"1984" may be in 1969 ...if Senator Eastland has his bill passed!

Read why Thomas I. Emerson, Yale University Professor at law, calls it "The legal foundation of a police state — '69 version."

An analysis of S. 12, Senator Eastland's bill to "strengthen the internal security of the United States," as approved by the Senate Internal Security Subcommittee and reported to the Senate Judiciary Committee.

On February 19, 1968, Senator Eastland of Mississippi, joined by 19 other Senators, introduced S. 2988, an omnibus bill dealing with virtually every aspect of what is known as the problem of internal security. Hearings were held on the bill by the Internal Security Subcommittee of the Senate Judiciary Committee (SISS), but no further action was taken by the 90th Congress. On January 15, 1969, at the beginning of the 91st Congress, Senator Eastland reintroduced the same bill, which was then designated S. 12. On this occasion Senator Eastland was joined by 17 other Senators.

S. 12 has now been approved by SISS and is before the full Judiciary Committee for action. In recommending the bill SISS made certain changes. The main ones were: (1) insertion of an elaborate loyalty-security program for employees in defense facilities; (2) addition of a provision authorizing the States to pass legislation on the same matters that S. 12 deals with; (3) elimination of the riot control provisions, which were no longer necessary since they had been enacted as part of the Civil Rights Act of 1968; and (4) partial repeal of the detention camp provisions in Title II of the Internal Security Act of 1950 (the McCarran Act). Various other less important changes were made. Essentially, however, SISS approved S. 12 in the form introduced by Senator Eastland.

The present analysis is a revision of a previous pamphlet which discussed S. 2988, the original bill. References to S. 12 herein are to the bill in its amended form as reported by SISS to the Senate Judiciary Committee.

Summary

To be called the "Internal Security Act of 1969," S. 12 consists of 9 titles and covers over 100 pages. It contains literally hundreds of proposals for changes in present laws and enactment of new laws. Among other things, it amends the Smith Act, creates a new crime of peacetime "treason," attempts to improve the working of the Subversive Activities Control Board, includes a sweeping loyalty program for employees of "defense facilities," amends the Foreign Agents Registration Act and the immigration laws, establishes a centralized loyalty-security program for Federal employees, authorizes the Secretary of State to control travel to foreign countries, and sets up a Communist Defectors Awards Board to pay annunities to defectors from Communist countries.

The bill is designed to overrule or circumvent virtually every liberal decision of the Supreme Court in the area of internal security over the last 15 years. As such it is clearly inconsistent with the fundamental principles of a democratic society as those principles have been interpreted and applied by our highest court. Many of the specific provisions of the bill are plainly unconstitutional; others are of doubtful validity. The bill as a whole is completely unnecessary to protect our internal security. In its individual provisions and taken as a whole it constitutes an obvious attempt to return to the era of McCarthyism. If passed, it would lay **the legal foundation for a police state.**

There is no possibility of analyzing in detail all the provisions of S. 12 within a limited space. All that can be done is to describe briefly its more important features.

TITLE I

Revives Smith Act

Title I includes various amendments to the criminal laws punishing treason, espionage, sabotage, sedition and the like. One of these amends the Smith Act to make it a crime to advocate overthrow of government by force or violence "without regard to the immediate provable effect of such action," or to organize a group for that purpose by "encouraging recruitment." These provisions are meant to overrule the Supreme Court's decision in 1957 in the **Yates** case, which held that the government must prove advocacy of action, rather than only advocacy of ideas, in order to establish a case under the Smith Act. Both provisions seem clearly unconstitutional. The first violates the clear and present danger test, which requires that the "immediacy" of the danger be taken into consideration. The second would prohibit all kinds of speech, quite removed from advocacy of violent overthrow, that are plainly protected by the First Amendment.

Peacetime Treason

Another provision in Title I would create a wholly new crime, — peacetime treason. It would make it an offense, punishable by a $10,000 fine or ten years imprisonment, or both, if any person "knowingly and willfully gives aid and comfort to an adversary of the United States by an overt act, other than the mere expression of a personal opinion." An "adversary" is defined as "any foreign nation or armed group which is engaged in open hostilities against the United States or with . . . the Armed Forces of the United States." It is hard to conceive of a law more dangerous for the liberties of American citizens. It goes far beyond the constitutional definition of treason, which can be committed only in time of declared war and requires "adhering to [the] enemies" of the United States in addition to giving them aid and comfort. The Eastland proposal could cut off virtually all public activity with respect to many of the most significant issues of foreign policy, and could even make it a crime to support civil rights, Negro or peace groups within the United States. There is little doubt that it would ultimately be declared unconstitutional.

TITLE II

Strengthens SACB

Title II provides various amendments to the Internal Security Act of 1950 (the McCarran Act). These include extending the terms of members of the Subversive Activities Control Board to seven years, giving the Chairman of the Board power to appoint the personnel and control the expenditures of the Board, and drastically limiting the scope of court review over the Board's decisions.

Loyalty Program for "Defense" Workers

Much of Title II is taken up with provisions establishing a new and very detailed screening program for persons working in "defense facilities." The term "defense facility" is defined to include any manufacturing, producing or service establishment, any educational institution or research organization, any transportation facility, etc., or any aspect thereof, "whose disruption by an act of sabotage, espionage, or other act of subversion would directly impair the military effective-

"...designed to overrule or circumvent... e in the area of internal security over the

ness of the United States, or capabilities of the United States in the production of essential defense materials and services." A "defense facility" could thus include virtually every industrial, commercial and research establishment, as well as many educational institutions, throughout the country.

Under the bill the Government is authorized to deny any person "employment in or access to" such a defense facility whenever it finds that his employment or access "is not clearly consistent with the national defense or security interests." Criteria which may be considered in denying employment or access include membership in or "affiliation with" any organization which the President or his designee has "probable cause to believe" is one that "has been organized or utilized for the purpose of advancing the objectives of the Communist movement;" giving "aid or assistance to any foreign power, group, or association which is Communist or Communist controlled;" acting "so as to serve the interests of another government in preference to the interests of the United States;" and "any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct."

The procedures set up to determine eligibility for employment or access provide for a "statement of reasons" as "detailed as the national security will permit," and a "personal appearance." But crucial evidence can be considered by the Government "without an opportunity for inspection or cross-examination" if the applicant is given a summary "which is as comprehensive and detailed as the national security will permit." And the President can dispense with all procedures, thus allowing summary dismissal or denial of access, whenever he determines that the above procedures "cannot be employed with respect to any individual consistent with the national security."

A similar screening program is established for all persons having "access to classified information," and for all persons employed in or having access to "vessels, harbors, ports, and waterfront facilities."

These provisions of S. 12 are intended to circumvent the decisions of the Supreme Court in *United States v. Robel, Schneider v. Smith,* and *Greene v. McElroy,* which imposed strict limitations upon Federal loyalty programs. The attempt is clearly unsuccessful. The screening programs proposed are so encompassing in their coverage, so vague and broad in their application, so repressive in their impact on freedom of expression and asssociation, and so lacking in fair procedures, that they plainly do not meet constitutional standards.

Provisions Affecting Labor Unions

Two other provisions of Title II are of special concern to trade unions and their membership. One removes the requirement that, in order for the Subversive Activities Control Board to find a labor union to be a "Communist-infiltrated organization," the "infiltration" must have taken place within the preceding two or three years. In striking out the time limitation, S. 12 would allow the Board to find "infiltration" on the basis of long past events.

The other provision permits "one or more members of any labor organization" to file a petition with the Board to have the organization declared a "Communist-infiltrated organization." This would allow a single dissident member or a small faction of a trade union, involved in a controversy with the union, to thrust the organization into an elaborate, costly and defaming public hearing before the SACB.

Partial Repeal of Detention Camp Provisions

The final section of this title repeals Sections 102 to 116 of Title II of the McCarran Act, which are the operating portions of the detention camp provisions of that law. S. 12 leaves in effect, however, Sections 100 and 101, which are the Congressional findings of fact and declaration of purpose. Section 101 contains, among other things, the statement that "[t]he detention of persons who there is reasonable ground to believe probably will commit or conspire with others to commit espionage or sabotage is, in a time of internal security emergency, essential to the common defense and to the safety and security of the territory, the people and the Constitution of the United States." And it goes on to declare: "It is also essential that such detention . . . shall be sufficiently effective to permit the performance by the Congress and the President of their constitutional duties to provide for the common defense, to wage war, and to preserve, protect and defend the Constitution, the Government and the people of the United States."

The effect of leaving Sections 100 and 101 on the statute books is not altogether clear. Presumably the authors of S. 12 mean to lay the foundation for the President, using his executive powers, to establish detention camps "in a time of internal security emergency," without explicit authorization from Congress. If so, the ostensible repeal is a fraud.

If it be assumed (contrary to the present language) that S. 12 is designed to repeal the detention camp provisions of the McCarran Act outright and in full, then other questions arise. No one concerned with the future of democracy in the United States can fail to agree that the detention camp provisions constitute a menace to democratic institutions and should be expunged from our laws. But their repeal is so contrary to the pervading spirit of S. 12 that one can only conclude that the repeal provision was inserted by the authors solely for the purpose of attracting liberal support for the remainder of the bill. Such a bargain is not acceptable. The sacrifice of American liberties entailed in S. 12 cannot be justified on any grounds, even repeal of the odious detention camp provisions. The two problems should be dealt with as separate issues.

TITLES III & IV

Restrictions on Aliens and Foreign Agents
Loyalty Oath Required to Secure Passport

Titles III and IV tighten various controls relating to aliens, foreign agents, immigration, denaturalization and passports. They provide, among other things, for refusal to admit immigrants from any nation which does not take back its nationals who have been deported by the United States, temporary entry of aliens for the purpose of giving testimony to a Congressional Committee, easing procedures for revoking naturalization, making it a crime to fail to surrender a passport upon demand of a representative of the Secretary of State, and imposing a five year penalty for having "any correspondence or intercourse" with the agent of a foreign government with the intent to evade U. S. passport laws. Worthy of particular notice is a provision denying a passport to a person who "refuses to swear or affirm his allegiance to the United States." Such a requirement for swearing to a belief is directly contrary to the Supreme Court's decision in the **Barnette** case, holding invalid a requirement that school children be compelled to salute the flag.

TITLE V

Provides for Forced Testimony Before HISC & SISS Authorizes Committees to Subpoena Americans Abroad

Title V contains a series of amendments concerned with legislative and court procedures. It includes two proposals increasing the powers of Congressional committees. One would allow a Congressional committee (e.g. HISC, SISS, etc.) to force a witness to testify, despite his reliance upon the privilege against self-incrimination, by giving him immunity without the necessity of obtaining court approval for the grant

very liberal decision of the Supreme Court last 15 years" — PROFESSOR THOMAS I. EMERSON

of immunity. The other authorizes Congressional committees to subpoena American citizens residing abroad.

Restricts Court Review of Denial of Constitutional Rights

Two other amendments in Title V drastically curb the power of courts to protect the constitutional rights of individuals. One provides that the Supreme Court "shall" issue a stay, pending its ultimate decision, to block the enforcement of any lower court order which has held a Federal statute unconstitutional. Another withdraws the jurisdiction of all courts to decide whether a Congressional committee (e.g. HISC, SISS, etc.) "has performed its duties effectively or satisfactorily, or in conformity with the mandate or will of its parent body." This is designed to overrule the *Gojack* and other Supreme Court decisions and to allow a Congressional committee to act in unlawful ways without being subject to any review in the courts.

TITLE VI

Creates Bureaucratic Gestapo

Title VI is called the "Federal Personnel Security Act of 1969." It establishes a highly centralized security-loyalty program for Federal employees, linked to the Subversive Activities Control Board. In charge of the system is a new agency, the Security Administration for Executive Departments, "subordinate only to the President of the United States." The Security Administration is headed by an Administrator, appointed by the President for a term of ten years and removable only for "neglect of duty or malfeasance in office." The Administrator may also serve as Chairman of the Subversive Activities Control Board, and can initiate cases before that Board. The Security Administration has "sole responsibility" for all investigations (except those conducted by the F.B.I.) and "all evaluations" in personnel security cases. It also has extensive powers to inspect and coordinate the loyalty programs administered by the various executive agencies and to "recommend such regulations as [it] may determine to be necessary to provide for uniformity in the application and administration of loyalty and security programs of executive agencies." The Security Administration also takes over the loyalty program for United States citizens employed in the United Nations and other international organizations.

Passage of the Federal Personnel Security Act would be a disaster for the Federal service and for the nation. It would create a powerful, uncontrollable, bureaucratic Gestapo, with a mission of rooting out of Federal employment all persons who did not conform to the Security Administration's view of acceptable beliefs, opinions, associations or behavior. It would make recruitment of young people with independent minds, or older persons either, impossible. And it would reduce those employees who stayed in the Federal service to robots.

In practical terms, the potential of these provisions can be quickly grasped if one visualizes a "security-minded" official such as Otto F. Otepka appointed as Administrator of the Security Administration. In 1967 Otepka was removed as security officer of the State Department for transmitting confidential papers to J. G. Sourwine, Counsel for SISS, in violation of a Presidential directive. Recently he was appointed to the Subversive Activities Control Board. As combination Chairman of the SACB and Administrator of the Security Administration Otepka would exercise a fearsome power over the lives of all government employees and the liberties of all Americans.

TITLE VII

Spurious "Relief" Proffered "Security" Cases

Title VII is labeled the "Disadvantaged Employment Applicants' Relief Act." It provides that any person who is denied employment by a firm having a government contract "because of unevaluated adverse security information concerning him" may file a petition for relief with the Subversive Activities Control Board. After a limited hearing, in which the applicant is not allowed to see adverse security information which is "classified or confidential," the Board must ask the new Security Administration for Executive Departments for a "security evaluation report." Armed with this report, except such parts as are "required to be held confidential in the interests of national security," the applicant may try again to get a job from the contractor. One can hardly imagine a worse way for affording relief to "disadvantaged employment applicants."

TITLE VIII

Re-establishes Restrictions on Right to Travel

Title VIII is entitled the "Travel Control Act of 1969." It is designed to overcome the effect of the Supreme Court decisions in the **Kent, Aptheker, Laub** and **Travis** passport cases. The title authorizes the Secretary of State to "restrict travel" by United States citizens to any foreign country or area if he determines that such country or area is involved in hostilities or is "one to which travel must be restricted in the national interest because such travel would (A) seriously impair the conduct of United States foreign policy, or (B) adversely affect the national security." The Secretary is authorized to make exceptions for a particular person when he "deems such travel by such person to be in the national interest." Travel in violation of the Secretary's order is punishable by imprisonment up to a year, or a fine up to $1,000 or both.

These provisions give the Secretary of State virtually unlimited discretion to prohibit some citizens from traveling abroad, to allow others to do so, and to attach any conditions to foreign travel he deems appropriate. They are quite clearly invalid on their face under the **Kent** and **Aptheker** decisions. The right to travel abroad is a "liberty" protected by the Fifth Amendment and it cannot be denied on the basis of such vague and unlimited standards as "national interest," "imparing the conduct of United States foreign policy," or "adversely affecting the national security."

TITLE IX

No Tax Exemption for Donations to "Subversives"

Title IX is a miscellany of various items. Among other things, it provides that "every Cabinet intelligence item" shall be so marked and "transmitted immediately by the fastest secure means to the office of the head of the Cabinet department to which it is of special significance" (a worthy objective). It likewise denies tax exemption to any charitable or educational organization "which makes any donation to a subversive organization or to a subversive individual."

Annuities for Defectors

A special feature of Title IX is the creation of a "Communist Defectors Awards Board." It is the function of this body to admit Communist defectors to this country, without regard to the immigration laws, and to issue a "certificate of entitlement" which will make available to them "such annuity, payable in monthly installments, as will, in the opinion of the Board, provide such person with an income which, when considered in conjunction with all other income of such person, will allow him or her to maintain a standard of living for self and dependent family comparable to that of the average person in the United States who is engaged in the same profession, occupation, or calling."

Finally, our national security is nailed down by a provision which makes it a felony for any person who is a member of a foreign "espionage organization" to "apply for, accept, or hold employment in any branch, department, or agency of the Government of the United States."

It is happening here— but it can be stopped!

- **Eastland's S. 12 is the most dangerous bill to be seriously considered by this Congress.**
- **Bills as patently unconstitutional did slip through the last Congress to become law.**
- **Eastland has already pushed S. 12 through SISS (Senate Internal Security Subcommittee) by the questionable device of a "telephone poll" of its members.**
- **Anytime after September 3rd (the date Congress reconvenes) any member of the full Senate Judiciary can ask for Committee approval to send S. 12 to the Senate for action.** ***(Senator Eastland is chairman of both the full Committee and SISS.)***
- **Only an informed and aroused Senate can stop S. 12 from becoming law.**

Here's what you can do:

1. **Write or visit (they're home during the Congressional recess) your U.S. Senators:**
   — provide them with this authoritative analysis of S. 12 by Professor Emerson;
   — urge their active leadership to stop Senate action on S. 12.
2. **Contribute to help us fight repressive laws & abolish the inquisitorial Committees (SISS; HUAC/HISC; etc.) from which they emanate.**

Send your check to:

ROBERT S. MORRIS, Treasurer
National Committee to Abolish HUAC/HISC
WASHINGTON LOBBY
3306 Ross Place NW
Washington, D.C. 20008

U. S. Senators Co-Sponsoring Eastland's S. 12

ALLEN (D., Ala.)
BENNETT (R., Utah)
BIBLE (D., Nevada)
BYRD (D., West Va.)
COTTON (R., N.H.)
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HOLLAND (D., Fla.)
HOLLINGS (D., S.C.)
HRUSKA (R., Neb.)
JORDAN (R., Idaho)
MUNDT (R., S.D.)
MURPHY (R., Calif.)
STENNIS (D., Miss.)
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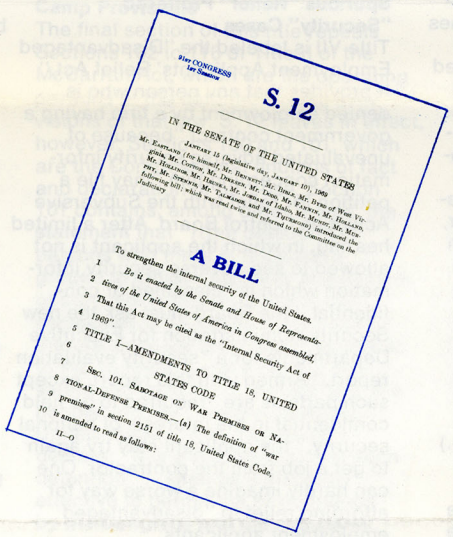

91st CONGRESS
1st Session

S. 12

IN THE SENATE OF THE UNITED STATES

January 15 (legislative day, January 10), 1969

Mr. EASTLAND (for himself, Mr. BENNETT, Mr. BIBLE, Mr. BYRD of West Virginia, Mr. COTTON, Mr. DIRKSEN, Mr. DODD, Mr. FANNIN, Mr. HOLLAND, Mr. HOLLINGS, Mr. HRUSKA, Mr. JORDAN of Idaho, Mr. MUNDT, Mr. MURPHY, Mr. STENNIS, Mr. TALMADGE, and Mr. THURMOND) introduced the following bill which was read twice and referred to the Committee on the Judiciary

A BILL

To strengthen the internal security of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Internal Security Act of 1969".

TITLE I—AMENDMENTS TO TITLE 18, UNITED STATES CODE

SEC. 101. SABOTAGE ON WAR PREMISES OR NATIONAL-DEFENSE PREMISES.—(a) The definition of "war premises" in section 2151 of title 18, United States Code, is amended to read as follows:

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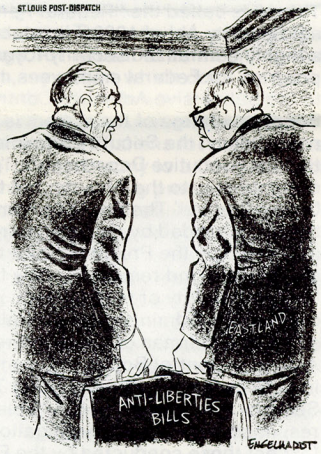

'Does it seem to you that the founding fathers were trying to undermine our American way of life?'

This literature has been prepared as an education-action service by:

National Committee to Abolish HUAC/HISC

[House Committee on Internal Security]

In Pursuit of First Amendment Principle To Abolish Inquisitorial Committees & Oppose Repressive Laws

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