State Department files to a Senate subcommittee. The second part explores both the development of congressional proposals to combat subversion and the Truman administration's response to those legislative proposals. The third part examines the culmination of congressional efforts in the McCarran Act. The fourth part explores Truman's veto of the bill, the vote to override the veto, and the President's last-ditch attempt to retain political advantage through the establishment of a commission on internal security and individual rights.
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>ENDNOTES</td>
<td>10</td>
</tr>
<tr>
<td>CHAPTER ONE</td>
<td>11</td>
</tr>
<tr>
<td>ENDNOTES</td>
<td>21</td>
</tr>
<tr>
<td>CHAPTER TWO</td>
<td>23</td>
</tr>
<tr>
<td>ENDNOTES</td>
<td>41</td>
</tr>
<tr>
<td>CHAPTER THREE</td>
<td>43</td>
</tr>
<tr>
<td>ENDNOTES</td>
<td>65</td>
</tr>
<tr>
<td>CHAPTER FOUR</td>
<td>68</td>
</tr>
<tr>
<td>ENDNOTES</td>
<td>82</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>84</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>89</td>
</tr>
</tbody>
</table>
INTRODUCTION

Congress passed the Internal Security Act of 1950, also known as the McCarran Act, on September 24, 1950, overriding President Harry Truman's veto of what he termed an ineffective and repressive bill. Among other things, the McCarran Act required members of the American Communist Party to register with the federal government and denied naturalization to any alien who had been involved with the advocacy of totalitarianism up to ten years prior to passage of the act. The White House argued against such measures, claiming that "personal liberty is preserved only by not giving to government officers powers under which such results can occur." Indeed, President Truman himself argued in his internal security message to Congress more than six weeks before the bill became law that "unwise or excessive security measures can strike at the freedom and dignity of the individual which are the very foundation of our society -- and the defense of which is the whole purpose of our security measures."

Historians have most often portrayed Harry Truman as a president unafraid to speak his mind, to take a stand on the issues, and to accept responsibility for his decisions. Judging from that image and the above comments, one might therefore conclude that Truman appreciated the duty which his office owed to the Constitution of the United States. Such a perception, however, does not accurately reflect
Writers from a broad spectrum of perspectives have attempted to clarify and explain the dilemma of an administration caught up in a red scare which threatened to tear the fabric of American society and subvert the Constitution. Liberal defenders of the Truman administration tend to see the President and his White House staff as prisoners of a hostile and conservative Congress, which whipped up public hysteria in order to further its members' own political fortunes. The President and his supporters claim that Truman fought to preserve individual liberties as best he could, given the constraints imposed upon him by a worried nation and an intractable Congress. Truman himself saw his position on the Communist threat as one of careful balance between the dual needs for effective internal security measures and a clear, uncompromising defense of constitutional liberties. He maintained his belief in the constitutional validity of his loyalty program while criticizing Congress for passing the "extreme" McCarran Act.

Among the more recent liberal apologists, Alonzo Hamby argues in his book, Beyond the New Deal: Harry S. Truman, that Truman was determined to defend the Bill of Rights "as he understood it." Truman, Hamby asserts, was not a liberal in the progressive, Rooseveltian tradition, but nonetheless sought "to provide leadership in the struggle against Republican conservatism and to establish a compelling
liberal identity which could attract the blocs of voters who had sustained FDR." Alan Harper's book, The Politics of Loyalty, de-emphasizes Truman's own responsibility for the repression of civil liberties and concentrates instead on the President's noble reaction to hostile Republicans.

In the 1960's and 1970's, radical or revisionist historians criticized the Truman administration for contributing to the anti-communist hysteria. They cited the loyalty program, the Smith Act prosecutions, and Truman's strident anti-communist rhetoric.

Perhaps the foremost revisionist critic of the Truman administration is Athan Theoharis. In his book, Seeds of Repression, Theoharis essentially blames Truman for the debacle which the White House faced in the form of the McCarran Act. Theoharis points to the vigor with which the President carried on the Cold War, strongly opposing Communism in all its forms and in all places. Truman's red-hunting was on a par with that of Congress, claims Theoharis, and in this light, Senator Joe McCarthy and President Truman "differed not so much over ends as over means and emphasis." "The really insidious aspect of Truman's rhetoric about loyalty and the McCarthyites' cries of betrayal," argues Theoharis, "was that it encouraged a popular mania for absolute security that extended beyond the prosecution of overt acts of disloyalty to a suspicion of all potentially subversive ideas." Theoharis corroborates his charge by citing the administration's response to the
McCarran bill -- the introduction of a rival anti-communist bill instead of concentrating on defeating McCarran's own legislation -- as an event that "undermined his (Truman's) attempt to emphasize the importance of civil libertarian considerations. Indeed, his introduction of an alternate bill served only to affirm an apparent need for more effective legislation." Theoharis effectively illustrates the gulf which existed between Truman's rhetoric concerning civil liberties and his vigorous response to the Cold War and Communism at home.

Michael Belknap also attacks Truman. Belknap claims that the administration pursued the prosecution of leading Communist Party members under the Smith Act because the White House needed to shore up its war against Communism at home in the United States. Fearing Republican attacks on the administration's "barren" efforts, the Justice Department sought a guilty verdict despite its own attorneys' warning that a conviction would be difficult. Belknap also asserts that the Justice Department delayed public notice of the Communists' indictment on June 29 until after the Democratic National Convention (scheduled for July 12-15) so as to avoid pushing leftist liberals into Henry Wallace's third-party camp. Belknap differs with Theoharis by arguing that Truman pursued anti-communism at home because of political pressures rather than personal convictions.

Other critics of the Truman administration include Bert Cochran, whose book, *Harry Truman and the Crisis Presidency*,
attacks the President's handling of the McCarran bill in a fashion similar to Theoharis, claiming that events surrounding the McCarran Act revealed the way in which the President, the Democratic liberals, and the "reactionaries" all contributed to the passage of repressive legislation. Truman vetoed the bill because of its repressive measures, while pressing his own bill whose major distinction was that the witch hunt would be left in the hands of the FBI and the Attorney General. The liberals, argues Cochran, decided to fight fire with fire by introducing an emergency detention bill which, for repressive elements, matched the McCarran proposal. The reactionaries, of course, believed they were saving the country from subversion from within.

In her book, Crisis on the Left, Mary McAuliffe argues that liberals in the post-war period, facing a conservative "resurgence" due to the Communist threat and renewed domestic prosperity, abandoned the united front which they pursued during the New Deal. The ACLU expelled members of the Communist Party; major labor unions did the same, and the ADA attacked Henry Wallace and his liberal Progressive Party in an attempt to compete with Republicans for the support of America's vital center. McAuliffe claims that the "new liberalism" was "realistic," cautious, elitist, and centrist. By excluding the left from the arena of permissible debate, the liberals "lost sight of vital civil liberties and limited the free marketplace for ideas."

This thesis attempts to avoid the pitfalls which beset
the above historians, who tended either to be liberal apologists or post-Vietnam writers criticizing Truman from the left. There are, of course, interpretations which fall in between the viewpoints outlined above. Nevertheless, the Truman administration's approach to the debate between internal security and civil liberties, it appears, is best viewed from a perspective which takes due notice of the intense political pressures of the period. There existed a tense conflict between Congress and the White House which reflected to a significant, if not all-encompassing, degree the conflict between conservative Republicans and New Deal Democrats. Such a political setting served especially to confuse non-partisan issues with partisan maneuvers, distorting an already complicated development.

Into this fray was injected Harry Truman, the "Gentleman from Pendergast." Truman began his political career in the 1920's as part of the infamous Pendergast Machine in Missouri, owing his first office to the power and influence of Mike Pendergast. Truman's early days as a politician were consumed with administering contracts for the Kansas City machine, and the corruption which ran rampant within the Pendergast fold taxed Truman's integrity. "Am I an administrator or not? Or am I just a crook to compromise in order to get the job done? You judge, I can't," he once wrote. William Pemberton claims that Truman "narrowed his ethical framework" during the Pendergast period. "In fact," says Pemberton, Truman "could
uphold his ethics only because they were narrow and unsophisticated." The future president, he argues, "shrugged off the ethical dilemmas, focused on practical problems, and became increasingly impatient with those who raised questions about his and his associates' conduct." Even Richard Kirkendall, who is very sympathetic to Truman, claims that while in Missouri, Truman "accepted one of the basic rules of machine politics and appointed its members to county offices that he controlled." After entering the Senate, Truman obtained patronage for the Pendergast Machine. Kirkendall notes that, as a senator, Truman shifted his political focus somewhat from "old-deal" Democratic policy to the New Deal's emphasis on labor unions and social workers. "The change," says Kirkendall, "reflected Truman's tendency to accept rather than rebel against the major realities of politics." As a senator and loyal party man Truman supported Roosevelt's court-packing plan, revealing that, in the words of Kirkendall, Truman's commitments "were to people, not to doctrines."

It is fair to bring this portrait of the early Truman to the White House of the late 1940's and early 1950's. President Truman did not change his role as an organization man upon taking over the job left by Franklin Roosevelt. In fact, a detailed exploration of the Truman administration's experience with the issues of internal security and individual rights supports the contention that Truman was primarily a political creature, and the desire to maintain
political standing, rather than a deep regard for the Constitution, marked his approach to the issues. This fact asserts itself in several ways. First, the Truman administration, despite its rhetoric, held no great respect for the values embodied in the First, Fifth, and Sixth Amendments. The operation of the Federal Loyalty Program created by President Truman illustrated how the hysteria of the times, with its concomitant emphasis on the repression of civil liberties, beset the executive branch of the government as well as the legislative. The loyalty program was the most glaring example of how the Truman administration itself contributed to the national hysteria. Second, the President's decision to release State Department loyalty files to a Senate subcommittee in the Spring of 1950, after repeated denials based on arguments reflecting a concern for the rights of affected individuals, revealed how political pressures could influence a President whose rhetoric appeared uncompromising.

An examination of the above two issues paves the way for a more detailed exploration of the Truman administration's response to the internal security legislation repeatedly proposed by Congress from 1948 to September 1950. When one becomes acquainted with the equivocation and vacillation which marked the Truman presidency, one can understand more easily the complex interplay of forces which culminated in the passage of an extremely repressive internal security bill and the
embarrassment of an already unpopular administration. In essence, the President continued his partisan perspective, preferring to see the debate as a political contest rather than as a constitutional or security issue. This approach, it appears, contributed to the passage of the McCarran Act on September 24, 1950.

A final note is needed to forestall any questions concerning the relationship between Truman and his administration. Harry Truman himself left comparatively few letters and remarkably few memos, communiques, or other documentation of his views in executive files. His administrative assistants, however, left voluminous correspondence which is stored at the Harry S. Truman Library in Independence, Missouri. One finds that Truman left it to his assistants, primarily Stephen J. Spingarn, George Elsey, Charles Murphy, Clark Clifford, Donald Dawson, and David Lloyd, to orchestrate the President's communication with just about everyone outside the White House. One need not fault the President for delegating authority; one must, however, recognize that the chief executive is responsible for advice he takes from his subordinates. It is important to understand Truman's relationship with his staff if one is to make sense of the official papers of the Truman presidency.
ENDNOTES


2. Ibid., p. 9.


6. Ibid., p. xx.


10. Ibid., p. 117.


15. Ibid., p. 23.


17. Ibid.
Judging Truman's administration solely by its rhetoric, one might well conclude that his administration's concern for the civil liberties of the American people came from a heartfelt appreciation of the importance of individual rights in American society. Truman's veto of the McCarran Act could easily reaffirm such notions. However, upon closer examination of the Truman administration's record on civil liberties, one finds that the preservation of the rights of the individual was of secondary importance to the White House under Truman.

The President's concern for civil liberties did not match his, or his administration's, desire to ensure national security and to pre-empt Republicans in Congress. His prosecution of the Cold War, exemplified by the Truman Doctrine and the Marshall Plan, found its complement on the home front in the form of an incautious disregard for Constitutional liberties. In order to understand the discrepancy between the rhetoric and the reality of the Truman administration's position on the McCarran Act, it is necessary to trace the administration's involvement with the issue of civil liberties in the years before 1950. Two particularly enlightening examples of the President's lack of genuine concern for individual rights are his establishment of the Federal Loyalty Program in 1947 and his release of confidential state department loyalty files to an investigating committee in the spring of 1950.

The President launched an ambitious and sweeping Federal Loyalty Program with Executive Order 9835 on March 21, 1947. The program sought
to investigate all federal employees and applicants for possible connections to activities and associations (particularly communist and communist front organizations) which aimed to subvert the policies of the federal government. The order required each department and agency head to submit to the FBI the names of all its employees. The FBI then checked those names against its records for evidence of disloyal activities and associations, as determined by standards set forth in the order. Upon the discovery of "negative information," the FBI conducted a full field investigation, and sent any suspicious information back to the agency loyalty board. If the loyalty board found the charges warranted further action, it sent a letter and charges to the employee or applicant, who could request a hearing. Final authority rested with the agency head.¹ From March of 1947 to December of 1952, the FBI undertook to clean the federal service of all disloyal individuals. The Bureau conducted 6,644,496 background checks, leading to 25,748 full field investigations which resulted in 490 persons being dismissed from or denied federal employment. An extra 5,921 individuals quit the government or withdrew their applications in the face of investigation.²

The White House touted the provisions of the program which ensured that the freedoms of the millions of federal employees which came under investigation would not be trespassed. Employees could request a full hearing, complete with affidavits and witnesses, when they found themselves charged with disloyalty. They could appeal a negative finding to a Loyalty Review Board in the Civil Service Commission. Furthermore, they received a full record of the charges brought against
them, "as detailed as security considerations permit," as well as a transcript of the hearings, which were kept informal and private. The order required that "reasonable grounds exist for the belief that the person involved is disloyal to the Government of the United States." This standard required proof of disloyalty, thereby (at least in theory) mitigating the effects of hearsay and rumor on an employee's or applicant's status.\footnote{3} These procedures, as well as others, were to "assure that the civil liberties of Government employees shall receive the fullest protection."\footnote{4} In fact, the order itself asserted that "equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government."\footnote{5}

The loyalty program, however, infringed upon the rights of the individual in many ways. EO 9835 allowed that "the investigative agency may refuse to disclose the names of confidential informants," when the security of the informants or the nation would be put at risk by such disclosure. This effectively denied suspects such as Dorothy Bailey, a government employee accused of subversive associations, the right to confront their accusers and, hence, the evidence presented against them.\footnote{6} The actual workings of the loyalty program did not always live up to its meager safeguards. The order claimed that "the presence within the Government service of any (emphasis added) disloyal or subversive person constitutes a threat to our democratic processes." The emphasis on absolute security led the program toward inefficient and extreme attempts to catch subversives. For example, on April 28, 1951, President Truman issued Executive Order 10241, amending EO 9835 to replace the "reasonable grounds" basis for belief that a
person was disloyal with a standard which accepted "reasonable doubt" of a person's loyalty. This amendment placed the burden of proof on the accused and gave greater weight to hearsay and rumor. The loyalty program itself stimulated excessive zeal for protection, thereby violating the balance between internal security and individual rights called for in Executive Order 9835.

Other problems existed as well. The Attorney General controlled the listing of subversive organizations and their members (from which a comparison could be made to the list of the federal payroll in order to find employees with dangerous connections). The Attorney General alone had the power to list organizations, without a hearing, and his justifications for doing so remained a secret. The government argued that much information upon which it chose to act had to remain confidential in order to protect national security. Moreover, organizations could not appeal their placement on the Attorney General's list. These developments had a twofold effect: government secrecy often subjected an organization's members to wrongful investigation by the FBI; and there developed the tendency of wary individuals to restrict their associations. An employee or applicant of the federal government may have innocuously joined an organization which claimed to promote liberal programs but had actually been infiltrated and controlled by Communists, thus becoming a Communist front. As a result, uninformed loyalty boards treated an innocent individual as a co-conspirator of communists. The defects of the program inspired wary persons to restrict their circle of associations and placed a premium on conformity, encouraging orthodoxy while
discouraging the free trade in ideas.\textsuperscript{10}

These serious flaws in the President's program served to diminish rather than preserve the rights of federal employees. The program itself legitimized the review of political beliefs and associations, thereby increasing pressures to extend the program during periods of crisis. Moreover, the loyalty program contributed to the hysteria of the times by affirming the claims of the right that the government was susceptible to subversion from within, thereby failing to calm the public's anxiety. In addition, by violating accepted standards of procedure, and by validating the tactics of right-wingers in their efforts to establish order and conformity, the program played into the hands of demagogic spokesmen such as Senator Joseph McCarthy (R-Wis.).\textsuperscript{11}

An exploration of Truman's loyalty program illustrates two trends for which the President was responsible. First, careful examination of the documentary record reveals the fact that, in the minds of the White House, the need for national security, or at least the appearance of national security, superceded the desire to preserve the rights of the individual. Second, the effects of the program actually contributed to public anxiety and to hasty Congressional action. The Truman administration once again failed to insist on the preservation of fundamental liberties in the spring of 1950.

The President's response to McCarthy's charges that spies were working in the State Department was another illustration of how Truman managed to sacrifice both American civil liberties and his own political strength. There existed among the far right in 1950 those
who believed that recent setbacks in foreign affairs, such as the Communist victory in China in 1949 and the development of a Soviet nuclear device, could not have occurred without the aid of subversives acting within the United States Government. The discovery that Klaus Fuchs, an important nuclear scientist, had delivered atomic secrets to the Russians only reinforced the mounting concern of a sizeable portion of the population unwilling to accept that the United States government was less than omnipotent. These fears found expression in the actions of members of Congress such as Karl Mundt, Richard Nixon, Pat McCarran, and especially Joseph McCarthy. McCarthy, the most vitriolic and demagogic Republican Senator of the 81st Congress, exploded on to the national scene with his Lincoln's Birthday address to the Republican Women's Club of Wheeling, West Virginia, on February 9, 1950. In this speech, he boldly announced that he had in his possession a list of 205 known Communists working in the State Department with the silent approval of Secretary of State Dean Acheson. The number of Communists on McCarthy's list fluctuated in succeeding speeches, dropping to as low as 57 and finally settling at 81. The uproar was instant and national in scope. In response, the Foreign Relations Committee set out to investigate McCarthy's charges, and gave itself the right to subpoena State Department loyalty files, files which came under the direct control of the President.¹²

Truman found his administration under attack from two directions. One side alleged that his State Department contained a nest of spies. From the other, a Congressional committee attempted to breach the separation of powers provided for by the Constitution. Truman's
response to this crisis revealed a political approach toward civil liberties which undermined not only the Constitution but his own credibility as well. From the start the White House clearly and adamantly denied that Congress had the right to subpoena executive files. The administration pointed to earlier research which found that, among others, Presidents Washington, Jefferson, and Tyler refused to relinquish confidential information to Congress.\(^{13}\) The real weight of the administration's argument, however, consisted of its emphasis on the fact that information in the files was often unproven, and to release this information to the public would unfairly punish innocent employees. J. Edgar Hoover, Director of the FBI, agreed with the administration's stand, pointing out how release of confidential files "might be made under circumstances which would deny the aggrieved to publicly state their positions."\(^{(sic)}\) Hoover went on to argue that reports, "if publicized, could be subject to misinterpretation, quoting out of context, or used to thwart truth, distort half truths, and misrepresent facts."\(^{14}\) McCarthy attempted to force Truman's hand by claiming that the only way to disprove his allegations was to open the files. In March of 1950, a tough election year, McCarthy's ploy almost worked. The President's aides advised Truman to make the files available, but with restrictions. The New York Times saw this move as a politically motivated compromise by Truman, who feared both setting a dangerous precedent and leaving McCarthy's loaded charges unanswered.\(^{15}\)

The White House planned to maintain the upper hand regarding the release of State Department files. The recommendations of Donald Dawson, assistant to the President, proposed that the committee must
state its evidence as to the disloyalty of an employee. This stipulation would serve to "smoke out" McCarthy's evidence. Furthermore, Truman would maintain total control over the files throughout the proceedings. And lastly, in order to protect investigative methods and personnel, the committee would receive a White House summary of the files, not the files themselves, for its records. But as McCarthy's attacks on the State Department increased, the President's resolve to deny access to Department files stiffened. Truman's refusal concentrated attention on the flimsiness of the senator's charges, and in response McCarthy reluctantly began to release the names of "card carrying Communists" in the Department. His charges against Dorothy Kenyon, John Service, and Haldore Hanson were weak and essentially insupportable. This reinforced his efforts to obtain more information, which might or might not have been legally admissible in a court of law but which would nevertheless be useful for smearing his opponents, from the restricted files.

Officials in the Truman administration advised the President to deny the subcommittee access to Department files for reasons concerning both civil liberties and investigative effectiveness. Attorney General J. Howard McGrath wrote the President that to disclose the loyalty reports, with their unproved allegations, would be "the grossest kind of injustice to innocent individuals." Release of hearsay and rumor could be devastating to reputations, he claimed, because "we all know that a correction never catches up with an accusation." J. Edgar Hoover reinforced McGrath's arguments when he spoke before the Subcommittee on March 27. Citing security reasons as well as civil
liberties arguments, Hoover pointed out that "names of persons who by
force of circumstance entered into the investigation might well be
innocent of any wrong." "We cannot," he argued, "disregard the
fundamental principles of common decency and the application of basic
American rights of fair play." The next day, Truman sent a letter to
Millard Tydings, chairman of the Subcommittee, denying Tydings access
to the loyalty files. Reiterating the arguments of McGrath and Hoover,
Truman told Tydings that it was the President's responsibility to take
care that "innocent people — both those under investigation and those
who have provided information — not be unnecessarily injured." Truman
championed the rights of the individual again in April when, in
a speech to the Federal Bar Association, he claimed that "our system of
justice preserves the freedom and dignity of the individual, and his
right to think and speak as he feels and to worship as he pleases. It
protects him in the assertion of his rights even against his own
government." The files contained unproven information, he argued, and
to release them would subject cleared people to retrials in the
newspapers.

One would gather from his public statements that the President
refused to release the State Department's loyalty files because he
believed that to do so would constitute an intolerable invasion of
individual rights. He apparently made his stand with the support of
high officials in his administration. Yet for all his arguments, based
on precedent, investigative efficiency, and constitutional liberties,
on May 4, 1950, Truman relented and opened the 81 files which McCarthy
sought to examine. The chairman of the investigating subcommittee,
Millard Tydings, claimed that the cases were identical to those investigated three years earlier by Congressional committees. In light of the fact that the data had already been examined, he argued, the President was not creating a precedent by opening the files. Senator Kenneth Wherry (R-Neb) countered this assertion with the claim that Truman released the files because he was afraid of the public's reaction on his upcoming tour of the West.\footnote{22}

Truman's disclosure of the files may or may not technically have been a sacrifice of the civil liberties of federal employees. If one accepts the President's assertion that the release was not a precedent (and therefore not a threat to individual rights) one can only conclude that his and his administration's previous stand relating the secrecy of the files to civil liberties was mere rhetoric. What is more plausible is the argument that the President's release of the files did not constitute a breach of the separation of powers. The fact that the files contained unproven information which could be used to damage employees' reputations remained. The disclosure of the files illustrated how pressure from the administration's political opponents influenced the actions of the White House. By exposing civil liberties to the whim of impermanent political developments, Truman weakened both the Constitution and, at the same time, the power of his own presidency. As the debate over Communist subversion intensified in succeeding months, the President would again make victory in the political arena, not the maintenance of individual liberties, his number one priority.


4. File of the Facts, pp. 6-7, no date, Internal Security folder, Papers of J. Howard McGrath (hereafter McGrath Papers), HSTL.


13. Memo, no date, Internal Security—McCarthy Charges(1) folder, Elsey Papers, HSTL.

14. Ibid.


16. Memo from Donald Dawson to Mr. Connelly, March 16, 1950, McCarthy folder, Lloyd Papers, HSTL.

18. McGrath memo to the President, March 17, 1950, McCarthy folder, Lloyd Papers, HSTL.

19. Statement of J. Edgar Hoover before the Senate Subcommittee on Foreign Relations, March 27, 1950, "Statements of McGrath and Hoover" folder, McGrath Papers, HSTL.

20. Truman letter to Tydings, March 28, 1950, Internal Security--McCarthy(2) folder, Elsey Papers, HSTL.

21. Truman speech to FBA, April 24, 1950, Internal Security--McCarthy charges(3) folder, Elsey Papers, HSTL.

President Truman's opposition to the Internal Security Act of 1950 did not represent a clear deviation from his previous stand on internal security legislation, because his administration's record on civil liberties was mixed. Despite his demonstrated disregard for civil liberties at times, the President on more than one occasion defended the rights of the individual in America. Indeed, one can trace a libertarian attitude in Truman as far back as 1941, when, as a Senator, he opposed bills giving the federal government power to tap phones. However, from 1948 until Congress passed the McCarran Act in September of 1950, the Truman administration adopted a half-hearted position in the face of pressure from domestic forces and from world events. These pressures led not only to a decrease in the President's political strength, but also, due to the President's disregard for individual rights, to a decline in the strength of civil liberties in America. An examination of the Truman administration's handling of the initial internal security legislation proposals revealed the weakness of executive resolve in the area of individual rights and reflected the administration's perception of issues as political rather than fundamental, and therefore open to compromise. Congress proposed several pieces of repressive legislation, to which civil libertarians responded with great energy. The White House, meanwhile, rode the fence, one side of which contained the liberals and the Constitution. The other side contained Congress, a nervous public, and the perceived need to trade some individual rights for a nation free of Communist
subversion.

The Truman administration watched concern for internal security in the United States mushroom during the post-war period but failed to note its own contribution to the crisis. In addition to the debacles of the loyalty program and the release of the security files, the White House continued to undercut civil liberties in its fight with Congress over internal security matters. Alarmed at the character of anti-subversive legislation in states such as Maryland, New York, and New Jersey, Truman's special assistant Stephen Spingarn wrote in April of 1949 that "since the end of World War II there has been an ominous trend in the United States toward the increasing curtailment of freedom of expression and opinion...." According to Spingarn, the actions of Congress during 1948 and 1949 paralleled those of the above mentioned states. Anti-communist bills sponsored by Senators Mundt, Ferguson, and Representative Nixon in 1949 were actually reintroductions of the 1948 Mundt-Nixon bill, H.R. 5852, which sought to control and reveal the workings of the American Communist Party. Senators Mundt, Ferguson, and Johnston would introduce the Mundt-Nixon-Ferguson legislation (S. 1194, S. 1196, and H.R. 3342) on July 22, 1949 as S. 2311. The alarming provisions of H.R. 5852, according to Spingarn, had been the requirements that the Communist Party and its front organizations register with the Justice Department lists of their officers and report on the source and expenditure of their funds. Truman's assistant should not have been surprised at the extremism of the bills, since another administration figure, Attorney General Tom Clark, had asked Congress in February of 1948 to tighten existing laws to curb
subversive activities. Clark endorsed the Mundt bill's principle of disclosure and suggested strengthening the Voorhis Act, which required the registration of foreign-controlled organizations with the Attorney General, by making an organization's officers responsible for the group's compliance with the act. Clark further added that, while the proposed changes would strengthen his hand, they "might not do the complete job." Clark added even more fuel to the fire by asserting his opinion that in the event of war with the Soviet Union the American Communist Party would not be loyal. The provisions Clark requested would become some of the foundations of the McCarran Act in September of 1950, by which time Clark would be sitting on the Supreme Court.

As liberals saw it, H.R. 5852 was unconstitutional. Section 1 of the bill described Communism and its aim to establish a totalitarian dictatorship in countries around the world. Section 3 required Communist organizations to register with the Attorney General, listing the names of all their members. Section 4 made it a crime, punishable by up to ten years in jail and a $10,000 fine, to act in any manner with intent to establish a totalitarian dictatorship under Communist control in the United States. Members of the Communist Party in the United States would be punished if they registered and they would be punished if they did not, thereby violating a suspect's Fifth Amendment right against self-incrimination. By proscribing acting "in any manner with intent to establish a totalitarian dictatorship," the Mundt bill, in effect, made it illegal to advocate the same views as Communists. The effect of this, in the view of the liberal watchgroup, Americans for Democratic Action, would be to limit freedom of speech and
association and make liberal causes suspect.\textsuperscript{5} The ACLU argued that the legislation also violated the clauses of the Sixth Amendment which guarantee the accused the rights to a jury trial and to confront witnesses. The determination of which organizations were to come under the scrutiny of the law would be left up to a Subversive Activities Commission and not the courts. Given that power, the government would need only show that the group had failed to register in order to obtain a guilty verdict. Although the organizations had the right to a trial for violating the law, they had no such trial to determine the validity of their listing in the first place. Furthermore, said the ACLU, the method of determining guilt by legislative proscription rather than by judicial trial, as S. 1194, S.1196, and H.R. 5852 sought to do, constituted an unconstitutional bill of attainder.\textsuperscript{6}

Liberal activists reacted to the threat to civil liberties with vigor. In the 1948 presidential campaign, supporters of Henry Wallace, former Vice President under Franklin Roosevelt, formed "The Committee to Defeat the Mundt Bill" and planned a 5,000-delegate march on Washington to protest the legislation. The National Wallace Organization, along with the Civil Rights Congress and the International Longshoremen's and Warehousemen's Union, among others, chartered planes and trains from across the nation in an effort to fight the bill and install their man in the White House.\textsuperscript{7} Truman, in September of 1948, claimed that Wallace's third party candidacy was the vehicle by which Communists were helping the Republicans in the election.\textsuperscript{8} By asserting that his administration was tougher on Communists than the Republicans, the President revealed his disregard
for liberal opinion and demonstrated how the conflicting pressures of political competition could influence his position on civil liberties.

Opposition to repressive legislation did not come solely from liberal groups, however. Russell H. Fluent, a veteran of World War I and chairman of the "Veterans Committee Against the Mundt-Nixon Bill," claimed that "no administration in temporary power has the completely un-American 'right' to declare people or organizations 'subversive' just because they disagree with the administration." Opponents of H.R. 5852 and its repressive provisions were both vocal and numerous well before Pat McCarran would attach his name to the proposals offered by Mundt, Nixon, Ferguson, Johnston, and others.

Events of late 1948 moved the debate over internal security legislation to the right, and the President, ever concerned about maintaining his political viability, went with the flow. Truman narrowly won the race for the Presidency in November, and on December 15 a former employee of the State Department named Alger Hiss was indicted for spying. The Hiss case combined with a heated political atmosphere to encourage legislative repression. According to the New York Times, in April 1949 Senator Pat McCarran (D-NV) proposed strengthening immigration and espionage laws to protect the United States in what he said was "the black era of fifth column infiltration and cold war with the ruthless masters of the Kremlin." In August, the press reported that the President, unwilling in the face of public scrutiny to combat such rhetoric, had succumbed and given the Justice Department the exclusive power to bar from entry into the United States, without public hearings, any aliens which the department
considered dangerous.\textsuperscript{11}

Other significant developments in 1949 included the reintroduction of the Mundt-Nixon-Ferguson legislation of 1948 with a revision of the section which outlawed acting "in any manner" with intent to establish a totalitarian dictatorship in the United States. Responding to criticisms of "thought control," the legislators changed the wording to prohibit the knowing commission of an "act which would substantially contribute" to the establishment of a dictatorship. This concession was minor in the face of the fact that both measures barred Communists from federally appointed jobs and from holding passports.\textsuperscript{12} In July 1949, the Senate Judiciary Subcommittee approved for consideration the Mundt-Ferguson-Johnston measure. This legislation included a revision extending the statute of limitations from three to ten years, which Attorney General Clark had requested. This proposal also required the registration of Communists.

The wording of the internal security legislation introduced in 1948 and 1949 set no limits on the type of organizations which would come under scrutiny. An unscrupulous demagogue might construe the definition of Communist front to include anything — chambers of commerce, labor unions, even farm groups. In fact, it would be up to those who held political power to define who were the enemies of the state. In the conservative post-war period, liberals knew, those favoring New Deal-type reforms might very well come under attack.\textsuperscript{13} A good example of this fear was Mary T. Norton's (D-New Jersey) response to H.R. 5852. She complained that "no person can read this bill and not realize that it is directed against labor." Norton noted a broader
concern with the bill when she quoted Roman Catholic bishop Francis J. Haas as saying that the bill was "potentially destructive of the moral and civil rights of all Americans."\textsuperscript{14} Henry Wallace remarked that the real victim of the Mundt bill would not be Communism but democracy, because, in his words, "Mundt and Nixon are more interested in devising legislation to intimidate liberals than they are in putting Communists in jail."\textsuperscript{15}

The administration's public response to the various repressive proposals was one of outrage. The President in 1948 had declared his opposition to legislation, such as Mundt-Nixon, which would outlaw political parties. "I never make comments on bills that are pending until they come before me," he said in a May 1948 press conference, "but as to outlawing political parties in the United States, I think that is entirely contrary to our principles."\textsuperscript{16}

The President was not alone in his opinion. In a letter to Alexander Wiley, chairman of the Senate Judiciary Committee, in June of 1948, Attorney General Tom Clark pointed out some constitutional problems posed by H.R. 5852. Section 2 of the bill, he stated, defined Communism as a foreign-controlled effort to establish a totalitarian dictatorship in the United States. He argued that section 8 of the bill required that organizations designated as Communist which failed to register with the Attorney General be severely punished, while those who complied with section 8 found themselves liable for the penalties of section 4, which imposed a ten-year prison sentence for anyone participating in a movement to establish a foreign-controlled totalitarian dictatorship in the United States. Clark suggested that
H.R. 5852 might be held to deny First Amendment freedoms of speech, the press, and assembly. The measure, Clark argued, also violated the Fifth Amendment's right of the accused to due process by defining the nature and purposes of an organization or group via legislative fiat. Clark also claimed that the disclosure provisions of the Mundt bill compelled the Communists to incriminate themselves, violating yet another clause of the Fifth Amendment. The Attorney General went on to say that outlawing the Communist Party was not only unconstitutional, but ineffective as well. Communists, he claimed, would just be driven to deny their affiliations, thereby making prosecutions of Communists more difficult. Also, he argued, the bill would make "martyrs" of Communists and their sympathizers. The Attorney General did not attempt to reconcile his earlier request for tougher legislation with the obvious constitutional problems which such a request was bound to engender. The executive and legislative branches, it seems, were playing hot potato with the controversial issue of internal security legislation.

The above positions of the administration, adopted in 1948, were important because they illuminated a consistent thread of arguments which the administration would make for the next two years. The rhetoric of the White House consistently emphasized that repressive internal security legislation threatened not only the Constitution but also the effectiveness of investigative and law enforcement techniques. This dual approach allowed the administration to avoid unpopular policies while appealing to the wide center of the American political spectrum. While officials would make these arguments again
and again, the pressure to tighten internal security legislation would remain constant also. To understand the true position of the Truman administration concerning such issues, however, one must take into consideration the practices of the administration as well as its rhetoric.

In 1948, H.R. 5852 passed the House by a vote of 319 to 58, illustrating strong anti-communist feelings in Congress well before the McCarran debate. In March of 1949, Francis Walter, a Democrat from Pennsylvania, offered a draconian amendment to the Nationality Act of 1940 which would penalize members of a Communist political party with loss of citizenship. Another piece of drastic legislation introduced in 1949 was the Hobbs bill (H.R. 10), sponsored by the Justice Department. Introduced initially by Sam Hobbs (D-AL), the bill provided for the lifetime detention of aliens suspected of being subversive. While the language of the bill did not explicitly denote permanent incarceration, it did give the government the power to detain indefinitely aliens who, upon deportation, were rejected by their native countries. In May, the ADA and the ACLU issued a statement condemning H.R. 10, claiming that the bill inquired into the beliefs of aliens by requiring the alien "to give information under oath as to his circumstances, habits, associations, and activities." No provision, they argued, was made for protection against self-incrimination. The Nation opposed the Hobbs bill on different grounds. Calling it a "concentration-camp measure," the liberal magazine argued that the bill was unnecessary because the general criminal code already covered specific "criminal or subversive" acts.
The Truman administration also opposed the Hobbs bill, but the manner in which it handled the bill revealed the ambivalence with which the White House approached the issue of civil liberties. In May 1950 Stephen Spingarn notified the new Attorney General, J. Howard McGrath, that the Justice Department was supporting a bill that the President had recently come to oppose. That same month, the President sent a memo to McGrath requiring that Justice take the rights of the individual, as well as national security, into account when scrutinizing new proposals. The President made this recommendation after receiving a memo from Spingarn which proposed that the administration should approve only those bills that struck "the best possible balance" between national security and civil liberties considerations. The administration did not adopt the argument of the Nation which implied that there was in fact no need for compromise. The concept of balance, which the administration would use again in its fights with Congress, betrayed a willingness to compromise on the part of the White House when it came to preserving civil liberties. Indeed, given the President's surrender on the issue of alien detention in 1949, the balance sought was not so much one between liberty and security as one among liberty, security, and political expediency. This consideration had the effect of tipping the balance toward security.

The suspicion that the Truman administration was willing to compromise on the issue of civil liberties in order to maintain the President's political strength was borne out by the debate surrounding yet more proposed legislation in Congress. A major bill under review in
1949 and 1950 was S. 2311, commonly known as the Mundt-Ferguson-Johnston bill. This bill possessed the main features of earlier bills, which required the Communist Party to register membership lists and donor information with the Attorney General, and to label all mailings as being disseminated by a Communist organization. S. 2311 also barred Communists from holding federal offices or obtaining passports. In addition to imposing a 10-year prison sentence for convicted subversives, the bill revised the statute of limitations for stealing documents from ten years to an unlimited period, as requested by Attorney General Tom Clark. This revision was in response to the Hiss case. Concerning the registration of Communist organization membership lists, S. 2311 stipulated that the Attorney General notify everyone on those lists. Anyone who formally denied membership could appeal his or her case to the government's Subversive Activities Control Board after a full FBI check on his or her activities.

Before noting the administration's handling of legislation such as S. 2311, one must understand the pressure that existed in Congress and the American public to tighten internal security. The Communist victory in China in 1949 and the successful Soviet test of atomic weaponry in the same year increased American anxiety and fear. Suspicion of subversives at home, fueled in part by policies, such as the loyalty program, of the Truman administration, translated into a suspicion of liberal programs and personalities, such as the people and programs commonly associated with the New Deal. Emerson Schmidt, director of Economic Research for the U.S. Chamber of Commerce,
expressed this fear accurately when he stated before the House Un-American Activities Committee that "democratic socialism may be a mere prelude to Communism." Schmidt supported his claim with the argument that, in the 1930's, the Agriculture Department (headed by Wallace) moved toward socialism more than any other phase of the New Deal, and more Communists and people "accused of such" came from there. Many conservatives in Congress shared Schmidt's beliefs. In May of 1950, thirty-two proposed bills related to internal security appeared in the combined dockets of the House and Senate.

The Truman administration, and civil libertarians, initially responded to the security bills from positions which reflected concern for individual rights. Whereas the rights activists maintained their vigilant opposition to internal security legislation, the White House waffled on its commitment to civil liberties in an attempt to retain its political strength.

In the case of S. 2311, or the Subversive Activities Control Act as it was commonly known, the administration presented powerful arguments opposing its enactment. In a letter to Pat McCarran, chairman of the Senate Judiciary Committee, Assistant Attorney General Peyton Ford claimed that S. 2311 might be found to be unconstitutional, and would at the very least make martyrs of convicted Communists. Noting the 1949 conviction of eleven Communists in New York and their pending appeals, Ford emphasized a 1948 letter from Tom Clark to the previous chairman of the Senate Judiciary Committee, Alexander Wiley, concerning identical legislation (the Mundt bill) in which Clark cited the Supreme Court's opinion in W. Virginia v. Barnette that stated
simply, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics...or force citizens to confess by word or act their faith therein." Ford's letter illustrated an apparently strong regard for civil liberties on the part of the administration.

The ACLU and other civil libertarians joined the White House in its attack on S. 2311. In March 1950, the ACLU released a statement sounding the by then familiar opposition to proposals such as S. 2311. Making sure to proclaim its "complete and unalterable" opposition to Communism, the ACLU went on to criticize the vague language of the bill. The ACLU asked if publishing Marxist literature would "substantially contribute to the establishment of a totalitarian dictatorship." The Union also wondered whether an attorney who defended a Communist in a political case would be guilty under this section. The ACLU repeated the claim that the registration provisions of the bill constituted an unconstitutional bill of attainder by imposing penalties through legislation rather than through judicial trial. The ACLU also argued that the provision providing that the unrestricted determination of the Subversive Activities Control Board as to which organizations were to be prosecuted would be final, violated the Sixth Amendment's guarantees of trial by jury and the right to confront witnesses. Others assaulted the repressive aspects of S. 2311 as well. A statement dated March 31 1950 and signed by eighteen organizations, among them the American Jewish Congress, the Textile Workers Union of America, and the American Council for Human
Rights, claimed that S. 2311 threatened the organizational activity of the entire liberal movement in the United States. Wondering where the repression would end, the statement quoted Guy Gabrielson, Republican National Chairman, who said that the Socialists would be next after the Communists. "We haven't gotten around to them yet," he said, "but I promise you we will. Avowed Socialists have no more place in the official family of the President of the United States than have Communists...Socialism is just the first step toward Communism." Seven months earlier, the New Republic prophetically revealed how this would be done. S. 2311, the magazine argued, provided for the Presidential Commission to determine a group to be subversive merely by the group's failing to turn over its records. Another kind of evidence the Commission could use would be the kinds of people who were active in the organization, and the people with whom they associated.

Despite arguments against its passage, the Senate Judiciary Committee reported out the bill with a ten to one vote. The lone dissenter, interestingly, was a Republican, William Langer of North Dakota. In a passionate defense of civil liberties, he claimed, "It is proposed to regiment the thinking of the American people...it is proposed to confer on a politically appointed board vague and, therefore, unrestricted power to outlaw associations." The Nation responded to the Committee's move in a like manner, arguing that if the bill were to become law, "we will have invited a future Administration to outlaw, by the same device, whatever party or group it may find inconvenient to its purposes."

Had the administration chosen to do so, it would have had plenty
of solid arguments upon which to base a stand in favor of individual rights. Yet the White House retreated from its earlier hard-line opposition to S. 2311 in favor of a more politically neutral position. Charles Murphy and Stephen Spingarn suggested to the President that executive policy regarding internal security legislation should attempt to achieve "the best possible balance" between national security and individual rights. Spingarn defended this strategy years after the crises of 1950 had subsided. In a 1967 interview he reiterated his position on civil liberties, claiming that "every time you exercise internal security you are infringing on individual rights, and there has to be a balance here between the national interest and the personal interest at some point.... The difficult thing is to strike a balance between the two, and this will not always be the same balance."

The idea of balance, and the malleability of this balance, posed a threat to the stability of civil liberties in the United States. The strategy of balance left the fate of individual rights up to the political currents of the times. Truman sought a defensible stand with regard to civil liberties but defined his position with respect to the hard-line anti-communists in Congress rather than with respect to the Constitution. In spite of the President's sometimes stirring rhetoric, his actions lagged behind. "Excessive security," Truman wrote in a May 1950 memo to McGrath, "encroaches on the individual rights and freedoms which distinguish a democracy from a totalitarian country." Yet this seemingly powerful statement in defense of individual freedoms had no teeth. The President left approval of internal security legislation up to the Attorney General's decision that a "balance has been struck"
between internal security and civil liberties. The Attorney General received no clear directive concerning the President's wishes on this matter, aside from the request that the Justice Department's Civil Rights Section become more involved in evaluations of internal security legislation.

The Truman administration continued to maintain an undefined position toward civil liberties as summer approached. The President received a memo from his administrative assistant, George Elsey, encouraging Truman to propose a commission on internal security and individual rights. Truman's assistants had brought up the idea for such a commission before as a way to determine in a bipartisan manner the role of civil liberties in matters of internal security. Elsey made the nature of the administration's strategy clear. "Some such step as this is necessary," Elsey said, referring to the commission, "to offset the serious consequences of the irresponsible attacks which Republicans are making against the Government." The attacks, he said, "give rise to a public hysteria...increase the likelihood of repressive legislation...shake the confidence of people in this country in their Government." By defining the problem as a congressional, Republican matter, Elsey and others in the White House ignored the executive branch's own complicity in the rise of "public hysteria." The negative effect of the loyalty program on the public's confidence in the government notwithstanding, the unwillingness on the part of the Truman administration to take a positive stand on civil liberties also contributed to a repressive atmosphere.

The proposed Commission on Internal Security and Individual
Rights, often touted as a defense of civil liberties, also exhibited the political nature of the debate over internal security. David Bell, another Truman assistant, pointed out that Senator McCarran had appointed a subcommittee June 1 to address the same issues which the Presidential commission would examine. Bell argued that the administration should establish a commission before Congress did, in order to "take the spotlight and the ball." That way, he claimed, the White House could direct the discussion on internal security and individual rights, stealing thunder from the Mundt-Nixon bill. Bell readily admitted the partisan nature of his strategy, but offered no positive course for the administration to take concerning civil liberties.

The events of 1949 and 1950 illustrated the great support for repressive internal security legislation. There also existed a consistent, powerful opposition to these laws on the part of liberals and others. The inconsistent political force during this period was the administration of President Harry Truman. The President and his assistants continued to see the debate in political terms. Perhaps predictably, they made their position contingent on the mood in Congress and the public. In doing so, however, they contributed to the erosion of individual rights. The commencement of hostilities in Korea on June 25, 1950, marked the beginnings of further trouble for civil liberties in the United States, as the nation geared up for a hot war with Communism. The Truman administration, under pressure to wage this war at home as well as abroad, found itself wedged between overzealous, repressive legislation on one hand and fundamental American liberties
on the other. The White House had itself as well as others to blame for the discomfort.
ENDNOTES


2. Spingarn memo to Clark Clifford, April 6, 1949, Sedition Bills 1949 folder, Clifford Papers, HSTL.


5. Statement of chairman of ADA, May 29, 1948, Nat'l Def. - Int. Sec. and Ind. Rts.(1) folder, Spingarn Papers, HSTL.

6. Testimony of Ben Sigal of ADA and the ACLU, May 6, 1949, Nat'l Def. - Int. Sec. and Ind. Rts.(1) folder, Spingarn Papers, HSTL.


17. Clark letter to Wiley, June 16, 1948, Nat'l Def. - Int. Sec. and Ind. Rts.(1) folder, Spingarn Papers, HSTL.


23. Neustadt memo to Hansen, May 15, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. (2) folder, Spingarn Papers, HSTL.


26. Statement re: S. 2311, March 31, 1950, Nat'l Sec. - Int. Sec. vol. 2(1), Spingarn Papers, HSTL.


30. Murphy memo to HST, May 16, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. (2), Spingarn Papers, HSTL.


32. HST memo to McGrath, May 19, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. (2) folder, Spingarn Papers, HSTL.

33. memo to HST, June 19, 1950, Nimitz Commission folder, Elsey Papers, HSTL.

34. Bell memo to Murphy, June 14, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. (2), Spingarn Papers, HSTL.
CHAPTER THREE

The Korean conflict encouraged even greater anti-communist sentiment in the United States than had existed previously, and the response of the Truman administration reflected the equivocation with which the President and his aides approached the heightened threat to civil liberties. While Truman initially won favor with his prosecution of the war, hard-line anti-Communists in Congress quickly regained the advantage, and public sentiment rose to a fever pitch. In July, 1950, 67 percent of the respondents to a Gallup poll supported the registration of Communist Party members. Ninety percent of those polled favored the removal of Communists from important war industries. And 85 percent of those polled favored, in the event of war with the Soviet Union, either the registration, imprisonment, deportation, or execution of Communist Party members. Only one percent said nothing should be done because "everyone is entitled to freedom of thought." The supercharged political atmosphere, fueled by the coming elections, accelerated the passage of drastic security measures. The war provided the climate for hysteria to dominate the election campaigns, and the demagogue Joseph McCarthy struck a hard blow when he charged that the State Department had sabotaged funds earmarked for the South Korean army, thereby necessitating American intervention. According to McCarthy, only $52,000 of $112,900,000 in military aid actually made it to the South Korean military.

Private persons also struck out at the perceived Communist threat. Sponsors of a speech Owen Lattimore planned to give at a New
Hampshire hotel cancelled his engagement because, in the words of one person involved, "anyone about whom there is any question should not be allowed to speak."\(^3\) Professor Lattimore had previously come under heavy fire from the House Un-American Activities Committee, and more recently from Joe McCarthy, who claimed that Lattimore was the Kremlin's top agent in the State Department. His sponsors cancelled Lattimore's speech despite the fact that a Senate subcommittee had completely cleared him of all charges, calling McCarthy's charges a "fraud and a hoax." Lattimore's trouble illustrated not only the repressive impact of the Korean War, but also the effectiveness of the red-hunters' ability to injure their enemies with publicity. The subcommittee's exoneration of Lattimore never caught up to the initial accusations or the press's questioning of the professor's innocence.

The Truman administration found itself once again in the situation of having to fight Communism while offering the public a political alternative to Congressional opponents. The course of events from June to September of 1950 revealed that the administration, under daunting pressure, could not or would not put civil liberties on an equal footing with political strategy. At the very least, it would be accurate to say that the administration's battle with Congressional anti-Communists assumed such proportions, and such a degree of partisanship, that the administration's efforts on behalf of civil liberties were indistinguishable from its efforts to maintain political strength.

The Korean conflict gave new hope to proponents of the Mundt-Nixon legislation and presented new problems for the Truman administration in
the area of internal security. In June, Pat McCarran appointed a Senate Judiciary Subcommittee, with Senator Warren Magnuson as its chairman, to draft internal security legislation. Magnuson wanted to introduce a bill, as a counter to the Mundt-Nixon bill, which would give the President broad powers to arrest and detain any individual known to be a member of an organization advocating the forceful overthrow of the government. In order to implement this power, the President would be required to determine that a disturbance threatened international relations and declare a national emergency. Then, the President would have to obtain the consent of both houses of Congress. After which, the President could implement the detention of "subversives."

Truman's effort to garner the support of a public bent on repression reflected not only the administration's preoccupation with politics rather than civil liberties, but also the extent to which the administration shared its opponents' assumptions about the Communist threat and the proper way to respond. In a memo on July 12, Stephen Spingarn argued that Magnuson's proposal was worse than the Mundt-Nixon bill and would anger most of the liberals in the country. Spingarn then suggested that an effective counter-proposal to Mundt-Nixon would be to require all political organizations "to make public the sources of their funds, how they disburse them, and who their officers are." In response to the mounting pressure to do something about internal security, Spingarn proposed broadening the powers of government supervision. "It is usually true," Spingarn commented, in a telling statement about the administration's regard for individual rights,
"that you can't lick something with nothing." Spingarn's attitude revealed his willingness to accept restrictions on civil liberties in order to win a political battle, and also revealed that he shared basic assumptions with his enemies on the right concerning the comparative value of civil liberties and internal security.

July 1950 saw a flurry of legislative activity and administration responses. On July 12, the House passed H.R. 7439, a bill which provided for the summary suspension of federal employees determined to be a security risk by the heads of government agencies. The bill authorized an agency head to dismiss an employee "as he deems necessary." The employee would receive the charges against him in writing, but only "as specifically as security considerations permit." Although many Truman supporters vehemently opposed such legislation, they failed to recognize that the President's loyalty program contained virtually the same provision. The Nation pointed out that, under the bill, "any government employee may be made the victim of personal animosity and may be accused, prosecuted, and convicted by a single official." Such hasty and ill-considered legislation soon became common in Congress.

The President also had trouble controlling the enthusiasm of the Justice Department for chasing Communists. This was especially true when Tom Clark headed the Department, but problems continued to plague the President, even after the appointment of a new Attorney General, J. Howard McGrath. Without a clear mandate from the President outlining the administration's stand on civil liberties, the Justice Department continued to pursue "law and order" with relatively unfettered vigor.
The Justice Department had sponsored an internal security bill, H.R. 4703, in 1947. The measure underwent substantial revision over the next several years, due to objections concerning some overly repressive sections raised by the Treasury Department, which reviewed all bills under consideration as part of the Bureau of the Budget's role in the legislative process. The major sections of H.R. 4703 provided for a tightening of the Espionage Act of 1917 (extending the statute of limitations) and the Foreign Agents Registration Act of 1938 (the new provisions required all those with knowledge of foreign espionage tactics to register). The bill also allowed for the Secretary of Defense and the President, in a time of national emergency, to make any regulation protecting any property they deemed to be in the interest of national security. The House passed the bill in March 1950, and, by mid-July, its companion bill, S. 595, awaited debate in the Senate.

Stephen Spingarn suggested that Truman lend his approval to the bill. Spingarn argued that the bill had been substantially improved over its original provisions and, most important, would serve as an answer to the Mundt-Nixon bill then under consideration. "I have been influenced to some extent in this judgment," Spingarn said, "by the fact that the current version of the Mundt-Nixon bill has been gaining great strength on the Hill since the Korean situation broke." He also took the opportunity to recommend that S. 595 adopt his notion for registering all "subversive organizations" instead of just Communists. Once again Spingarn reacted to the pressure for repression with a bill only somewhat less overtly repressive than the bill Congress had offered.
The battle over internal security continued to escalate throughout July and August. As Congress rode a wave of public support for crackdowns on Communists, the administration fought a rearguard action which, while clearly more protective of civil liberties than Congress, nevertheless revealed that the White House was unwilling to risk public support in order to preserve basic freedoms. The conflict between Congress and the Truman administration centered on the Mundt-Ferguson-Johnston legislation, S. 2311. The registration and disclosure provisions of the bill were distasteful to the President and offered the means by which the White House could differentiate itself from its opponents in Congress. With his back to the wall, Truman appeared finally to come down on the side of civil liberties. He boldly declared in a July 22 conference that he would veto any legislation that violated the Bill of Rights, regardless of the fact that it would be an unpopular move in an election year. Truman hoped to have it all ways. He portrayed himself as a defender of civil liberties and his opponents as violators of the Constitution. At the same time he set himself up as the true defender of internal security and his opponents as obstructionists.

Spingarn's report on S. 2311 detailed its constitutional and practical shortcomings. The bill, he noted, contained a significant revision of its predecessor, the Mundt-Nixon bill. Instead of directly outlawing the Communist Party, S. 2311 required proof that a suspect be found to have conspired to perform an "act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship" and that a foreign entity controlled that
effort. Spingarn argued that if the Smith Act of 1940, which required only that the prosecution prove that a subversive entity advocated or taught the violent overthrow of American government, were held to be valid by the courts, then the new bill, much harder to enforce, was unnecessary and cumbersome. Experience, he said, indicated that from two to three years of bureaucratic and legal procedure would elapse before the Subversive Activities Control Board could require any group to register. And given the secrecy and mendacity of Communist organizations, one could count on their refusal to register. In short, the bill would contribute nothing to internal security.

Spingarn also attacked the constitutionality of S. 2311. The phrase "substantially contribute" was vague, he argued, and lent itself to being construed as prohibiting legal action which sought drastically to change the government, such as a constitutional amendment. This prohibition, he claimed, made the bill void on its face. The President's special assistant also brought up the old argument that the registration provision of the bill, requiring that Communists who were not on the Attorney General's formal list register themselves, violated the Fifth Amendment's command that "no person shall be compelled in any criminal case to be a witness against himself." Finally, Spingarn mentioned the possibility that the proposed legislation constituted prior restraint by providing that the simple fact of party membership and not any physical behavior constituted a crime.11

To Spingarn's credit, some of his remarks, though tempered by his emphasis on the practical difficulties of the bill, did defend the principle of civil liberties. But they also reflect Spingarn's
assumption that certain forms of restrictions were legitimate, most notably the Attorney General's power to determine who would and who would not be compelled "to be a witness against himself."

Even as Spingarn wrote, times continued to get worse. As if existing pressure to pass S. 2311 were not enough, American forces in Korea suffered setback after setback and, by the end of July, found themselves packed into a small area surrounding Pusan at the tip of the Korean peninsula. Senator Mundt had told reporters earlier in the month that "the climate is certainly conducive for Congressional passage of this (S. 2311) right now. If we are asking our boys to die fighting in Korea and other areas, we certainly should protect them from sabotage behind their backs here at home." As the situation on the battlefield worsened, the impulse for repression at home became more severe. Indeed, as the Senate approached the Mundt bill toward the end of July, the New York Times reflected on the gravity of the situation. "The English-speaking world in all its perils," commented the newspaper, "has not in modern history done quite what is now proposed to be done."

The White House was sensitive to pressures from Congress and the public. Presidential assistant David Lloyd sounded the alarm with a memo to Charles Murphy in which he noted that Freedom House, an organization of prominent liberals, favored outlawing the Communist Party. This, he claimed, was a "very significant trend of public opinion." The President responded to that significant trend on August 8, with an internal security message to Congress. The thrust of the President's message asserted that current laws were strong enough to
combat Communist subversion, and that, as they sought to defeat Communist subversion, the American people should, at the same time, safeguard civil liberties. Truman found support for his claim that existing laws sufficed from a recent federal appeals court decision of August 1 which upheld the conviction of eleven Communist Party members under the Smith Act of 1940. Judge Learned Hand supported the prosecution's contention that the Communist Party represented a "clear and present danger" to the United States.\textsuperscript{15}

In his message, the President pointed to the many strong laws already on the books. He cited the Smith Act as well as laws against treason, espionage, and sabotage. Truman also noted immigration and naturalization laws. And, lastly, he cited his own loyalty program as an effective preventive measure. The President acknowledged the need for strong new legislation in the areas of espionage (extending the statute of limitations beyond three years) and alien deportation. He took the time to criticize the Hobbs bill, H.R. 10, and offered in its place a measure authorizing the Attorney General to exercise supervision over deportable aliens by requiring them to report their whereabouts, instead of detaining them indefinitely, as the Hobbs bill required.

Truman went on to attack the Mundt legislation then pending in Congress. "This kind of proposed legislation is dangerous," he said, "because, in attempting to proscribe, for groups such as the communists, certain activities that are perfectly proper for everyone else, such legislation would spread a legal dragnet sufficiently broad to permit the prosecution of people who are entirely innocent or merely
misguided." The President also argued that the legislation would simply drive the Communists underground and, if the legislation were held unconstitutional, make martyrs of them.16

Truman's message made it appear that the White House was at last taking a positive stand on the issue of civil liberties, defining its position on relevant proposals, and striking its own course. Many newspapers applauded the President's courage. The Chicago Sun Times called Truman an all-American, "on the first team with Washington, Madison, and Jefferson."17 The ADA sent a telegram to the Senate Judiciary Committee in support of Truman's suggestions and urged Americans to follow his lead in opposing repressive legislation.18 The New Republic, however, observed that the President's message had been "pounced upon by every faction in Congress as confirmation of its own original opinion."19 Hard-core anti-Communists focused on the President's call for tougher legislation, while liberals focused on Truman's assault on the Mundt-Nixon legislation and his defense of existing laws. By failing clearly to establish an unequivocal stand on civil liberties, the President actually contributed to the anti-Communist hysteria. This failure indicated not so much that the President was overtly hostile to the Constitution, but rather that he deemed the political stakes too high to risk a strong position in support of unpopular principles.

The actual course that the Truman administration took in its fight against the Mundt legislation revealed that the administration's focus still fell short of a constitutional defense of civil liberties. On August 17 a group of ten Senators, including Estes Kefauver, Hubert
Humphrey, Warren Magnuson and Scott Lucas, introduced a bill which embodied the President's recommendations of August 8. The bill, S. 4061, fell prey to McCarran's Judiciary Committee, which on the same day reported S. 4037, McCarran's omnibus internal security bill. These two bills represented the respective positions which the White House and Congress took on the issue of internal security legislation. McCarran's bill eventually combined with a House measure, H.R. 9490, to become the Internal Security Act of 1950.

The McCarran bill contained a number of anti-subversive provisions, gleaned from previous proposals in Congress. It contained the registration and publication provisions of S. 2311, McCarran's own recommendations authorizing the Justice Department to bar or deport a large number of aliens, S. 595's anti-espionage sections, H.R. 10's detention provisions, and a new effort to establish a new bureau of passports and visas. The various approaches of Congressional hard-liners had gelled under the direction of Pat McCarran.

The White House reacted swiftly to the political threat posed by S. 4037, but continued to accord a low priority to the larger threat to individual rights. The new "blockbuster" bill amended a 1918 law, which provided for the exclusion and deportation of "subversive" aliens, to exclude also affiliates of the American Communist Party and its organizations. A White House memo argued that the phrase "totalitarian party" went undefined, and would thus lead to administrative difficulties. Furthermore, such wording might not have exempted officials from foreign governments or the United Nations. The extent to which the administration shared the approach of the right
became apparent as the White House developed arguments against the McCarran bill. The administration focused on the deficiencies in the bill compared to the President's own anti-communist efforts — not on a defense of civil liberties. A communiqué by Peyton Ford, the Assistant Attorney General, argued that the nationality provisions of S. 4037 (those determining which type of alien the United States would admit for citizenship), which amended the Nationality Act of 1940 to exclude Communists, were confusing and administratively deficient. Stipulations regarding membership in banned organizations could be circumvented, he charged. Ford made no mention of possible violations of rights in his memo. The executive branch's concern for civil liberties during this period, when expressed, was less than enthusiastic.

From the administration's own perspective, its alternative bill, S. 4061, took a more "rational" approach to security legislation. Based upon the President's recommendations as embodied in his message of August 8, the bill implied that the Smith Act and the Nationality Act needed no changes, while the Immigration and Foreign Agents Registration Acts needed strengthening. The administration's proposal extended the statute of limitations for espionage from three to ten years, and required those with knowledge of foreign espionage tactics to register with the Attorney General. The bill also substituted the Hobbs bill's permanent detention provision (included in S. 4037) with a parole-like provision that required deportable aliens to report their whereabouts.

S. 4061 sought to accomplish two things. It intended to compete
with the popularity of the McCarran bill's anti-Communist position while at the same time preserving the President's image as a defender of civil liberties.\(^{24}\) In attempting to accomplish this, the administration's bill fell prey to the same complications which the administration's position created all along. Instead of presenting a position which emphasized civil liberties, Truman attempted to defeat McCarran by introducing a rival bill, which he argued was more effective. Furthermore, the President's rhetorical support for civil liberties and his vague concern with "undue" or "excessive" measures clashed with his arguments in favor of tightening controls.\(^{25}\) These arguments served to heighten fear and suspicion; if the Communist threat were as real as the Korean situation implied, and the President recognized that a comparable threat existed internally as well, then restrictive measures would not be unwise. The President, through his efforts to mitigate Congress's proposals by meeting them half way, admitted either that his administration's efforts and existing laws had been ineffective, or that a genuine threat existed and that threat justified drastic legislation.\(^{26}\) The administration's approach revealed Truman's equivocation concerning civil liberties. Moreover, Truman's strategy failed; it resulted in a general reduction in the political standing of the administration. The increasing conflict between the White House and congressional conservatives, Truman's weakening political position, and his desire to gain political advantage from the issue explained the course of events surrounding the veto of the McCarran Act.

The White House and Congress jockeyed for position during the last
week of August and the first weeks of September. While the Truman administration found some support for its proposals, the tide of battle definitely favored conservatives in Congress. As the President's position weakened, he found some of his supporters in Congress abandoning civil liberties in favor of the more popular anti-Communist bandwagon. Campaign pressures on liberal legislators mounted, while the Justice Department held a more favorable view of the McCarran Act and its House counterpart, H.R. 9490, sponsored by John Wood, a Democrat from Georgia and chairman of the House Un-American Activities Committee.

However, the President was not entirely alone in his opposition to McCarran's proposals. A radio show, broadcast on August 21, interviewed Paul Jensen, a wartime counter-intelligence officer who vehemently opposed the Mundt-Ferguson and McCarran bills. While Jensen, an attorney at the time of the interview, noted the constitutional problems the bills created, his main attack centered around the impracticability of the bills' provisions. He predicted that, due to the registration requirements and the appeals provision, "it might be four or five years, or more, before any one agent is jailed." Jensen went on to poke fun at the possibility of a Communist running to the Attorney General in order to get on the list. Jensen favored as an alternative the administration bill, S. 4061.

The interview with Jensen typified the kind of support the President received during this period. Influential figures, both public and private, concentrated their efforts on the ineffectiveness and, to a lesser extent, the unconstitutional nature of the
Congressional proposals. Administration accounts of news items emphasized the fact that "the active pendency of this legislation has already caused the Communist Party to greatly accelerate its movement underground." The result of Wood's and McCarran's legislation, argued the administration, would be a "serious blow" to internal security. The President's own position failed to focus on the constitutional weaknesses of the Wood-McCarran proposals, especially in the area of civil liberties. Spingarn commented that the outlook for the President's proposals was "very gloomy" and that the President desperately needed more public support.

The Truman administration's lack of resolve and direction, accentuated by the increasing public hysteria, served only to further the destruction of support for moderate legislation within the President's own ranks. J. Howard McGrath, the President's Attorney General, actually supported parts of the McCarran bill. In a letter to Senator Lucas, who was ostensibly a Truman supporter, McGrath clarified the Justice Department's views concerning the legislative proposals then under consideration. McGrath maintained the by then familiar objections to the registration provisions of the McCarran bill, emphasizing their ineffectiveness and impracticality. However, he argued for strengthening the anti-sabotage provisions of S. 4037 by giving the President the authority, as S. 595 did, to restrict access "to such property and places as the President may designate...in the interest of national security."

The Attorney General brought the Justice Department's concern for effective, enforceable laws to the internal security debate, but the
manner in which he did so exposed a lack of concern for personal liberty, despite his occasional statements to the contrary. First, the provision granting the President restrictive powers raised some serious questions concerning due process, since the President was to receive complete power over personnel involved in areas concerning "national security," which could include virtually any circumstances. Second, McGrath's rhetoric revealed that, in spite of his defense of the Constitution, his foremost goal was to apprehend those deemed subversive. "The present world situation," he said, "requires the prompt enactment of practical and constitutional legislation which will give to the Department of Justice adequate weapons to deal with the precise dangers which we face, while preserving our traditions of personal liberty. We in the Department favor the general purpose of this type of legislation, but we do not feel that there is time enough remaining for novel experiments in law enforcement over a period of years, with doubtful, meager, and inadequate results." 30 Peyton Ford, the Assistant Attorney General, encouraged the President to approve H.R. 9490, claiming that even with the bad sections, the bill contained essential legislation. 31 The sense of national emergency, with its resulting disregard for civil liberties in favor of preserving internal security, had once again made itself felt within the President's own administration.

The breakdown of support for civil liberties continued in September. Eight liberal Senators, among them Harley Kilgore, Estes Kefauver, and Hubert Humphrey, met with the President on September 6 to propose legislation which would fight McCarran's bill with one of their
own. To defeat McCarran, they proposed an "emergency detention" amendment to S. 4061, the administration bill. Their amendment gave the President, in the event of an officially declared national emergency, the power to intern persons believed likely to commit acts of espionage or sabotage. The Senatorial group told the President that a move such as this was the only possible way of defeating the McCarran bill. Truman told them to go ahead with the proposal and he would reserve judgment until the bill reached him.32

The Kilgore bill, which Spingarn called the "concentration camp" bill, illustrated the disintegration of the anti-McCarran forces as well as the way in which, by defining the debate in the terms which their opponents chose, ostensibly liberal figures contributed to public fears and to their own political disadvantage. These liberals adopted what they considered a politically sophisticated defense of civil liberties. In doing so, they attempted to defend civil liberties by restricting them, a position which proved untenable. According to the New Republic, the November elections had everything to do with the liberals' change of heart. Needing a politically attractive, "tough" plan, the Senators introduced the Kilgore measure to steal McCarran's thunder. Senator Lucas of Illinois, in a tough race with his Red-hunting opponent, Everett Dirksen, touted the substitute bill as an alternative to McCarran's bill, which did "not go far enough." When the bill failed as a substitute, Lucas shocked observers by introducing it as an amendment to the McCarran bill. These circumstances railroaded liberals in the Senate, after condemning the McCarran piece as ineffective and theirs as tough, into supporting the combination
measure. Only seven Senators found the courage to oppose the new Goliath. Only one of thirty-two Senators up for re-election, Herbert Lehman (D-NY), voted no on the bill.\textsuperscript{33}

As Congress approached the day of reckoning on the McCarran Act, the Truman administration pondered the consequences of the President either signing or vetoing the bill. Most observers had predicted the President would veto. Keeping in mind the "overwhelming sentiment for anti-communist legislation," Truman's assistants discussed the dilemma.\textsuperscript{34} Politically, support for the bill would mean that the President and many Democratic Congressmen would appear no less anti-communist than their opponents. A signature would also secure legislation needed for the internal security of the United States. The President's aides argued that defects, such as existed in the registration and immigration provisions, could be ironed out after passage. In addition, the President's approval of the McCarran Act did not necessarily mean a permanent blow to civil liberties. The President's advisers granted that the bill would give administrators a great deal of discretion to determine who was and who was not controlled by Communists. "But, of course," they said, "the Executive is supposed to have enough wisdom and authority to see that this discretion is handled properly." Any imprecision in the legislation would be straightened out by the courts. "It is quite possible," they admitted, "that some innocent people will get hurt before the courts have completed this work. That is unfortunate, but at worst it is only a temporary situation and does not in itself justify a veto."\textsuperscript{35}

Despite arguments in favor of signature, the President's
administration had much more powerful and practical recommendations for vetoing the McCarran bill than they had for signing it. Politically, the President almost had to veto the bill. To sign would leave him exposed to the "booby traps" (administrative difficulties) of the bill, and charges that he sabotaged the McCarran Act would hurt the President in the 1952 elections. By signing the bill, Truman would also alienate liberal Senators such as Lehman, Carroll, and Helen Douglas, who had gone out on a limb for the President with their opposition to the legislation. Truman's aides argued that signing the bill would actually help the Communists. The registration and immigration provisions of the act would make martyrs out of Communists. In the process of publicizing their persecution, the Communists might be able to run the FBI ragged, incriminate innocent people, and force disclosure of government secrets. The President's aides also argued that giving unlimited discretion to administrative agencies, even though this discretion may be short-lived due to court decisions, was a bad idea. These agencies "may not, in all cases, be able to resist the pressure to proceed against groups and individuals who do not really endanger our security." The White House had learned its lessons over the past few years, and was clearly wary of the possibility that the McCarran Act would be used to attack the people and policies associated with the New Deal. The recent growth of radical anti-Communism and its attacks on New Deal Democrats warranted such concern.

Congress passed the Internal Security Act of 1950 on September 20. The House passed the bill with a vote of 312 to 20, while the Senate voted 51 to 7 for passage. Both Houses exceeded the required
two-thirds majority that would be needed to override a veto.

Despite overwhelming support for the McCarran Act, President Truman decided to veto the bill. This decision, however, resulted not so much from any deeply held respect for the Constitution and civil liberties as from the fact that Truman had painted himself into a corner by equivocating on the matter and offering no clearly defined position of his own; he simply had no realistic alternative. Spingarn illustrated the President's dilemma clearly in a memo dated September 20. "The signing of the bill," he said, "would represent an action of moral appeasement on a matter of highest principle." Spingarn argued that having once yielded on basic principle, "the Administration would find it difficult to make a stand when the next 'aggression' in the field of internal security legislative proposals took place." Spingarn's argument about "moral appeasement," while full of impressive rhetoric, actually demonstrated the predicament Truman had created for himself in the field of internal security.

Spingarn drew the line beyond which the President's administration was unwilling to go with the McCarran Act, but the line may well have been drawn at any of a number of points in the past. Indeed, rather than drawing the line in, say, 1947, Truman and his administration participated in the degradation of civil liberties through their development of the loyalty program, their vacillation over the State Department files, and their consistent anti-Communist rhetoric. The McCarran Act offered the President his last chance to diminish the power of the anti-Communists, to portray himself as a guardian of liberty, and at the same time to maintain his anti-communist
credentials.

The idea of a commission on internal security and individual rights recurred as part of the preparations for the veto. Representative Helen Douglas, a Democrat from California, wrote to President Truman, claiming that she and the other Representatives had voted against the McCarran Act because it would be ineffective and undermine civil liberties. She suggested that the President create a commission to clear the air, calm hysteria, and offer a fresh solution to the problem of internal security and individual rights. The Truman administration did not share Mrs. Douglas's noble intentions. According to Spingarn, Truman saw the proposal of a commission as a strategic device to help sustain the veto. The President advised him, he said, "that he is favorably disposed toward the idea of announcing in the veto message that he was creating a Presidential Commission on Internal Security and Individual Rights if this would help in getting the veto sustained." ^41

A defender of the President might argue that the establishment of a commission, in addition to being a popular measure, would also have served to remove the debate over internal security and civil liberties from the bitter fighting that existed between Congress and the White House. In fact, Senator Kilgore proposed that "the hearings and the report of a distinguished Commission would raise the question above the level of partisan politics, put the initiative into the hands of the Administration, and permit the careful consideration of many important questions which have not yet received sufficient study and attention." ^42 What Kilgore, Douglas, and perhaps others did not realize
was that putting the initiative into the hands of the administration would not, could not result in raising the issue above partisan politics. To the contrary, the "Gentleman from Pendergast" viewed his entire relationship with Congress in partisan terms, and pursued developments with the primary goal of gaining political advantage.
ENDNOTES


2. Letter to HST, July 12, 1950, OF 20, HSTL.


4. SJS memo for the file, July 12, 1950, Pres. Comm. on Int. Sec. folder, Confidential File, HSTL.


7. Note p. 18 of ch. 2 and corresponding footnote.

8. Memo to HST, July 14, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. Vol. 1, folder 1, Spingarn Papers, HSTL.

9. SJS memo to Murphy, July 20, 1950, Nat'l Def. - Int. Sec. and Ind. Rts.(1), Spingarn Papers, HSTL.

10. Memo for file, July 22, 1950, Nat'l Def. - Int. Sec. and Ind. Rts.(1), Spingarn Papers, HSTL.

11. Comments on S. 2311, July 26, 1950, Nat'l Def. - Int. Sec. and Ind. Rts.(1), Spingarn Papers, HSTL.


14. Lloyd memo to Murphy, August 7, 1950, Internal Security folder, Lloyd Files, HSTL.

15. Time, August 14, 1950, p. 11.


18. Telegram, August 9, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. Vol. 2(3), Spingarn Papers, HSTL.


22. Memo, August 17, 1950, Nat'l Def. and Int. Sec.(1), Spingarn Papers, HSTL.

23. Memo for file, August 17, 1950, Nat'l Def. and Int. Sec.(1), Spingarn Papers, HSTL.


25. Ibid.

26. Ibid.


28. Memo, September 1, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. Vol. 3 (3), Spingarn Papers, HSTL.

29. SJS memo to Gen. Landry, August 24, 1950, Nat'l Def. - Int. Sec. and Ind. Rts. Vol. 3 (3), Spingarn Papers, HSTL.

30. McGrath letter to Lucas, August 26, 1950, Int. Sec. folder, Lloyd files, HSTL.

31. Ford to Murphy, September 21, 1950, McCarran Veto folder, Murphy Files, HSTL.

32. Memo, September 6, 1950, Nat'l Def. and Int. Sec. Vol 3 (2), Spingarn Papers, HSTL.


34. Pros and Cons..., September 18, 1950, Nat'l Def. and Int. Sec. Vol 3 (1), Spingarn Papers, HSTL.

35. Ibid.

36. Ibid.

37. Ibid.

39. Memo, September 20, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.

40. Douglas letter to HST, September 20, 1950, OF 2750C, HSTL.

41. Memo for file, September 19, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.

42. Memo, September 20, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.
The President delivered his veto message to Congress on September 22. The text of the message indicated a lack of concern about the importance of maintaining civil liberties. The President's aides drafted the speech for him, and in the process of revising the drafts, actually downplayed the importance of individual rights. Spingarn commented that "the draft does not contain enough material emphasizing how the bill would actually hurt our internal security in proportion to the amount it contains about the danger done to our ancient liberties. For the history books there should be, of course, some ringing phrases in the latter department but the arguments on the danger to internal security are much more effective today insofar as getting the veto sustained and convincing the country it is right is concerned." Spingarn's comments revealed the administration's priorities, but they also revealed how the administration allowed its opponents to frame the debate. Perhaps if the White House under Truman exhibited a deep concern for basic civil liberties guaranteed by the Constitution, the administration could have avoided the predicament in which it found itself.

The President sent his veto message to each member of Congress double-spaced and printed on only one side of each page so as to make it easier to read. Truman included with each copy of the message a personal appeal from him asking that the Congressmen carefully study the message before taking any action on it. In his message, the President concentrated on the debilitating effect H.R. 9490 would have
on the internal security of the United States. Truman argued that despite Congressional arguments that the McCarran Act was an "anti-Communist" or "Communist control" bill, the bill "would actually weaken our existing internal security measures." The President used the same paradoxical logic in his veto that he had used in earlier efforts simultaneously to defend his administration and attack repressive Congressional proposals. That is, he emphasized the danger of the Communist threat and extolled the effectiveness of existing laws, all in the same breath. Speaking of the threat of Communism, he said, "Those dangers are serious, and must be met. But this bill would hinder us, not help us, in meeting them. Fortunately, we already have on the books strong laws..." This position presented an unclear picture to Congress and the public about where the administration stood on internal security and civil liberties. At best, it revealed the tendency of the Truman administration to compromise civil liberties or to seek a middle ground which, given the clearly articulated public mood, proved untenable.

Truman contended the McCarran Act was harmful because it would require the publication of a complete list of vital defense installations to be protected in a time of national emergency. Truman said, "It is inconceivable to me that a majority of the Congress could expect the Commander-in-Chief of the armed forces of the United States to approve such a flagrant violation of proper security safeguards." The bill would also require that the Justice Department and the FBI waste an "immense" amount of resources enforcing its unworkable registration provisions. Interestingly, the President mentioned the
registration requirements' ineffectiveness first, and not their impact on civil liberties. His assistants had been making him aware of the constitutional problems which registering the Communists would raise since the original Mundt-Nixon legislation in 1948. Truman argued that in trying to enforce those sections, the executive branch "would have to spend a great deal of time, effort, and money—all to no good purpose."5

The President continued his assault on the ineffectiveness of the McCarran bill by attacking the emergency detention provisions originally proposed by his stumbling liberal allies. "It may be," he said, "that legislation of this type should be on the statute books. But the provisions in H.R. 9490 would very probably prove ineffective to achieve the objective sought, since they would not suspend the writ of habeas corpus, and under our legal system to detain a man not charged with a crime would raise serious constitutional questions unless the writ of habeas corpus were suspended. Furthermore, it may well be that other persons than those covered by these provisions would be more important to detain in the event of emergency."6 In taking this path, Truman avoided criticizing a provision which almost begged to be picked apart on constitutional grounds, and instead claimed "ineffective" the section which his own assistant had termed a "concentration-camp bill".7 It would be difficult to determine whether the President pursued this course out of consideration for the tenuous election-period positions of Kilgore, Lucas, and the other detention-provision sponsors (thereby exhibiting his typical partisan loyalty) or whether he actually believed that the impracticality of the
provision was more important than its repressive character. Regardless, he missed a golden opportunity to emphasize the McCarran bill's threat to traditional American liberties. In doing so, Truman revealed more perhaps than he would have liked about his nonchalant attitude toward individual rights.

President Truman devoted a significant portion of his veto message to attacking the registration provisions of the McCarran bill — sections 1 through 17. These requirements, he said, were "about as practical as requiring thieves to register with the sheriff." Truman went on to attack the cumbersome legal proceedings which the Attorney General would have to endure in order to get the Subversive Activities Control Board to require an organization to register. He argued that the board would be bound by criteria which dealt with the attitudes or states of mind of an organization's leaders. Instead of immediately raising constitutional questions concerning speech, association, and thought, such as the liberal press and even his advisors had been doing for two years with similar proposals, Truman criticized the impracticality of the provisions, comparing them to legal procedures concerning overt criminal acts. "Under this bill," he said, "the Attorney General would have to attempt the immensely more difficult task of producing concrete legal evidence that men have particular ideas or opinions. This would inevitably require the disclosure of many of the FBI's confidential sources of information and thus would damage our national security."

The President did mention the threat which H.R. 9490 posed to civil liberties, devoting approximately one third of his speech to a
defense of constitutional rights. The significance of the comments mentioned above lay in the fact that they revealed the President's tendency to agree with the public's and Congress's desire for some type of repressive legislation in order to control the Communists. He viewed the detention and registration provisions of the McCarran bill not primarily as affronts to fundamental American concerns for liberty and diversity but as statutes which suffered mainly from administrative flaws.

That is not to say that Truman ignored the constitutional issues raised by the McCarran Act. He included the requisite "ringing phrases" suggested by Spingarn. He did not see the registration of the Communist Party itself a danger to civil liberties, but the President did assert that the registration requirements for Communist-front organizations "can be the greatest danger to freedom of speech, press and assembly, since the Alien and Sedition Laws of 1798." The bill based the determination of which groups were and were not Communist-front organizations on criteria which examined solely "the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those" of the Communist movement.

Truman was very concerned, as he and others had been in the past, that the bill would authorize a persecution of persons advocating liberal programs similar to the New Deal programs of the 1930's. However legitimate this concern, Truman failed to recognize that his loyalty program and the Attorney General's list had a comparable result. "This provision could easily be used to classify as a communist-front organization," said the President, "any organization
which is advocating a single policy or objective which is also being urged by the Communist Party or by a communist foreign government." As an example he cited "an organization which advocates low-cost housing for sincere humanitarian reasons might be classified as a communist-front organization because the communists regularly exploit slum conditions as one of their fifth-column techniques." The President argued that the registration sections possessed the basic flaw of moving the government in the direction of suppressing opinion and belief. This, he said, was a "long step" toward totalitarianism. "In a free country," Truman proclaimed, "we punish men for the crimes they commit, but never for the opinions they have." Apparently the President felt that the Constitution protected New Deal Democrats but not Communist Party members. This revealed the basic flaw with Truman's (and many liberals') thinking. They defended their own and their allies' right to speech, but not Communists'. They undermined the real meaning of the First Amendment by concentrating on the politics of power rather than on an abstract defense of rights.

Truman spent the remainder of his speech trying to convince Congress that existing laws were powerful enough to restrain the aims of the Communists. He also objected to some provisions which added new standards of judging Communist behavior in the areas of immigration and naturalization which, in Truman's words, "interfere with our relations with other countries and seriously damage our national security." Section 22 excluded anyone who advocated any form of totalitarian or one-party government. The President noted that the bill would exclude Spain, then on friendly terms with the United States, from commercial
or cultural exchanges with the United States. Diplomatic exchanges would be sharply limited also, he argued. In fact, Truman said, section 22 was so broad it would actually require the deportation of any alien who operated a well-stocked bookshop containing the writings of loyal Spaniards or Yugoslavians. President Truman said that provisions such as section 22 would aid the Communist cause. "It will be to their advantage, and not ours, if we establish for ourselves an 'iron curtain' against those who can help us in the fight for freedom." The President closed his arguments with the observation that section 25 contained the provision that aliens would be eligible for naturalization as soon as they withdrew from organizations censored by the Attorney General. This weakened the current law, he argued, which required a ten-year wait after such withdrawal.

The concerns which the President raised in his veto message and which the liberal press had predicted came to pass shortly after the McCarran Act became Public Law 831 on September 23, 1950. Congress's vote to override Truman's veto proceeded as expected, with few surprises. Congress received the veto message at 4:00 on Friday, September 22. Despite the President's request that the legislators review the message carefully, the House immediately voted to override by a vote of 286 to 48. Congress was to adjourn on Saturday, and would not reassemble until November 27. The battle over the bill in the Senate, therefore, needed to be resolved before adjournment in order for the legislation to provide suitable ammunition for election campaigns. The liberals needed to buy time in order for the message to have a significant impact on the public and thereby increase the
chances for sustaining the veto. Senators Humphrey, Douglas, Lehman, and the lone Republican, William Langer, filibustered for 22 hours. Langer eventually collapsed from exhaustion on the Senate floor and had to be taken to the hospital. The filibuster failed, and at 4:30 p.m. on Saturday, the 24th, the Senate voted to override the President's veto by a vote of 57 to 10. Despite the overwhelming vote, the President's aides claimed a small victory, citing the message's favorable reception among the press.16

Thus ended the two and a half year battle between the White House and Congress over the content of internal security legislation. The President and the liberals in Congress had been "outsmarted," as the Nation put it. The liberal magazine noted that even the conservative press attacked the McCarran Act for its enforcement of conformity and orthodoxy. The Nation could no longer find praise for those Senators — Kilgore, Kefauver, Lucas and others — who had supported the emergency detention bill. Recognizing the powerful election pressures which drove the liberals to capitulate, the magazine claimed that "none of these considerations, we are certain, weighs against the folly of lending even tactical support to the McCarran monstrosity. The hysterical will not credit the Democrats with its passage in any case; so the Senate liberals have given moral ground to no purpose whatever." Senator Lucas appeared to validate the Nation's criticism when he explained his proposal to add the emergency detention provision to the McCarran bill with the lame justification that "the American people are anxious to have an anti-communist bill placed on the statute books."18
As the President and the press had predicted, the McCarran Act was an ineffective and dangerous bill. The Communist Party refused to register, in accordance with earlier statements promising such action, and Attorney General McGrath responded to the Party's noncompliance with a promise to pursue them "with the utmost vigor."19 One can make the argument that the Justice Department was acting so as to preclude Congressional accusations that the administration was soft on Communists. On September 20, McGrath told the American Bar Association that the United States Communist Party had never been very big or powerful and posed no major threat.20 The Communist Party was not alone in its refusal to register. Not a single organization or individual came forward in the weeks following the bill's passage to register as subversive.21

The immigration provisions were a disaster. The Nation claimed that the McCarran Act forced the immigration authorities "to make the country and its Congress look ludicrous before the world." In 1950, to detain an alien because of his or her past affiliation with a totalitarian organization meant that vast numbers of European refugees, victims of the disastrous political events surrounding World War II, would be detained at ports of entry such as Ellis Island. In the month following the enactment of the Internal Security Act, immigration authorities detained, among others, a concert pianist who at the age of ten had belonged to the Hitler Youth, a group of Italian musicians attempting to raise money for the Italian equivalent of Boys' Town, American soldiers' wives who had belonged to Nazi youth groups in their childhood, and German technicians sent to the United States by American
officials in Europe. Responding to this "public display of foolishness," the State Department cancelled all visas in October until the law could be interpreted more clearly.22

The predictions on the part of the President's staff that the bill's unenforceable provisions would be used against the administration by its Congressional opponents came true. In response to the problems engendered by the immigration provisions, Senator Ferguson accused the administration of trying to undermine the McCarran Act by, essentially, trying to enforce it.23 Senator McCarran accused the administration of trying to discredit the law because immigration authorities refused to allow Spanish immigrants into the United States who were or had once been members of Spanish dictator Francisco Franco's Falange.24

The passage of the Internal Security Act of 1950 and the problems which resulted from it did not reduce the desire of President Truman to control the debate over internal security and individual liberty. With his position as a defender of internal security severely weakened by the vote to override, Truman played his last hand — he sought to create a Commission on Internal Security and Individual Rights.25 He created the commission ostensibly to examine the issues created by the conflict between the need for internal security and the desire to preserve individual rights. As noted before, though, the President and his supporters viewed the idea of a commission from a vantage point which emphasized the opportunity to gain political advantage rather than to secure the rights of American citizens.

In the aftermath of the elections, the White House received
letters from influential citizens advocating the establishment of a
commission. Benjamin Kaplan, a law professor at Harvard, wrote that
Truman could respond to the McCarran Act and the elections with a
commission that would "build up sentiment over a fairly long pull." Max Kampelman, legislative counsel to Hubert Humphrey, wrote that the
election results pointed to more McCarthyism in American politics.
Appointing a commission, he argued, would "take the sails from their
attack." These well-intentioned intellectuals fell prey to the same
misperceptions as the administration had. They observed the debate
over civil liberties and internal security to be one between the "good
guys" (themselves) and the "bad guys" (hard-line anti-communists).
Such a perspective blinded them to the possibility that their
solutions, like those of their enemies, might be detrimental to civil
liberties. A commission would not necessarily elevate the debate above
politics, but to liberals such a structure would definitely remove the
issues from their opponents' control. Wearing these political
"blinders" made liberals see wrestling control over the liberty/security
debate to be one and the same as striking a blow for the Constitution.
In fact, they were competing for control of the system, rather than
defending liberty in the abstract.

The Truman administration also saw the battle between civil
liberties and internal security to be the same as one between the White
House and congressional conservatives, which contributed to the
politicization of a debate which did not necessarily require such
distortion. David Bell wrote to Charles Murphy supporting the
appointment by the President of a Commission on Internal Security and
Individual Rights. This should be done, he said, before Congress reassembled. In the same letter Bell suggested that Truman should make a point of the commission's being above politics. Bell advocated, essentially, that an effective strategy in the President's war with Congressional hard-liners would be to make the commission appear above anything smacking of strategy.

Murphy himself wrote to the President suggesting the same thing — that a commission should be appointed before an increasingly hostile Congress reconvened. Murphy pointed out that Senators McCarthy and Ferguson wanted to extend their investigation of subversion in the government beyond the State Department to the Department of Agriculture and the Bureau of the Budget. "In my judgment," he said, "the appointment of a Commission of outstanding citizens, from both major political parties, would effectively counteract such political charges. The findings of the Commission would undoubtedly strongly endorse the effectiveness of the President's Loyalty Program. Because such a Commission could not be attacked as partisan, its judgment would carry great public weight and be a firm reliance for Democratic candidates in 1952." Murphy admitted that a commission "cannot be expected to shut the Republicans up," but went on to argue that the commission "would help to show up the Republicans as unpatriotic politicians, ready to undermine their government to gain votes — which is in large degree the truth of the matter." One might well have levelled Murphy's charges of demagoguery against the Truman administration itself, especially given the President's consistent anti-communist rhetoric.
The Commission on Internal Security and Individual Rights, or the Nimitz Commission as it came to be called, inevitably suffered from the very partisanship which it ostensibly sought to overcome. In order to be effective, the commission required the service of highly visible individuals who were familiar with the workings of government, internal security, and law. These persons, due to the nature of their skills, tended to do business with the government. It was therefore necessary that the President obtain exemptions from the various conflict-of-interest laws for people whom he wished to appoint to the commission. Unfortunately, Truman needed the approval of the chairman of the Senate Judiciary Committee, Senator Pat McCarran, in order to obtain the exemptions. In a letter to McCarran, the President pointed out that exemptions from conflict-of-interest laws were far from unprecedented. Truman noted Admiral Nimitz's observation that persons involved in government service had recently obtained exemptions from both the Defense Production Act of 1950 and the Federal Civil Defense Act of 1950. While the House was willing to pass legislation exempting commission members from conflict-of-interest laws, McCarran blocked efforts in the Senate to do the same, and June of 1951 saw the end of Truman's efforts to bolster his reputation in the area of internal security and civil liberties.

Truman's veto of the McCarran Act and his subsequent efforts to regain political advantage through the establishment of a commission on internal security and individual rights demonstrated that the President, despite his occasional rhetoric supporting civil liberties, did not regard individual liberties in the United States as a top
priority of his administration. Through his veto message and the
commission Truman sought to attain what moral high ground he could,
given the depths to which the debate over internal security and
individual rights had sunk. But this moral superiority, couched as a
defense of the Constitution, was more a political ploy than a genuinely
felt sentiment. The President himself was guilty of undermining the
spirit of the Constitution, as were his opponents in Congress, through
their disregard for civil liberties in favor of the more popular,
politically safe repression of free thought.
ENDNOTES

1. Memo on 2nd draft, September 20, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.

2. Memo, September 25, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.


4. Ibid., p. 646.

5. Ibid., p. 646.

6. Ibid., p. 647.


8. Ibid., p. 648.


10. Ibid., p. 649.


12. Ibid., p. 650.

13. Ibid., p. 653.

14. Memo, September 25, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.


16. Memo, September 25, 1950, Nat'l Def. and Int. Sec., Vol. 3 (1), Spingarn Papers, HSTL.

22. Ibid.
23. Ibid.
26. Kaplan to Murphy, November 9, 1950, "K", Murphy Papers, HSTL.
27. Kampelman to Murphy, November 20, 1950, "K", Murphy Papers, HSTL.
28. Bell memo to Murphy, November 13, 1950, Internal Security folder, Nash Files, HSTL.
29. Murphy memo to HST, November 15, 1950, Internal Security folder, Murphy Files, HSTL.
30. HST letter to McCarran, May 12, 1951, OF 10 (1950-51), HSTL.
CONCLUSION

The Truman administration's treatment of the debate between internal security and civil liberties revealed much about presidential politics during the Truman era. Harry Truman brought his machine background to the White House, and his loyalty to the Democratic Party, along with his own anti-communism, led him to see his opponents as a threat to civil liberties but to disregard the impact, at home and abroad, of his own efforts to combat Communism.

Truman not only failed to combat the repression of civil liberties in America, he contributed to it through his federal loyalty program, Smith Act prosecutions, and strident anti-communist rhetoric. Truman competed with conservatives in Congress for the support of Americans who favored the vigorous prosecution of the Cold War at home as well as abroad. In the process, the President contributed to public hysteria and undermined his own position. From its inception in March 1947 until 1952, the loyalty program served to undermine American civil liberties, despite standards which ostensibly protected those employees undergoing investigation. Employees were denied the right to confront their accusers or examine evidence brought against them, due to the program's emphasis on protecting investigations rather than suspects. The Attorney General possessed unchecked authority to list subversive organizations without public justification or appeal. Such measures served to restrict the association of federal employees with any unorthodox causes and created a climate of fear and suspicion. This tendency came about largely because of the President's emphasis on both
internal security and political expediency.

President Truman's reaction to Joseph McCarthy's demand to examine State Department loyalty files illustrated how Truman pursued political advantage while at times using the rhetoric of civil liberties to do so. McCarthy charged that spies infested the State Department with Secretary of State Dean Acheson's approval and that a simple examination of the Department's files would reveal this to be the case. The President initially refused to release the files, claiming that the separation of powers established by the Constitution protected the executive branch from such intrusion. Truman's administrative assistants provided additional support for the President's position with the argument that the files contained unproven information and that to release this information to the public would unfairly punish innocent individuals. By taking this approach, Truman portrayed himself as the protector of the Constitution and individual rights. As the pressure to defend his office mounted, however, the President succumbed to McCarthy's insistence and allowed a Senate subcommittee to examine the files, claiming that the files had been examined years earlier by Congress and thus did not constitute a breach of the separation of powers. Abdication or no, such action on the part of President Truman revealed his defense of civil liberties to be more rhetoric than conviction, and which served as a political tool in his battle with Congress.

The battle between the Truman administration and Congress over internal security legislation between 1948 and 1950 culminated in the passage of the McCarran Act over the President's veto on September 24,
1950. The episode revealed that Truman's concentration on political advantage over civil liberties, as illustrated by the loyalty program and the State Department files, was a consistent trend. Beginning with the Mundt-Nixon bill, H.R. 5852, in 1948, conservatives in Congress attempted to outlaw the Communist Party by, in effect, simultaneously requiring its members to register their affiliation and making membership in the party illegal. The Truman administration initially responded to this effort with constitutional arguments which mirrored those of the liberal press. The Mundt-Nixon bill (and its successors in 1949 and 1950) threatened not just to deny First Amendment protection to Communists, but to liberal ideas as well. The arbitrary actions of the proposed Subversive Activities Control Board could quite easily violate Sixth Amendment rights to confront witnesses during a jury trial. The Hobbs bill threatened the Fifth Amendment's protection against self-incrimination by requiring suspects to divulge their "associations and activities."

While liberals kept hammering away at the repressive provisions of the proposed legislation, the administration hesitated, vacillated, and equivocated in an attempt to gain political advantage over congressional conservatives. Truman's assistants in the White House sought ways to mitigate the harmful effects that the Alger Hiss case, Soviet nuclear capability, the Communist takeover in China, and eventually the Korean War had on the administration's anti-communist reputation. In doing so, the Truman administration shifted away from direct confrontation with Congressional conservatives to a more politically neutral position advocating "balance" between internal
security and individual rights. Such a tactic sacrificed civil liberties for political advantage and revealed the President's true priorities.

The Korean War combined with upcoming elections to instigate an intensification of efforts on the part of Congress to pass some type of internal security legislation. Truman responded to those efforts with a security message to Congress which argued that yes, there were some improvements to be made in the existing security laws, but by and large current laws were effective enough to combat subversion. Furthermore, the President argued, pending legislation would not only harm individual rights, it would have the detrimental effect of hindering investigative efforts by driving the Communists underground. Truman's speech was designed to make him appear both tough on Communism and concerned about civil liberties.

In order to combat Congressional conservatives, the administration offered its own bill, reflected the recommendations contained in the President's security message. In addition to the administration's efforts, liberal senators proposed a "concentration camp" bill which would allow the President, in the event of a national emergency, to intern persons he suspected were likely to commit sabotage. The President's bill died in committee, and the "liberals'" bill became attached to the McCarran proposal. Congress passed the bill by a wide margin on September 20.

Truman was now faced with the problem of whether to veto the McCarran bill or not, and his decision to veto, as well as his veto message, revealed his desire to maintain as much political advantage as
possible. After the fierce struggle over the McCarran Act in Congress, Truman could not accept it. Yet he needed to maintain his own anti-communist credentials. Thus, in his veto, the President failed to concentrate on the threat to civil liberties which the McCarran Act posed; instead he emphasized the bill's ineffectiveness. This approach tended to validate Congress' repression of individual rights. Not surprisingly, his half-hearted effort failed, and early in the morning of September 24 the Internal Security Act of 1950 became law. Truman continued to try to gain political advantage with the establishment of a commission to study the subject of internal security and individual rights, but even that effort suffered from the partisan nature of Truman's administration.

The administration of President Truman expressed a concern for civil liberties which, while greater than that of its Congressional opponents, fell short of a principled defense of individual rights. Instead, Truman adopted the notion that, in order to compete with Congress during a period of Cold War hysteria, some rights, including the right of association, the right to confront witnesses, and the right to due process, had to be abridged. "The buck stops here" was a slogan of Harry Truman's, meaning that he and no one else would be responsible for his actions. If one holds Truman accountable for his policies on internal security, one cannot ignore the role he played in undermining civil liberties.
BIBLIOGRAPHY

Books


Magazines

*The Nation*

*New Republic*

*Time*

Journal Articles


Newspapers

*Chicago Sun Times*

*New York Times*

*Washington Post*

Manuscript Collections

Papers of Clark Clifford, Harry S. Truman Library, Independence,
United States Government Documents


U.S. Congressional Record. 81st Cong., 2nd Sess., 17 August 1950. Volume 96, part 9, p. 12693


U.S. President. Public Papers of the Presidents of the United States. Washington, D.C.: Office of the