

MARYLAND SENATORIAL ELECTION OF 1950

INDIVIDUAL VIEWS OF MR. JENNER

A MEMBER OF THE SENATE COMMITTEE ON
RULES AND ADMINISTRATION

IN RESPECT TO THE

REPORT

OF THE

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

EIGHTY-SECOND CONGRESS

FIRST SESSION

RELATIVE TO

THE MARYLAND SENATORIAL ELECTION OF 1950



PRESENTED BY MR. JENN.

OCTOBER 16 (legislative day, OCTOBER 1), 1951.—Ordered to be printed

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MARYLAND SENATORIAL ELECTION OF 1950

I. PREAMBLE

On August 23, 1951, a message from William M. Boyle, chairman of the Democratic National Committee, was read to the Midwest Democratic Conference at French Lick, Ind.¹ Mr. Boyle told his audience to get ready for "the most bitterly fought campaign of modern times" in 1952. He referred to the Maryland senatorial election of 1950 which, in recent months, has been the subject of widespread controversy, and said that Republicans would stop at nothing. This present report examines the Maryland election, its background, and the fundamental issue involved. *Any fair reading of it will establish that the Maryland campaign essentially was a demonstration of how doubtful conduct in respect to the Communist issue can and, in fact, did destroy public confidence in a United States Senator and mark him for defeat.*

One great crisis which confronts the United States today arises out of the threat of communism within, and Communist aggression from without.

Over a period of years this issue has provoked growing concern and apprehension among our people, irrespective of party.

The concern and apprehension derive from numerous sources, but none more disturbing than the revelation, during the past decade, that Communists and their sympathizers managed to infiltrate and influence the Federal Government. The concern and apprehension are now acute since we are waging war against Communist aggression. With almost 200,000 casualties of all types in the Korean war against communism, Americans find it impossible to tolerate Communists and Communist sympathizers here at home.

The issue has been slow in coming to a focus where the electorate could directly register their decision upon it.

It was, however, a critical factor in the 1950 senatorial elections in Florida, California, Utah, and Maryland.

II. INTRODUCTION

1. On November 7, 1950, John Marshall Butler, Republican candidate for United States Senator, defeated Senator Millard E. Tydings, Democrat and incumbent, in the general election in the State of Maryland, by a majority of 43,111 votes.

2. Early in December 1950 the defeated incumbent, Senator Millard E. Tydings, made an oral complaint to the United States Senate Subcommittee on Privileges and Elections alleging unfair election practices and violation of Federal and State election laws in the campaign of his successful opponent. On December 15, 1950, he made a written complaint to the same committee. The committee took no action.

¹ Washington Star, August 24, 1951.

3. Upon the organization of the Eighty-second Congress in January 1951 a new Subcommittee on Privileges and Elections was appointed. The complaints of former Senator Tydings were resubmitted to this new subcommittee. It was determined by the new subcommittee to hold hearings on the complaints; and this was done, beginning on February 20, 1951, and continuing until April 11, 1951.

4. On August 3, 1951, the subcommittee submitted to the full Committee on Rules and Administration a report on the Maryland senatorial election of 1950.

The report found, among other things, that—

(a) The committee (in its report and recommendations) *had not* initiated an election contest.

(b) There was no election contest.

(c) The defeated candidate did not challenge the seat in the United States Senate.

(d) No proceedings were instituted in the State of Maryland in accordance with State law, section 168.^{1a}

5. On Monday, August 20, 1951, Senator Carl Hayden (Democrat, Arizona), chairman of the Committee on Rules and Administration, submitted the subcommittee's report to the Senate. On the same day, Senator Kenneth Wherry (Republican, Nebraska), minority leader, discussed the report in a speech on the Senate floor. Subsequently, and on the same day, Senator Joseph McCarthy (Republican, Wisconsin), who had been attacked bitterly by former Senator Tydings, delivered a Senate address, replying to Senator Tydings' charges. Senator McCarthy's views are included in the report of the Committee on Rules and Administration.

III. THE CIRCUMSTANCES THAT PRECIPITATED THE MARYLAND ELECTION INQUIRY

A few days after Senator Tydings' defeat at the general election (November 7, 1950) United States News and World Report interviewed him by telephone from Washington, D. C., to Aberdeen, Md., and published the interview in the magazine on November 17, 1950. It read [emphasis added] as follows:

Q. What do you think was the basic reason for the outcome in your case, Senator?

A. The basic reason, in my judgment, was that the primary campaign for the governorship was so bitter that it demoralized the Democratic Party and brought on a situation that has no parallel in Maryland politics, where the party was split completely down the middle. The fact that I ran about 50,000 votes better than the Governor did is indicative of what I am trying to say, but the demoralization over the whole State was due to the gubernatorial primary, and that couldn't have been healed. *I think that was the principal factor.* Everybody was the victim of it because even the Attorney General, who would normally win by 100,000 or more, won by only about 20,000 and there was no real fight on that office in the sense that there was on the others. It affected everybody.

Q. Had you foreseen any of this in advance?

A. I had seen it coming ever since the primary.

Q. You weren't entirely surprised by it, then?

A. No. Nor were some of my friends that I had talked to—the demoralization was too great to recover.

Q. To what extent was the result influenced by the fact that Senator McCarthy jumped into your campaign?

^{1a} Report of the Committee on Rules and Administration, U. S. Senate, 82d Cong., 1st sess., pursuant to S. Res. 250, p. 12.

A. I don't think that McCarthy as a person did any damage, but I think the issue raised and the propaganda about it had some effect, but it would be secondary to what I have already told you.

Q. What about foreign policy and military policy?

A. That was too obscure to pass any sound, seasoned judgment on it. It was in and out, but never a major issue. The worse thing of all was the demoralization of the party by the gubernatorial primary, where they fought each other so hard that both sides were exhausted and there was a lot of terrible bitterness.

Q. Did you feel there was any resentment particularly around the State on the question of the Korean war and administration foreign policy?

A. I suppose that had some effect. It was minor, too.

Q. How about the "Fair Deal" program?

A. All of those things were obscured behind the demoralization that resulted from the primary. If we had had a united party to go into the general election with, the result would have been entirely different, in my judgment. The party was split wide open, and continued split in many places right up to the end.

Although in this interview Senator Tydings emphasized the split in his own party and admitted Democratic demoralization in Maryland, he did not enumerate the reasons for this demoralization. It seems indisputable that one of the main reasons was the Senator's handling of the so-called Tydings investigation. How this came about and how it was made evident in the Maryland primary election will be discussed later in this report.

Actually the circumstances which precipitated the Senate inquiry into the Maryland campaign were brought about by Senator Tydings himself and under most peculiar conditions.

Up to and including December 7, 1950 (the 30-day period following the election) ex-Senator Tydings could have filed charges under the Maryland corrupt practices law if he had discovered corrupt, illegal, or improper campaign methods used by the Butler organization.

But this he did not do.

Instead, Senator Tydings made an oral complaint to the Senate Subcommittee on Privileges and Elections. Later he presented written complaints. Yet at no time did he contest the election nor, in the light of his claim that he had been libeled, did he ever bring a libel action. He insisted to the Privileges and Elections Subcommittee of the Eighty-second Congress (which held the hearings in the case) that "I have not and do not now ask that any specific action be taken upon the evidence adduced."²

It seems clear that former Senator Tydings' energetic participation in the matter was one of the most compelling reasons for the subsequent investigation.

Why did he do it?

Sometime in December 1950 (the date was never made clear during the hearings) and just before the expiration of his term, Senator Tydings was called on the telephone by an old friend, one S. Charles Friedenber, a Baltimore eggnog dealer.

Friedenber told Senator Tydings³ that an acquaintance of his, a Baltimore commercial garage proprietor named Louis Fried, had brought him a strange story concerning one William Fedder, a Baltimore printer, who had handled a great deal of work for the Butler campaign organization. Friedenber seems to have given Tydings some fragments of what was subsequently known as the "midnight ride" story.

² Hearings before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, U. S. Senate, 82d Cong., 1st sess., pursuant to S. Res. 250, p. 7.

³ P. 2350, p. 1008.

Friedenberg asked if he should bring this man to Washington. Senator Tydings replied, "Yes, Charles, do so."⁴ "Bring him right over."⁵

On or about December 19, 1950, Friedenber, the eggnog man; Fried, the garage proprietor; Fedder, the printer; and Fedder's nephew, Herbert Fedder, assembled in the offices of Senator Tydings in the Senate Office Building. They were met there by Senator Tydings and also by Edward McDermott, counsel to the Privileges and Elections Subcommittee, and Bruce Aultman, a committee investigator. The latter two were present at Senator Tyding's invitation.

At this meeting Fedder apparently told the story of the "midnight ride" in which he and three persons who were working as volunteers in an election post-card project, were participants.

"Apparently told" is imprecise, but a copy of the statement made in Senator Tydings' office does not appear in the printed hearings. In the subsequent hearings Fedder, however, said that he based his prepared statement on what he had said at the December 19, 1950, meeting.⁶

The substance of the "midnight ride" story (which underwent frequent alterations as Fedder later rehearsed it) was as follows:

The three post-card volunteers (identified as Donald Surine, an employee of Senator McCarthy; Ewell Moore, a former part-time employee of Senator McCarthy; and George Nilles, a Washington real-estate salesman) came to Baltimore on the Sunday night before the election by prearrangement with Fedder in order to supervise the mailing of the cards. The practice of distributing post cards and the use of a vote-catching phrase or two are routine operations used frequently by candidates for public office.

According to Fedder, these three men threatened his wife. They held him against his will and forced him to sign a statement to the effect that he had been paid in full by the Butler committee. They drove him to his home and forced him to return a \$500 campaign check. They reduced him to a state of abject terror.^{6a}

This story seems to have galvanized Senator Tydings. It had been told in Baltimore before the meeting in the Senate Office Building and it was told afterward. Fedder admitted that he had told the story to (1) Fried, the garage proprietor; (2) a Baltimore policeman; (3) the Federal district attorney in Baltimore; (4) the FBI; (5) Bradford Jacobs, of the Baltimore Sun; (6) a Mr. Ryan, of the Washington Post; and (7) a Mr. Holland, of the Washington Star.⁷ "I told it so many times," said Fedder, "it's easy to remember wrong. It's easy to get mixed up."⁸

What Fedder never succeeded in explaining was why—since he reiterated throughout the hearing his respect and good will toward

⁴ *Ibid.*, p. 1008.

⁵ *Ibid.*, p. 1010.

⁶ Q. Now you made a complete statement, did you not, on December 19 in the presence of Mr. Fried and Friedenber and Senator Tydings? Did you tell them everything?

FEDDER. I don't know if I told them everything. I told them everything I thought of at that time.

Q. Would there be any reason to conceal anything at that time?

FEDDER. No reason to conceal anything, but each time I go over the story I seem to remember something else. *Ibid.*, p. 84.

^{6a} It may be illuminating, at this point, to insert a brief statement of Fedder's Butler campaign transactions. Fedder testified at the hearing that, in all, he did \$18,099.59 worth of work for the Butler campaign, and that the final payment of \$1,325.70 was made on December 26, 1950. At the time Fedder first went to see Senator Tydings some \$1,300 was still due him on the Butler campaign account, but he insisted that he was not moved to participate in the Tydings interview because money was still owed him. Indeed, he stated that the sum total of his Butler campaign business was "the biggest order I had ever gotten in my life" (*ibid.*, pp. 53, 85, and 999).

⁷ *Ibid.*, p. 89.

⁸ *Ibid.*, p. 89.

Senator Butler and that he had voted for Senator Butler despite his fearful ordeal—he had not during this so-called midnight ride appealed to the Baltimore police for protection. It is clear from the testimony that he had numerous opportunities to do this. But he never did.

The story only came to the surface after ex-Senator Tydings had made his first complaints.

However that may be, the defeated Senator Tydings proceeded vigorously with his own investigation and, before he left the Senate, turned over the leads he had developed to the Privileges and Elections Subcommittee.

He did more than this. He managed to bring about the hiring by the subcommittee of the informer Fried, the Baltimore garage man, as a committee investigator.

Said Fried on this point (and he was not contradicted by Senator Tydings or anyone else):

Senator Tydings said to me, "Would you take a job as an investigator with this committee?" I said I would, and Senator Tydings reached for the telephone, made a telephone call, and I was told to proceed from his office, which was in this building, in room 106, and I was sworn in in room 106, and that is how I came to get this job.⁹

It is a most singular thing that former Senator Tydings' complaints carefully avoided, with no more than passing reference to what was a burning issue in the Maryland campaign, the Senator's own conduct as chairman of the Senate investigation of the loyalty of State Department personnel. This question of Communist influence in Government was of acute importance.

Before we take up the Maryland election hearings, we must consider the background of this Communist infiltration, Senator Tydings' handling of the State Department investigation, and how it became a decisive factor in the Maryland election.

IV. THE REAL ISSUE

It has been said that the fundamental issue which confronts the United States is communism and that our people have become increasingly alarmed as evidence accumulates that Communists and their sympathizers have at numerous times and places penetrated the innermost recesses of the Federal Government and have been able to influence Government policy.

This is no idle fear, as the atomic spy cases, the Coplon-Gubitchev espionage, the Marzani conviction, the Julian Wadleigh confessions, and the Hiss case have shown.

The revelation of the depths to which Communist infiltration had gone in the State Department threw the country into consternation.

This Communist infiltration became a critical factor in the Maryland election because of the strange behavior of the then Senator Tydings in his conduct of the so-called Tydings investigation.

Over a period of 6 months, from February to July 1950, Senator Tydings was chairman of a Senate Foreign Relations subcommittee investigation of Communist influence in the State Department.¹⁰

⁹ Hearings, p. 1032.

¹⁰ The hearings of the Tydings committee ended 1 month after the United States went to war against Communist aggression in Korea.

This investigation was precipitated by charges made by Senator McCarthy in a series of public speeches and Senate addresses beginning early in February 1950.

As a result of these addresses Senator McCarthy found himself the center of the most intense controversy. He was bitterly attacked and vehemently defended.

Under the circumstances it was expected that Senator Tydings would proceed with vigilance, energy, and dispatch with the investigation.

Given the nature of the charges, Senator Tydings had the responsibility of defending the right of Congress to obtain any sort of information that would assist the investigation.

Here was a situation in which concession to secrecy was unthinkable. If the labor involved in making this investigation was taxing and severe, Members of Congress must often undertake such labor. A clear analysis, based upon all of the facts, obtainable from whatever source, was plainly due the country.

What happened? An increasing number of people were at first puzzled, then astounded, and finally incensed by the investigation. The public examination of Browder by ex-Senator Tydings was one of the most extraordinary exhibitions within recollection.

It was inevitable that Senator Tydings' conduct of the investigation would be a crucial factor in the Maryland campaign.

Immediately after the general election, on November 13, 1950, a columnist in the Baltimore Sun (a newspaper which had supported Senator Tydings) made the following revealing comment. The emphasis in the passage is added:

What a very high percentage of the 285,000 Marylanders who went for Mr. Butler seem to have concluded about Mr. Tydings was that in a single, but determinative, episode he served the President as Wolsey served Henry VIII—*not wisely, and in the end not well*. From that first historic television show of the Lattimore hearing, tens of thousands of these people seem to have had a dismaying sense of *levity and lack of inquisitiveness in the chairman*.

What did this editorial writer mean when he said that Maryland voters felt that Tydings had served President Truman "not wisely and in the end not well"?

What did he mean when he said that Maryland voters sensed a "lack of inquisitiveness in the chairman"?

This is what he meant: He meant that Maryland voters believed that Senator Tydings had not been interested in vigorously pushing the investigation because the administration had something to hide.

Nobody believes that President Truman or former Senator Tydings is a Communist or a Communist sympathizer.

But everybody *knows* that Communists and Communist sympathizers *did* infiltrate the executive branch.¹¹

The deadly fear under which the administration lives is caused by the fact that over a period of nearly 20 years Communist infiltration *did* occur and that the administration has so often and so adamantly resisted attempts to get at the facts that if they should ever tell the whole truth now, the President and his officials would be marked, almost certainly, for political destruction at the hands of our people.

¹¹According to an article appearing in the New York Times on August 25, 1951, Vice President Alben W. Barkley told a reporter that 2,500 to 3,500 persons had been separated from Government service after loyalty inquiries.

Here are eight proven examples of this infiltration:

1. It is known that what was probably the first Communist cell in Government was established in the Department of Agriculture in 1934—*nearly 20 years ago*—and that, from this beginning, Communist infiltration fanned out until scarcely a single agency of the executive branch was left untouched.¹²

2. It is known that warning was given in 1939—*12 years ago*—that either Communist or Communist sympathizers in the State Department were giving confidential information to Russian agents.¹³ Despite this warning the administration did nothing and it was not until the Committee on Un-American Activities was able to break the Hiss case (9 years later) that any action was taken.

3. It is known that in 1944—*7 years ago*—secret orders were issued to destroy the War Department's copies of the records of subversives and to remove the originals from the control of the Department by putting them in the hands of the archivists and consigning them to oblivion. It is also known that the destruction of these records was only halted by the quick action of Senator Styles Bridges (Republican, New Hampshire), of the Senate Military Affairs Committee who, discovering what was afoot, went to the Pentagon himself and, as chairman of a subcommittee, forced a promise that the records would not be tampered with. To this day, however, it has been impossible to discover the source of the original order to destroy the records.¹⁴

4. It is known that early in 1945—*6 years ago*—a secret directive was issued by the Army which permitted the granting to Communists of officers' commissions in the United States Army.¹⁵ Only the action of an alert newspaper and pressure from Congress uncovered the existence of this secret directive, forced its publication and subsequent cancellation.

5. It is known that on October 28, 1946—*5 years ago*—the late Mackenzie King, the Canadian Prime Minister, came to Washington to see the President after the uncovering in Canada of a Russian spy ring that had ramifications in the United States.¹⁶ In Canada a royal commission investigated and issued a report. Participants in the spy ring, including Fred Rose a member of the Canadian Parliament, were indicted, tried, convicted and jailed. In the United States the White House maintained a dead silence. More than 4 years had to go by before anything was heard of atomic arrests and no White House report of any kind was ever issued to the American people.^{16a}

6. It is known that in January 1947—*4 years ago*—Carl Marzani, an official of the State Department, was indicted for violation of the Criminal Code. He had concealed the fact that, under the alias of Tony Whales he had been a Communist Party organizer in New York City. Marzani was tried and convicted.

¹² Hearings before House Committee on Un-American Activities, September 9, 1948, p. 1352.

¹³ Testimony under oath A. A. Berle, Jr., former Assistant Secretary of State, before the House Committee on Un-American Activities, August 30, 1948.

¹⁴ Congressional Record, vol. 96, No. 219, January 17, 1951, pp. A8477-A8478.

¹⁵ H. Rept. 839, 79th Cong., 1st sess., Investigation of the National War Effort; also Chicago Tribune, Mar. 1, 1945; also memorandum, The Commissioning of Communists in the United States Army, 1941-46, Congressional Record, vol. 96, No. 219, pp. A8476 ff. which gives the text of the secret directives verbatim.

¹⁶ New York Times, Oct. 29, 1946.

^{16a} Yet, in his speech to the Federal Bar Association on April 24, 1950, President Truman said, " * * * We are striking hard blows at Communist subversion wherever it is found." (See complete text of address Congressional Record, April 25, 1950, p. A3123 ff.)

The case was appealed to the Supreme Court where the conviction was upheld. Marzani went to prison.¹⁷

7. It is known that on July 15 and 16, 1948—*3 years ago*—Robert Alexander, a State Department subordinate attached to the Visa Division, came voluntarily before a subcommittee of the Senate Judiciary Committee and testified that numerous aliens brought into the United States by the United Nations and other international organizations were doubtful security risks.¹⁸

The steps the State Department took to discipline Mr. Alexander for revealing what he did are not known, but it is known that a carefully selected "nonpartisan" committee of three private citizens were invited *by the State Department* to investigate the matter. In due course, on August 31, 1948,¹⁹ this nonpartisan committee concluded that there was "no basis for the charges contained in the testimony" and that they were "shocked by the manner in which these serious charges were made."

Remember what Alexander's chief charge was: That numerous aliens brought into this country by the United Nations were doubtful security risks.

Within 6 months of this nonpartisan endorsement Valentin Gubitchev, a Soviet engineer *employed by the United Nations*, was arrested with Judith Coplon, an intelligence analyst of the Justice Department. They were brought to trial in New York and charged with conspiracy to commit espionage. On March 7, 1950—a year ago—they were convicted of this crime. Gubitchev was deported. The Coplon case is still (October 1951) pending in the courts on appeal.

8. It is known that in February 1950—*less than 2 years ago*—Klaus Fuchs confessed to the British authorities that, while a trusted scientist engaged in atomic research, he had been a Soviet spy and that, acting in concert with a number of Americans, he had been systematically betraying most secret scientific information. In the wake of Fuchs' trial and conviction, came the arrest, trial, and conviction of Harry Gold, the Philadelphia chemist; of David Greenglass, a noncommissioned officer formerly attached to the Los Alamos atom bomb project; of Morton Sobell, an electronics specialist; of Julius Rosenberg, the New York engineer, and Ethel, his wife. Gold is now serving a 30-year sentence. So is Sobell. Greenglass turned State's evidence. The Rosenbergs are now under sentence of death.²⁰

It would be possible to continue this enumeration at great length, but enough has been given to illustrate how, over a period of nearly two decades, Communist infiltration of the Government expanded.

When, upon the death of Mr. Roosevelt in 1945, Mr. Truman became President he had before him a remarkable opportunity to be of public service.

He could have banished the question of Communist infiltration forever. He could have given inexpressible relief to public opinion.

There is reason to suppose (through his encouragement of the FBI in the early stages of the Amerasia case) that his first reaction was to proceed vigorously in the matter, let the chips fall where they might.

¹⁷ Washington Post, June 23, 1947.

¹⁸ Hearings before Immigration and Naturalization Subcommittee of the Senate Judiciary Committee on S. 1832 (1948), pt. 3, pp. A193 ff.

¹⁹ State Department Release No. 699, September 1, 1948.

²⁰ For an account of the relations between Fuchs and Gold see J. Edgar Hoover's article, *The Crime of the Century*, Reader's Digest, May 1951.

Then something happened. Exactly what is not publicly known and it is hardly likely that any detailed and accurate revelation will be forthcoming before this administration is turned out of office.

But this *is* known:

A noticeable chill came over executive circles. Executive officials became increasingly loath to deal with or discuss the infiltration question.

Then, in November 1946, a Republican Congress—the Eightieth Congress which the President has so often and so bitterly denounced—was elected.

This Eightieth Congress assembled in January 1947. It was known that this Congress was determined to proceed vigorously with the Communist infiltration question. At different times during this Congress no fewer than six committees, four in the House and two in the Senate, undertook investigations.

Now, indeed, the administration took action with all speed.

On March 21, 1947, *less than 3 months after the Eightieth Congress had assembled and when their investigations had scarcely begun*, the President issued Executive Order No. 9835. This was the famous Loyalty Order.²¹

The ostensible reason for the Loyalty Order was to protect the United States “against infiltration of disloyal persons into the ranks of its employees.”

The Loyalty Order also had the practical effect of removing the entire investigation from the reach of Congress.

The administration set out to investigate itself.

A special provision was buried deep in the Loyalty Order under the heading “Part VI—Miscellaneous.”

A section of this buried provision read as follows:

The Security Advisory Board of the State-War-Navy Coordinating Committee shall draft rules applicable to the handling and transmission of confidential documents and other documents and information which should not be publicly disclosed, and upon approval by the President such rules shall constitute the minimum standards for the handling and transmission of such documents and information, and shall be applicable to all departments and agencies of the executive branch.

Here was an instrument by which the President might, if he chose, attempt to lay an absolute embargo on information demanded by the Congress from the executive agencies. It provided for *a censorship of the civilian agencies*, a phenomenon absolutely unheard of in the history of this country.

The provision cited did appear in the Federal Register as stated, but elsewhere in the executive branch, as far as research discloses, there was a complete silence.

Viewed from this distance in time, it now becomes quite clear that, if the administration was to protect itself in this enterprise, some excuse, some justification had to be provided.

We find the excuse in the Loyalty Order. It read as follows:

* * * equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government.²²

Was not this the real pivot upon which the administration’s action turned?

Had the administration chosen to deal honestly and openly with the Congress on this issue, had it chosen to rise above party, *the*

²¹ For complete text of the Order see the Federal Register, vol. 12, No. 59, March 25, 1947, pp. 1935-1939.

²² Text of Loyalty Order, op. cit.

machinery of the investigation could have been so organized that no innocent person need have been injured.

The opportunity was clearly present. In Congress the question all but obliterated party lines. Numerous Democrats, as well as Republicans, felt intensely that the truth must be discovered, and given to the public. Indeed, some of the most strenuous efforts toward this end were made by Democrats in Congress, as will presently be shown; but, in the end the administration was able to frustrate these efforts.

The situation grew steadily more acute.

To understand it, a brief reference must be made to the traditional position taken by Congress in respect to its powers of investigation.

This right and power of the National Legislature to investigate anything it chooses is the very last ditch of representative government.

The founders understood this clearly for behind them lay the history of Britain where the Crown had often worked its will, in defiance of the Parliament, through the employment of the star chamber and similar devices.

Nevertheless, the founders did not wish to concentrate all power in any one place. They were setting up a system of checks and balances and the President, as the administrator of Government, must have an area of freedom in which to move.

The result was that congressional demands upon the executive for his records, files, and papers depended somewhat on circumstance. The rights of Congress are real; so are those of the President. When these rights collide we are on debatable ground. The debate will never be settled. It's part of the checks and balances.²³

However, in the past the Executive has been careful not to press too hard. He had rights but prudence dictated that he should not overstress them. And in any matter in which the national interest was involved he clearly must give way for, according to his oath of office, he had sworn to "preserve, protect, and defend the Constitution of the United States."

Within the past 20 years all this has changed. The multiplication of executive agencies after 1933, the increasing employment by the Executive of "information officers" began to put a barrier between Congress and its sources of information in the agencies.

This tendency toward secrecy grew with headlong speed after the issuance of the Loyalty Order in 1947.

It is not to be supposed that the determination to withhold information from Congress and the public was first or exclusively dictated by the wish to conceal Communist infiltration. The appetite had been growing for years. Attorney General Biddle in 1942 tried to put over a censorship bill with Mr. Roosevelt's endorsement.^{23a} Luther H. Evans, the Librarian of Congress, at the sixty-seventh annual conference of the American Library Association at Atlantic City bitterly assailed—

the governing practice in Government of setting up two worlds of information, one free and open, the other secret and closed, an increasing tendency to place information which in former times was free and open in the secret or restricted category.^{23b}

²³ For a discussion of the history and background of the rights of Congress in investigation, see, for example, Memorandum on Proceedings Involving Contempt of Congress and Its Committees, Senate committee print, dated January 6, 1947, 80th Cong., 2d sess., Senate Judiciary Committee.

^{23a} See Arthur Krock's discussion, *New York Times*, October 24, 1947.

^{23b} American Library Association release, June 17, 1948.

Other examples abound. Senator Ferguson in his 1948 speech, "The Iron Curtain at Home," footnoted later in this report, said that—

If every Communist and fellow traveler were discovered and expelled from the Government today, we would still have the problem of executive secrecy on our hands tomorrow.

What happened in the case of the loyalty order was that the growing trend toward secrecy collided with a determination on the part of Congress to get at the facts—in this instance—about infiltration. The administration moved almost automatically to throw another barricade between Congress and the records. There were just too many bodies hidden for the administration to risk exposure.

Since then alarm has spread throughout all our communication mediums. At the April 21, 1951, meeting of the American Society of Newspaper Editors, the society's committee on freedom of information submitted an interim report studded with such sentences as:

Many editors do not know about the arrogant suppression of news all over the place * * *. Most Federal offices are showing exceptional zeal in creating rules, regulations, directives, classifications, and policies which serve to hide, color, or channel news. * * * We editors have been assuming that no one would dispute this premise: That when the people rule, they have a right to know all their Government does. This committee finds appalling evidence that the guiding credo in Washington is becoming just the opposite; that it is dangerous and unwise to let information about Government leak out in any unprocessed form.

As an initial step in breaking the censorship, I introduced a bill (S. 2255) on October 11, 1951, specifically declaring that records made by public officers and Government employees are *the property of the people* and that failure or refusal to open such records to the public or to the American press, except as Congress shall have otherwise provided by law, is unlawful. I intend to press vigorously for action along this line.

So it was, in 1947, that the Congress was confronted with a situation in which, having set out to investigate Communist infiltration, it found itself confronted by an Executive who was determined not only to withhold information about Communists and Communist sympathizers,²⁴ but to keep back information on any subject upon which he or his officials chose to be silent.²⁵

The first discovery by Congress of its peril came by accident.

In October 1947, while the committees of the Eightieth Congress were struggling with their investigations of Communist infiltration, a reporter named Nat Finney of the Washington bureau of the Minneapolis Tribune overheard some employees of the Veterans' Administration discussing a censorship order which had just been imposed in their agency. The reporter followed the lead, managed to get hold of a copy of the censorship code (which had been drawn up in the State Department), wrote a series of stories, and published them. This exploded the works.²⁶

On October 24, 1947, the State Department authorized the publication of a memorandum saying that "these standards merely represent

²⁴ "It is difficult to secure information from an administration which is determined to keep the facts from the people." (S. Doc. 69, p. 42.)

²⁵ This has become steadily clearer in recent months in such instances as the RFC and Internal Revenue investigations.

²⁶ See Minneapolis Tribune, October 24, 25, 29, and November 7, 8, and 19, 1947. Mr. Finney received the Pulitzer prize for his alert and energetic performance.

a codification of existing practices." This could only mean that by unofficial understanding a civilian censorship was already in force.²⁷

A House investigation of the matter was undertaken. Hearings were held.²⁸ Mr. Finney and State Department officials were questioned, but all that happened was that one Harold Moseley, secretary of the State-Army-Navy-Air Force Coordinating Committee, undertook that the censorship project would be held in abeyance until the congressional probe was completed. Further Congress could not get. It was up against a stone wall.²⁹ (The publication 2 years later of the President's September 24, 1951, censorship order—Executive Order 10290—revealed, at last, the President's open determination to censor American newspapers, periodicals, the radio, television—in sum all means of communication.³⁰)^{30a}

Meantime, what was happening to the other congressional committees which were investigating Communist infiltration?

This question is exceedingly important because of Senator Tydings' subsequent statement that four committees of the Eightieth Congress had carried on extensive investigations of the loyalty of numerous Government employees (later named by Senator McCarthy) and had failed to bring charges against them.³¹

²⁷ For a detailed and documented analysis of the development of this civilian agency censorship see, *The Iron Curtain at Home*, an address by Senator Homer Ferguson of Michigan in the Senate, August 7, 1948 (Congressional Record, same date, p. 10190). The speech is of vital significance in the light of Senator Tydings' later accusations that the committees of the Eightieth Congress had investigated Communist infiltration without bringing charges. Senator Ferguson made his address on the last night of the special session. The Eightieth Congress was about to adjourn. The Senator in the immediately preceding days as chairman of a Senate Subcommittee on Expenditures in the Executive Departments, had been investigating the case of William Remington. Not only was the Executive adamant in his refusal to give up the files, but one Matthew Hale, Assistant Solicitor of the Department of Commerce, attempted to bias the refusal to answer questions on the ground that he was a lawyer representing the Department of Commerce and must advise his client, Secretary Sawyer, not to give information. Subsequently he admitted that he had stripped the files upon direct orders from the President of the United States. (See hearings on export policy and loyalty, Senate Subcommittee on Expenditures in the Executive Departments, 80th Cong., 2d sess., pt. 2, August 5, 1948, pp. 340 and 343. See also the interim report of the subcommittee S. Rept. 1775, 80th Cong., 2d sess., September 4, 1948.)

²⁸ Hearings, Subcommittee of the House Committee on Expenditures in the Executive Departments 80th Cong., 1st sess., November 14, 1947, *Investigation of Charges That Proposed Security Regulation Under Executive Order 9835 Will Limit Free Speech and a Free Press*. Subsequent hearings of the House Expenditures Committee on this matter (March 6 and 10, 1948) were never printed. The transcripts are in the committee's files.

²⁹ See *Minneapolis Tribune*, November 19, 1947. Also *Washington Daily News*, February 12 and May 5, 1948.

³⁰ *Federal Register*, September 27, 1951, p. 9796.

^{30a} President Truman in 1947 accused Mr. Finney of setting up a straw man in order to knock it down. When the President issued his open censorship order on September 24, 1951 Mr. Finney, in an interview in the October 8, 1951 *Washington Daily News*, said: "The upshot of what he [Mr. Truman] has done now shows it was no straw man * * * what you'll have now again is the same situation as in World War II when everyone knew about the A bomb but the American people."

³¹ For the Tydings formal statement on this matter see, for example, p. 1079, hearings of the Senate Subcommittee on Privileges and Elections, *Maryland Senatorial Election of 1950*, April 10, 1951. Also Senate speech of Senator Tydings, *Congressional Record*, July 20, 1950, pp. 10861 ff., and Senator Ferguson's rejoinder, *Congressional Record*, July 24, 1950, pp. 10965 ff. Also p. 9 of the report submitted by Senator Tydings on the State Department loyalty investigation. Passages from two different "In the Nation" columns by Arthur Kroek in the *New York Times* at the time of the Hiss disclosures before the House Committee on Un-American Activities may be of interest in the light of Senator Tydings' charge that the Eightieth Congress failed to act. The first is dated August 17, 1948: "After the Administration very belatedly came to the reluctant conclusion that the mere and more, constituted a danger to security, men in the Government, in Congress, and in the press who had been either frustrated or denounced whenever they pointed to this peril and this source began to move openly to get rid of them. But then one of democracy's most lovable faults came into action for their protection. J. Edgar Hoover and his Federal Bureau of Investigation, which supplied the material on which the attempted ousters were based, were assailed as a *gestapo* by citizens who now may be beginning to get an idea of what they were shielding from the only practical process to dislodge it from government. The personnel director of the State Department, Hamilton Robinson, was sacrificed to this clamor by superiors who approved what he had done to protect the public service at this sensitive point and realized its necessity. Any reporter or commentator who described the effort as "star chamber" methods, and contrasted it unfavorably with legal procedure, was almost certain to receive public recognition. Democracy, as so often before, was guarding its most cherished traditions for the benefit of those who are intent on overthrowing it. Now some of the facts are beginning to come out, and the administration which allowed the Government to become a hatchery for the radical thinking that has been turned to such good foreign account has become an embarrassment to its successor. Yet, at the height of the period in which Americans who saw little virtue in their own system in contrast with that of Russia were being welcomed into the Government above all others, the practice went so far that Secretary Hull was induced to take his quota, among them—in a high place—C. B. Baldwin, now Mr. Wallace's campaign manager." (Mr. Wallace was the Presidential candidate of the Communist-

A more deceptive and specious statement than that of former Senator Tydings could scarcely have been devised.

In the first place, ex-Senator Tydings was himself a member of one of those four committees (Senate Appropriations Subcommittee on the State, Justice, and Commerce Departments), a fact which he never mentions. The best recollection of investigators of this subcommittee is that Senator Tydings seldom, if ever, attended a meeting in which these critical matters were under consideration.

In the second place, the refusal of the Executive to give up the files was, in the end, an effective obstruction to the work of these committees.

The one exception was provided by the House Committee on Un-American Activities, which was able through evidence over which the Executive had no control (the microfilm records of Whittaker Chambers) to bring about the exposure of Alger Hiss. The whole attitude of the Executive was revealed in his dismissal of the charges against Hiss as a "red herring." Diligent search has failed to reveal a single instance in which the President uttered a word of criticism of Hiss, even after the truth was known, and, as is known, the present Secretary of State, Dean Acheson, said at the time that he would not turn his back upon Alger Hiss.^{31a} Long before Chambers' public testimony, while Hiss was still a State Department official, Senator Kenneth Wherry (Republican, Nebraska), of the Senate Appropriations Committee, asked for information on Hiss's subversive connections and got nowhere.³²

Now Millard Tydings had been a Senator for nearly 25 years. He had held numerous important Senate committee assignments. He was, at the time of the McCarthy charges, chairman of the Armed Services Committee and a member of the Foreign Relations Committee. He had a long and intimate knowledge of the machinery by which the Congress operates. During his incumbency the increasing practice of the Executive to withhold information had been discussed and analyzed on the Senate floor again and again.³³

Furthermore, at the very moment when he made his statement about the failure of the four Republican committees to act, he surely knew well that the elections of 1948 which returned the Democrats to power had automatically cut off the Republican direction of the unfinished investigations.

Nevertheless, ex-Senator Tydings made these accusations against the Congress.

Let us have the facts in this matter.

The four Eightieth Congress committees which Tydings referred to were—

1. The House Committee on Foreign Affairs.
2. The House Committee on Expenditures in the Executive Departments.

backed Progressive Party in 1948.) The second "In the Nation" passage came 2 weeks later in the New York Times for September 2, 1948. Mr. Krock is discussing Berle's testimony. "Mr. Berle [in the State Department] kept on worrying about this [Hiss] and other situations until he became a nuisance, a favorite word used about him in those days, and he was shipped off to Brazil. The young and talented intellectuals, including those wrongly or truly suspected of past mental flirtations they repented, remained the favorite and most protected group in government until the Republicans organized Congress in 1947." [Emphasis added.]
^{31a} "I disapprove very much of the way in which these legislative committees work. Smearing good people like * * * Alger Hiss and others, is, I think unforgivable." Eleanor Roosevelt's *My Day*, Washington Daily News, August 16, 1948.

³² Washington Daily News, April 27, 1946.
³³ The catalog of the Library of Congress contains more than 180 separate entries—hearings and reports—representing the labor of congressional committees since 1933 in wrestling with the problem of communism in the United States.

3. The House Committee on Appropriations.

4. The Senate Committee on Appropriations.³⁴

The activities of these four committees may be summed up briefly as follows:

1. House Foreign Affairs Committee

Representative Bartel J. Jonkman (Republican, Michigan), a member, was appointed a committee of one to investigate subversives in the State Department in July 1946. This was during the Seventy-ninth Congress, controlled by the Democrats. His appointment clearly showed that there was enough Democratic sentiment for vigorous action on the issue to override party lines.

He went to work at once. On August 2, 1948, he reported to the House on the results of his efforts. Jonkman's difficulty lay in the fact that he was working single-handed. He was led to believe, through the assurances of State Department officials, that vigorous action in dismissing subversives would follow his researches. Through no fault of his own he missed entirely evidences of Communist penetration in the State Department uncovered by other committees. He told the House that he believed that—

the Department of State is now free from persons of whom it is known or there is reasonable cause to believe that they are security risks.³⁵

Apparently he did not know when he made this statement that the Senate Appropriations Committee (see below) had come into possession of information that showed that State Department infiltration went far beyond what he supposed.

2. Senate Committee on Appropriations

Early in 1946, during the Seventy-ninth Congress and not long before Representative Jonkman's efforts began, the then Secretary of State, James F. Byrnes, was a witness before the Senate Appropriations Committee in the matter of the State Department's annual appropriation.

Byrnes was questioned about subversives in the State Department. He said that he was hopelessly handicapped in removing undesirables because of civil-service rules and regulations.³⁶

These regulations, drawn at a time when the question of Communist infiltration was unheard of, are, in part, designed to protect employees from arbitrary and unjust treatment.

To meet this situation, and at the instigation of a Democratic member of the committee, Senator Pat McCarran, of Nevada, the Senate Appropriations Committee agreed unanimously to attach to the State Department appropriations bill a provision which would enable the Secretary of State to dismiss summarily subversive and undesirable personnel without regard to civil-service regulations.

This provision (subsequently attached also to appropriation bills for the Government's most sensitive agencies including

³⁴ Actually there were more than four Eightieth Congress committees working on the question of Communist infiltration. The Senate Investigating Subcommittee whose work has already been referred to was one. The House Un-American Activities Committee was another. But, save for the breaking of the Hiss case, the same fate overtook the efforts of all: The determined refusal of the Executive to give information and the expiration of the Eightieth Congress practically foreclosed effective action.

³⁵ Congressional Record, August 2, 1948, p. 9643.

³⁶ See Congressional Record, July 24, 1950, p. 10966.

the Department of Defense, the Atomic Energy Commission, and the Department of Commerce) was known as the McCarran rider.

This was the situation when the Republicans assumed control of the Eightieth Congress in January 1947.

Within 2 months it was discovered that numerous doubtful security risks were still in State Department employ. The administration's determination to close the files (via the Loyalty Order) had not yet had time to take complete effect and the Senate Appropriations Committee's investigators began to uncover startling information. It was found, for example, that though the McCarran rider had been in effect for more than a year, the State Department had used it only on two occasions.

So alarmed was the committee that the members determined to discuss privately the matter with General Marshall, who by this time had succeeded Mr. Byrnes as Secretary of State.³⁷

General Marshall demanded proof of the accusations. Executive sessions on the question were initiated. State Department officials were called. Previously these same officials had told Senate investigators that there was not one case where a reasonable doubt existed about a State Department employee's loyalty.

Yet, as in closed session, case after case was called to the attention of State officials, the replies were, "I would not attempt to deny that," "I never heard of that case," and so forth. The officials were plainly shaken.

They went back to the Department, examined the cases once more, and on June 27, 1947 announced that 10 persons had been discharged from the State Department under the McCarran rider.³⁸

The Senate Appropriations Committee investigation continued without relaxation.

Suddenly, in November 1947, Secretary of State Marshall announced that the 10 persons discharged had been allowed to resign without prejudice.^{38a}

This was an astonishing reversal, since Marshall himself, 6 days after the 10 were fired, admitted in a press conference that "some" of those discharged had "indirect associations with representatives of foreign powers."³⁹

What had happened was astounding. The public discovery of the Civilian Censorship Code had provoked an intense clamor that the Federal Government was acting in secret with star-chamber tactics.

The administration's design to operate the Loyalty Order in secret had boomeranged. But the confusion and indignation which the Loyalty Order exposure provoked enabled the State Department to undo what the Senate Appropriations Committee had forced it to do. The 10 discharged persons (who represented only a fraction of the doubtful cases) were permitted to resign, which left them free to enter Government employ elsewhere.

³⁷ See remarks of Senator Ferguson, a member of the Senate Appropriations Committee, *Congressional Record*, July 24, 1950, p. 10995, in which the Senator describes the circumstances of General Marshall's confidential discussions with committee members. Senator Ferguson quotes, in extenso, from the June 10, 1947, memorandum which these committee members submitted to General Marshall.

³⁸ *Washington Post*, June 28, 1947.

^{38a} *Washington Post* Nov. 11, 1947.

³⁹ *Washington Post*, July 3, 1947.

Constantine Brown reported in the Washington Star (June 17, 1947) that the State Department was attempting "to draw a curtain between State Department personnel and Congress."

They (State officials) maintain, said Mr. Brown [emphasis added]—

that the employment of fellow travelers and so-called subversives was not the security risk it had been painted since, through their affiliation with front organizations or even with the Communist Party, they can provide important and useful information.

Members of the Senate Appropriations Committee were furious. Fresh information had developed. There was strong evidence of a Soviet espionage ring operating within the executive branch. Some of the suspected participants were State Department employees. It was believed that the publication of what was known would destroy all national confidence in the State Department. Party considerations within the committee were dissolved as the members strove, in private, to persuade the responsible officials of the State Department to rid this agency of doubtful employees.

But by now, through the operation of the Loyalty Order, the files had been slammed shut.

3. House Committee on Appropriations

This committee began its investigation of the State Department in the fall of 1947. In January 1948 a report was submitted to Chairman John Taber (Republican, New York) with appendixes giving summaries of the cases of 108 individuals classified as undesirable personnel.

During the State Department House appropriations hearings (q. v.) in the spring of 1948, this material was used extensively in questioning State Department witnesses. The summaries of the cases (with the names replaced by symbols to assure absolute protection to individuals) were released to the press and widely publicized.

The committee insisted that the State Department take action.

But here also, the clamps of the Loyalty Order had shut down, and nothing was done.

4. House Committee on Expenditures in the Executive Departments

This committee began open hearings in the spring of 1948 to hear the complaints lodged by Representative Busbey (Republican, Illinois)⁴⁰ against Hamilton Robinson, Chief of the State Department Office of Controls, which were listed in a letter addressed to Representative Chenoweth (Republican, Colorado), dated February 2, 1948. Robinson had been one of the drafters of the Civilian Censorship Code. A carefully prepared case against Robinson had been drawn up by Representative Busbey, which questioned Robinson's competence to pass upon security risks. Due to circumstances beyond his control, Representative Busbey was not permitted to present his case in any coherent way. After three hearings, the committee voted 4 to 1 to discontinue. On March 25, 1948, Representative Busbey introduced

⁴⁰ Washington Star, March 10, 1948.

into the Appendix of the Record (pp. A1912-A1924) as an extension of his remarks, his case against Robinson under the title of "What's Wrong with the State Department." Robinson subsequently resigned from the State Department, but it is not known whether the resignation was the result of the public clamor against him, or because of the Busbey charges.

This is the history of those four congressional committees accused by ex-Senator Tydings of investigating, but bringing no charges.

Yet, though the Eightieth Congress was frustrated in its efforts, the question did not die. The issue remained acutely alive.

Despite all the cautions, hesitations, and refusals of the administration evidence of infiltration continued to come to light.

This was the state of affairs when, in February 1950, Senator McCarthy made his first charges against the State Department.

The concern of the administration was understandable. It was clear that, despite the operation of the censorship provisions of the Loyalty Order, despite the refusal to grant unimpeded access to the records, the mere raising of the question was dangerous.

Within a matter of weeks the word "McCarthyism" was first heard. With all speed, every channel of communication and publicity that the Administration could influence, was pounding at "McCarthyism" in general and the Wisconsin Senator in particular.

A recent comment of Time magazine is germane:

The policy of pretending that Communist influence in Government didn't exist can be called "Trumanism." It is the real father of "McCarthyism."⁴¹

It would have been scarcely possible for the junior Senator from Wisconsin to have attracted national attention on this issue had it not been that for nearly 20 years suspicion, anger, and frustration had been building up in the minds of the American people. If there was no fire behind all these years of smoke, *why didn't the administration open its records?*

The Senate, yielding to the manifest necessity of investigating the McCarthy charges, passed a resolution calling for an inquiry. The then Senator Tydings was appointed chairman of the Foreign Relations Subcommittee assigned to the task.

Bits and pieces of this long and wretched story, going back almost 20 years, were known in Congress and throughout the country when Senator Tydings undertook the responsibility of the investigation in 1950. He had before him the greatest opportunity which any Senator in this generation has had to render a public service of incalculable value and to win the everlasting gratitude of his countrymen.

Instead, he chose, for reasons known best to himself and, perhaps, the President, to botch the opportunity. Instead, he managed to add still another chapter to the long story of suppression and concealment.

He knew what his duty was and he evaded it. His evasion was so obvious that the public at once detected it. His conduct proved a decisive factor in the ensuing Maryland election and he was defeated.

Before attention can be given to the Maryland campaign, however, a brief survey must be made of Senator Tydings' handling of the Senate investigation of the McCarthy charges.

⁴¹ Time, August 27, 1951, p. 18.

V. SENATOR TYDINGS' CONDUCT OF THE STATE DEPARTMENT LOYALTY INVESTIGATION

The original Senate resolution (S. Res. 231, adopted February 22, 1950), which followed shortly upon Senator McCarthy's charges, directed the Senate Foreign Relations Committee to conduct—

a full and complete study and investigation as to whether persons who are disloyal to the United States are or have been employed by the Department of State.

Also—

In the conduct of this study and investigation, the committee is directed to procure, by subpoena, and examine the complete loyalty and employment files and records of *all* the Government employees in the Department of State and such other agencies against whom charges have been heard.⁴²

No attempt will be made to deal in detail with this investigation. It was given wide coverage by the press and is still fresh in the minds of the public. Chairman Tydings' handling of Earl Browder, who was a witness, was so astonishing as to provoke comment throughout the country. Later, when Browder was discharged from Senate contempt, Prosecutor William Hitz made pointed reference to—

the arrogant and defiant attitude Browder displayed *toward all but the Chairman [Tydings] and counsel of the Tydings subcommittee.*⁴³ (Emphasis added.)

The bias shown by Senator Tydings was reflected in his famous remark to Senator McCarthy during the hearings:

You are in the position of being the man who occasioned this hearing, and so far as I am concerned in this committee you are going to get one of the most complete investigations ever given in the history of this Republic, so far as my abilities permit.⁴⁴

In short, Senator Tydings convinced the public that he was more interested in investigating Senator McCarthy than he was in investigating the charges.

The character of Senator Tydings' management of the hearings may be shown in three examples:

1. THE CASE OF THEODORE GEIGER

At the time of the Tydings investigation, Theodore Geiger was one of Paul Hoffman's top assistants in the ECA. Previously he had been an employee of the State Department. Evidence existed which showed that, while a member of the faculty at the College of the City of New York, he had been a member of the Communist Party. It was far from clear that this connection had ever been broken.

Subsequently his record was brought up for investigation by the Tydings committee. Later still, the following colloquy occurred at a hearing and the printing of this colloquy—the printing being under Tydings' control—occurred under extraordinary circumstances. It was suppressed in the published hearings and was only printed later

⁴² For the full text of the resolution see hearings before a Subcommittee of the Committee on Foreign Relations, U. S. Senate, State Department Employee Loyalty Investigation, pt. 1, March 8, 1950, p. 1. The documentation of the Tydings investigation includes the volume cited, pt. 2 (appendix), pt. 3 (the section containing the colloquy about Theodore Geiger), the committee report and the separate individual views of Senator Lodge, the latter identified as S. Rept. 2108, pt. 2, 81st Cong., 2d sess., dated July 20, 1950. (Emphasis added.)

⁴³ Washington Star, March 14, 1951, p. A3. Justice Dickinson Letts' opinion in the same case reflected complete agreement with Prosecutor Hitz' description of the atmosphere that prevailed. See appendix I.

⁴⁴ Hearings before a subcommittee of the Committee on Foreign Relations, United States, Senate, 81st Cong., 2d sess., pursuant to S. Res. 231, p. 6.

at the insistence of Senator Lodge.⁴⁵ (State Department Employee Loyalty Investigation, pt. 3, June 28, 1950, pp. 2521-2522.)

Mr. MORRIS (assistant counsel to the committee).⁴⁶ There is a case of a man named Theodore Geiger. He has been an employee of the State Department. He is now one of Paul Hoffman's top assistants. He is doing work that is quasi-State Department in character. I have gone and gotten some witnesses together who will testify that he was a member of the same Communist Party unit as they were, and I think that we would be delinquent if in the face of this evidence that is now on the record—

Senator TYDINGS. Why didn't you tell us this? Why did you wait until this hour to tell me?

Mr. MORRIS. I am not waiting, Senator. One day Senator Green made me a witness and I put it all in the record.

Senator TYDINGS. You haven't told me about it. This is the first time I have heard about it.

Mr. MORRIS. Senator, I assume that you are aware of everything in the record.

Senator TYDINGS. No; there are some things in the record I haven't been able to read.

Mr. MORRIS. Certainly Mr. Morgan [the committee counsel] knows it. I have mentioned it several times to him.

Senator GREEN. That wouldn't have anything to do with my motion.

Senator TYDINGS. Turn it over to the FBI or do something else with it. I would like to get a decision here. We don't want to waste this afternoon. [Emphasis added.]

In sum, although according to the Senate resolution, the Tydings committee had been expressly directed—

to conduct a full and complete study and investigation as to whether persons who are disloyal to the United States *are or have been* employed by the Department of State—

and although it was clear that Geiger had been a State Department employee, Senator Tydings dismissed the matter out of hand. The investigation was not made.

Not only was this true, but later, on April 10, 1951, in his second appearance before the Rules Committee's Subcommittee on Privileges and Elections, former Senator Tydings said:

We were asked to investigate the case of Mr. Geiger, who worked for the ECA and not for the State Department. (Hearings p. 1098.)

This was plain deception. Former Senator Tydings was testifying under oath. He knew or on the basis of the record should have known that the original Senate resolution directed him to investigate any case brought before him of persons who *had been* State Department employees. (Remember, that at the time of the investigation Geiger was still a Government employee.)^{46a}

Identical treatment was given to the case of Gustavo Duran. Duran was employed by the State Department from 1943 to 1946. He had been charged with being a secret Soviet agent in the Spanish Republican Army. (In February 1950 Duran was employed in the office of the Secretary-General of the United Nations at Lake Success.⁴⁷) Ex-Chairman Tydings abruptly dismissed the Duran case and in the report which was submitted he stated:

In view of the fact that his employment in the Department ceased before the loyalty program was instituted, we do not feel that a discussion of him is merited

⁴⁵ See Congressional Record, July 24, 1950, pp. 10972 ff.

⁴⁶ Mr. Morris is presently engaged as staff director of the Senate Committee on Internal Security. This committee is energetically pursuing the task of eliminating security risks from within the Federal Government.

^{46a} Geiger himself upon application for employment with the E. C. A. on April 30, 1948, stated on the form, under sec. 5, Complete Employment History, the following:
September 1945-July 1947—Executive Officer, Mission for Economic Affairs, American Embassy, London, England.

⁴⁷ See United Nations Telephone Book, dated February 1, 1950, p. 27.

in the body of our report. For the possible interest of the readers of this report, however, we have set forth an appendix of the charges made against Duran and his reply thereto.⁴⁸

Of what does the matter in the appendix consist? Simply a denial by Duran of the charges. Ex-Senator Tydings did not make the slightest effort to investigate them despite the fact that under the terms of the Senate Resolution, investigation was mandatory.

The charge against Geiger was neither frivolous nor irresponsible. A group of witnesses had been assembled. Yet Senator Tydings refused to act.

The charge against Duran simply was not investigated. Senator Tydings junked the case.

2. THE AMERASIA CASE

This case is one of the chief skeletons in the administration's closet. To this day the whole truth is known neither to the Congress nor the public.

The Senate investigation offered Senator Tydings a remarkable opportunity to bring the truth to light. A number of persons involved in the case were witnesses in the Tydings inquiry. The examination of the Amerasia witnesses by Senator Tydings and the committee counsel was casual and routine and showed no evidence that the Senator—whose reputation as an adroit and energetic attorney is well known—was determined to ruthlessly push the investigation.

Briefly, the background of the case is as follows:

The case began with a raid on the New York premises of Amerasia magazine by agents of the wartime OSS, who were verifying the fact that material used in the magazine had been taken from classified documents of the United States Government. The FBI was called in and began its investigation on March 12, 1945.

On June 7, 1945, after several months of investigation, the FBI, *on orders of President Truman*, arrested six persons.⁴⁹ They were: Philip Jaffe, editor of Amerasia; Kate Mitchell, his coeditor; Mark Gayn, a free-lance writer; Andrew Roth, a commissioned officer in the Navy and assigned to ONI; John Stewart Service, Foreign Service officer in the State Department; and Emmanuel Larsen, also employed in the State Department.

On August 10, 1945, true bills were returned against Jaffe, Roth, and Larsen in that they were violating section 88 of title 18 by conspiring to violate sections 100, 101, 234, and 235 of title 18. Service, Mitchell, and Gayn testified in their own defense before the Federal grand jury and no bills were returned against them.

On September 28, 1945, a motion to quash the demurrer and *a motion to suppress the evidence* were filed simultaneously by Larsen's attorney.

This motion to suppress the evidence seems to have been the critical point upon which the case turned.

It is not the concern of this report to question why the Department of Justice failed to fight the motion to suppress evidence. However, because of Senator Tydings' later use of the same material, it is of more than passing interest to know what the Justice Department had accomplished in the original instance.

⁴⁸ Report of a subcommittee of the Committee on Foreign Relations, pursuant to S. Res. 231, p. 30.

⁴⁹ See the testimony of Myron Gurnea of the FBI before Subcommittee No. 4 of the House Committee on the Judiciary, May 31, 1946, Congressional Record, May 22, 1950, p. 7565.

The Justice Department marked time with the prosecution. Jaffe, on October 2, 1945, pleaded guilty and was fined \$2,500. Larsen, on November 2, 1945, entered a plea of nolo contendere and was fined \$500. The third defendant, Lt. Andrew Roth, received a nolle prosequi on February 13, 1946.⁵⁰

The Government made no effort whatever to appeal the motion to suppress the evidence.

In the fourth point in the Larsen motion it is stated that—

Said evidence was obtained by means or with the aid of information acquired by secret and illegal search of said defendant's home by agents of the FBI prior to his arrest and the illegal seizure of said evidence.⁵¹

It is a fact and it is known that the search of Larsen's effects did not occur in the apartment where he was living when he was arrested and from which the evidence was taken.

The Justice Department seems to have accepted the bare allegation of an illegal search, unsupported by evidence or affidavit, as a sufficient excuse for conceding that illegal search had occurred.

At one stroke the Government ruined its own case. Why?

There were no fewer than six additional points in the Larsen motion to suppress evidence which, if pursued by the Tydings committee, might have opened up the truth about the Justice Department's handling of the case which had had the effect of leaving the mystery deeper than it was before.

The record is clear. The OSS and the FBI did their duty. Their efforts were wasted by the Justice Department.⁵² The opportunity for a revelation of Communist influence in the State Department was thereby thrown away.

The practical effect of Senator Tydings' handling of the Amerasia case was the ruin of another opportunity to learn the truth.

3. WHAT TYDINGS DID IN THE MATTER OF THE FILES ON THE ACCUSED

The report of the Senate investigation submitted by Senator Tydings contained this passage:

Upon ascertaining that the cases with respect to the individuals named by Senator McCarthy were identical with individuals whose loyalty files had previously been reviewed by four committees of the Eightieth Congress, the President, on May 4, 1950, agreed to make the loyalty files available for review by our subcommittee with respect to such individuals, on the theory that to do so would not establish a precedent for subsequent exceptions in violation of his March 13, 1948, directive. Accordingly, arrangements were made for the review by members of the subcommittee at the White House of the files concerning the individuals charged by Senator McCarthy in his February 20, 1950, speech on the Senate floor.⁵³

A considerable show was made of the President's earnest desire to cooperate by his opening the files on this occasion.

What happened?

⁵⁰ One of the numerous subsequent attempts to get at the facts in this case occurred in 1946 when a House Judiciary subcommittee took it up in closed session. In the report (H. Rept. 2732, 79th Cong., 2d sess.) Representative Springer in his minority views made the categorical statement that "The evidence presented at the hearings disclosed the fact that Andrew Roth, a lieutenant (junior grade) in our Navy was known to be a Communist by the board passing upon and granting commissions in the Navy, and that fact was so known at the time he was recommended for a commission as a lieutenant (junior grade) in the Navy." See also the section on Lieutenant Roth on p. 65, *The Forrestal Diaries*, New York, Viking Press, 1951.

⁵¹ Criminal case 75457, U. S. District Court for the District of Columbia. The trial record contains a detailed history of the court proceedings mentioned above.

⁵² For a lengthy discussion of the Justice Department's conduct of the Amerasia case see Senator Lodge's individual views, S. Rept. 2108, pt. 2, 81st Cong., 2d sess., pp. 2-15.

⁵³ Subcommittee Print, State Department Loyalty Investigation, p. 9.

Senator Lodge was a minority member of the subcommittee and one of those who visited the White House to inspect the files. He says in his individual views that—

the subcommittee was allowed to see the files only under such stringent limitations as to preclude our getting much essential information and as to make our work extremely cumbersome. We were not only bound and specifically forbidden from discussing any individual case by name outside of the room in the White House where we saw the files, but we were also forbidden from taking any notes from the White House. We were categorically denied the help of technical career personnel, such as FBI men, to help in the interpretation of the many technical questions which were raised in the files. No assistance from the subcommittee's professional staff was permitted.⁵⁴

In other words, the files were "opened" and then every possible obstruction was put in the way of their use.

VI. THE MARYLAND ELECTION INQUIRY

On February 20, 1951, the Subcommittee on Privileges and Elections of the Committee on Rules and Administration met in open session to hear the testimony of witnesses called in the controversy over the Maryland senatorial election of 1950. The hearings continued until April 11, 1951. Testimony running to 1,193 pages was taken from 48 individuals.

The inquiry seems to have been an investigation based upon what Senator Tydings said Senator Butler's campaign practices were and not into the right of Senator Butler to hold his seat.

This may explain why Senator Butler was never formally invited to appear as a witness prior to February 20, 1951, when he used his personal privilege. Senator Tydings, on the other hand, *was* invited to appear and emphasized the fact in his testimony.⁵⁵

Senator Butler, however, attended the hearing and rose, on a point of senatorial personal privilege—

to raise the question as to the type of jurisdiction that the committee proposes to exercise and as to the nature of these proceedings.⁵⁶

I have been informed—

said Senator Butler—

that at this hearing witnesses are to be publicly heard whose testimony may involve criticism of me personally, my qualifications, and my conduct of my campaign. I, therefore, earnestly insist that before the hearing of any testimony, it is essential for the committee to determine the character of the hearing.⁵⁷

In closing his statement, Senator Butler said that if his opponent was going—

to use the investigative process as a rostrum to repeat his campaign arguments or to explain away his defeat, then surely this committee is establishing a precedent under which every defeated candidate, especially in close elections, will attempt to do the same thing.

I earnestly suggest to the committee that there would be great danger that hearings conducted to permit defeated candidates to rehash political arguments of a campaign will degenerate into smear attacks on the reputations of Senators, under the guise of investigation as to legislation.

Moreover, examination of witnesses at public hearings where no bill of particulars has been given as to any complaints inevitably means a fishing expedition which will give wide publicity to vicious campaign gossip.⁵⁸

⁵⁴ S. Rept. 2108, pt. 2, 81st Cong., 2d sess., p. 20.

⁵⁵ Hearings, p. 7.

⁵⁶ Hearings p. 1.

⁵⁷ Hearings, p. 1.

⁵⁸ Hearings, p. 4.

This was a telling point in the light of Senator Tydings' subsequent discursive statements before the committee which had the almost inevitable effect of distracting attention from the question of his conduct of the Tydings investigation.

At the outset, one circumstance of the campaign deserves attention. Despite the fact that Senator Butler was widely and favorably known as a Maryland lawyer and had been a highly regarded resident of Baltimore for many years, he was a political novice. He never before had participated in a political campaign.

Furthermore, Maryland is "normally" a Democratic State and there was practically no Republican organization. In his statement to the subcommittee Senator Butler recalled that no Maryland Republican had been elected Senator since 1928 and none elected Governor since 1934.⁵⁹

It is true that Theodore R. McKeldin, the Republican who was elected Governor of Maryland in November 1950, was experienced in politics, but during the period before the primaries he was absorbed in his own campaign.

The result was that Senator Butler, an amateur in politics, started with no organization whatever and pieced together one as he went along.

A Chicago public-relations man named Jon Jonkel was hired and put in charge of campaign publicity. Senator Butler ran into difficulties in finding a capable campaign director; and Jonkel, by a process of default, assumed the job.

One other factor requires attention. The Butler campaign treasurer was a Baltimore lawyer named Cornelius Mundy. At the hearing he testified that he had not wanted the job at all.⁶⁰ He seems to have taken it only out of friendship for Senator Butler.

As it worked out in practice Treasurer Mundy was sometimes inaccessible and in the later turmoil and excitement of the campaign, Jonkel, intermittently, became paymaster as well as campaign director.

Ex-Senator Tydings made a great point of the fact that Jonkel, not a citizen of Maryland, was campaign director—a violation of Maryland law—and that his disbursements of campaign funds were highly irregular.

These facts cannot be denied. Nevertheless, the circumstances were clear and no evidence was found anywhere that showed that Senator Butler or Jonkel or anyone else in his organization had consciously violated the law or spent money corruptly. The money went for perfectly legal and legitimate campaign expenses.

The violations of Maryland law may not be excused,^{60a} but there are no grounds whatever for accusing or implying that Senator Butler or any of his people were guilty of subterfuge or corrupt intent.

Indeed, one of the remarkable things about the hearings was that Senator Tydings aside, the witnesses one and all attested their high regard for Senator Butler.

A dispassionate survey of the testimony leads to but one conclusion: Senator Butler was a secondary target for former Senator Tydings' animosity, if he can be said to have been a target at all.

Senator Tydings' real wrath seems to have been directed at the "carpetbaggers," who, in the persons of Senator McCarthy and Mrs.

⁵⁹ Hearings, p. 4.

⁶⁰ Hearings, p. 533.

^{60a} Nor was Jonkel excused. On June 5, 1951, he paid a fine of \$5,000 for his carelessness in the keeping of his accounts.

Miller (now Mrs. Garvin E. Tankersley), the then editor of the Washington Times-Herald, and their subordinates and acquaintances, participated in the campaign.

These "carpetbaggers," in one way or another, were concerned with the circumstance that caused Senator Tydings the most trouble—his conduct of the Tydings' investigation.

Briefly stated, former Senator Tydings' charges were:

1. That a defamatory tabloid newspaper, *From the Record*, was distributed late in the campaign, so late that Senator Tydings did not have adequate time to combat it. (This tabloid contained the much-discussed composite photograph of Senator Tydings and Browder.)

2. That a full page-advertisement in the *Baltimore American* for November 5 contended that the Republican counsel in the Tydings State Department loyalty investigation was neither allowed to question witnesses nor attend closed sessions.

3. That Roscoe Conkling Simmons, identified by Senator Tydings as "a colored gentleman of Chicago,"⁶¹ traveled through Maryland addressing Butler meetings and assisted in the distribution of a campaign folder, *Back to Good Old Dixie*, and that this folder named as sponsors persons who had never authorized the use of their names.

4. That the campaign finances were carried on in a manner irregular in the highest degree (for example, in the payment of printing bills) and that Senator Butler had, in a signed letter, guaranteed the payment of \$12,000 worth of printing bills when, under Maryland law, he could personally contribute to his campaign fund no more than approximately \$2,500.

5. That the Butler campaign was one of "moral squalor,"⁶² that the famous Fedder ride was "Chicago gangland style, imported into Maryland for the first time."⁶³

6. That numerous broadcasts of Fulton Lewis, Jr.,⁶⁴ during the campaign were not the views of a news commentator at all, but were simply political speeches aimed at Senator Tydings' defeat.

The lasting impression left by the testimony is that of a desperate effort by former Senator Tydings to divert attention from the place where he was so vulnerable (the Tydings' investigation) and in some manner rehabilitate himself.

Who would question but that Senator Millard Tydings had compromised his reputation? Could he now reestablish it?

Manifestly he could not defend the course he had taken. He seems to have felt that one thing he could do was to attack his successful opponent. This was difficult.

Senator Butler was not a dishonest man and couldn't be made to look like one. So, out of bits and pieces, a patchwork sort of indictment was worked up.

This impression emerges clearly from any dispassionate survey of the hearings.

The truth about Senator Butler's "irregular" campaign finances has already been cited.

⁶¹ *Ibid.*, p. 18.

⁶² *Ibid.*, p. 19.

⁶³ *Ibid.*, p. 19.

⁶⁴ Fulton Lewis, Jr., is a resident and voter in the State of Maryland.

Nothing more needs to be said about Fulton Lewis' broadcasts other than that Lewis was highly conscious of the nature of Tydings' conduct of the State Department investigation and, as an energetic news commentator, simply made hay with his material.

The notion that Roscoe Conkling Simmons (or any of the other "carpetbaggers" for that matter) committed some sort of crime by participating in the Maryland election is preposterous. In the history of the American party battle, the use of out-State assistance in a campaign has been commonplace. Nor is it dishonest.

The truth about the Fedder midnight ride may never be known. In his testimony Fedder contradicted himself repeatedly and the conduct of Fried, the informer, was baffling in the extreme. It is not unlikely but that the three volunteers in the election postcard project did believe that Fedder was short-changing the campaign fund and behaved summarily with him, but the notion that Fedder thought himself in danger of his life when he had many opportunities to appeal for, and get, protection simply passes belief. And to build this incident up, as it was built up, as an example of gangsterism that threatens to destroy the democratic process is simply trash.

As for the celebrated tabloid, some people seem to feel that its use violated an ideal. It is worth strenuous emphasis to say that the very essence of our political system implies that not only the issues, but the pent-up animosities, the knowledge of facts hitherto concealed, are all brought forth in a campaign. By the discharge of all this the air is cleared, the people register their decision at the polls, and the defeated party accepts the decision.

In the matter of the Baltimore American advertisement of November 5, 1950, it would seem as though the clearest explanation is that given in a portion of the testimony before the subcommittee by Mrs. Margaret T. Berndt, the Baltimore lady who wrote the advertisement. It reads as follows:

I might say that I am a registered Democrat, and I was sure that a thorough and sufficient investigation would be made under his [Tydings] direction, and that we would know the truth one way or the other.

As the hearings progressed, I reluctantly came to the conclusion that such was not the case. I attended the hearings through May 1. [They began February 20.]

After that, severe illness in my family prevented further attendance. During the period in which I attended the hearings, it was repeatedly requested that the minority counsel be allowed to question the witnesses. Each time the request was denied by the chairman.

When the minority counsel attended the executive session at which Mr. Budenz was to be examined, Mr. Tydings told the counsel to leave, and said that that went for all other executive sessions. This was in late April.

It certainly did not occur to me, and I don't believe that it would occur to most laymen, that the rules would be changed, when over half the sessions had been held, and many important witnesses had been heard.

It seemed somewhat like changing the rules of a ball game in the seventh inning. At that time I made up my mind that I would work to help the Republican who won the senatorial primary in the general election. I could not tolerate seeing boys that I had watched grow up being sent to distant parts of the world to fight communism and not learning the truth about the same communism within the very Government that was sending those kids abroad.

Consequently, last fall I did everything I could, and I was sure that Mr. Tydings would be defeated.

I remembered that in the previous January or February I had read an article in one of the labor papers urging his defeat, and asking union members to contribute money for that end. I wanted to see Mr. Butler win by as large a majority as possible.

Late in October I saw a copy of part 3 of the Tydings committee report. That was the part that was not published with the rest. This part contained the case of Theodore Geiger.

The minority counsel stated in this report that he had witnesses who would testify that Geiger belonged to the same Communist cell that they did.

After a brief discussion, Mr. Tydings said to turn it over to the FBI, or do something else with it, "I want to get a decision this afternoon."

In view of the wording of the resolution under which the committee had operated, this was too much for me. In my opinion, this one case was typical of the whole investigation.

Mr. Tydings had been given a job to do by the United States Senate, and in my opinion he had not done it. I wanted the voters of Maryland to know that. I wanted to use this case in a full-page advertisement.

At first I planned to use a large reprint of this case with one question under it, "Why weren't these witnesses called?" But, because it made better copy, I decided to use the ad as it subsequently appeared.

The Geiger case was the important part of the ad. To this day no one knows whether Theodore Geiger is guilty or innocent. If I were he, and were innocent, I would resent this state of affairs.

On the night before the election Mr. Tydings, over television, stated that the first two statements on the lower part of the page under the Geiger case were unmitigated lies.

On checking up, this was the first time that I knew that the rules were changed in the seventh inning. What is more, I learned that this change was not due to any change of heart on Mr. Tydings' part, but was due to the strenuous objection of Senator Lodge. Since this statement was true for over half the sessions, in my opinion it ill became Mr. Tydings to question them. It would have been a simple matter to put an asterisk after the statements, and beneath to have said, "From March 8 to May 4."

I think this even might have improved the ad, because many readers would say to themselves, "How come?"

In my opinion, Mr. Tydings' anger, which was obvious on television, was due to the main part of the advertisement. For this part he has offered no valid explanation.⁶⁵

The very absence of Federal legislation dealing with the manner of conducting elections (aside from money corruption, the outright theft of votes and the deliberate rigging of election machinery) is proof of the remarkable success of the American system.

History has shown that the imposition of unreasonable restrictions can lead to unmitigated tyranny where, at the last, the people are permitted simply to formally assent to decisions previously made by their government.

Any effort of the Federal Government to dictate to the people of a State rules, regulations, and conduct for conducting an election should be regarded with intense anxiety and vigorously resisted.

In his testimony before the Privileges and Elections Subcommittee, Senator Butler's publicity man Jonkel made one devastating statement.

He said:

* * * long before the tabloid was ever put out, there were 100,000 people who did not want to choose a nominee for the Democratic Party for the United States Senate. That was well indicated and the doubt was there * * * the doubt was there and we knew it.⁶⁶

In other words, one of the reasons for Senator Butler's election was this doubt. Senator Butler would have been a feeble candidate indeed if he had not appealed to this doubt, and what is more, he would have been derelict in his duty if he had not, in his campaign, relentlessly driven home the facts about the Tydings investigation.

⁶⁵ Hearings, pp. 506-507.

⁶⁶ Ibid., p. 273.

It has been mentioned previously that when Senator Tydings was interviewed by U. S. News and World Report immediately after the election, he attributed his defeat to the "split" in the Democratic Party and to its "demoralization."

What was the reason for the demoralization? There were numerous reasons, no doubt, but as far as the senatorial campaign was concerned, one significant fact stands out:

In the Democratic primary 339,091 votes were cast for candidates for the *governorship* and only 224,729 votes for the *senatorship*.

More than 100,000 *Democratic* voters at the primary refused to vote for any senatorial candidate at all. Plainly, the distrust of, if not positive anger at, Senator Tydings within the Democratic ranks was very deep and one compelling reason for it is clear.

Then Jonkel made one other statement that deserves a place in the political science textbooks. He said:

* * * We had in the last election the same kind of issue that the Democrats used against the Republicans in the Hoover campaign, and that was * * * the guy selling apples on the street * * * we will never live down the apple. *The Democratic Party has to resolve the issue of communism. It is a big issue. The doubt exists.*⁶⁷ [Emphasis added.]

What it amounts to is that the administration has managed to completely compromise the Democratic Party on the issue of communism.

That this is a bitter situation for loyal Democrats is true, but their party must purge itself on the question before the country will ever trust them again.

How the Communists infiltrated the Government has been traced in this report.

How Democrats—but not all Democrats—strove to conceal the fact has been proven in this report.

VII. CONCLUSIONS

1. The Subcommittee on Privileges and Elections unanimously concluded after exhaustive investigation that there was no evidence proving unfair election practices or violations of Federal or State election laws in the Maryland campaign of 1950.

2. It was developed that the inquiry into the Maryland elections of 1950 was requested by former Senator Millard E. Tydings and limited only to the conduct of the campaign of Senator Tydings' opponent.

3. The device whereby defeated candidates can utilize congressional committees as forums for accusations against their victorious opponents is lamentable.

4. The infiltration of Communists into the United States Government was the critical issue in the Maryland campaign of 1950. The character of the investigation into the loyalty of State Department employees, which ex-Senator Tydings conducted, was the principal cause for his defeat.

5. The people of the State of Maryland met the issue at the polls on November 7, 1950, and will have an opportunity to do the same thing again in 1952.

WILLIAM E. JENNER.

OCTOBER 11, 1951.

⁶⁷ Ibid., p. 267.

APPENDIX I

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Criminal No. 1784-50)

United States of America v. Earl Russell Browder

THE COURT: It is charged that the defendant refused to answer the sixteen questions specified in the indictment. The defendant's responses to such question were in some instances in the nature of objections and expression of the defendant indicating his claim of supposed rights. The Court thinks the Committee members so understood defendant's answers to such questions. A search of the record will not disclose one instance when the Committee or its presiding member overruled the defendant's objections or offered to set him right if, perchance, his observations were ill founded or his position untenable in the eyes of the Committee. Indeed in large part the Committee must be regarded as respecting his sincerity in the expression of his views. The Court thinks this a very considerate and proper attitude on the part of the Committee. Perhaps as many as one hundred and forty or fifty questions were propounded which were fully and freely answered by the defendant without show of pique and with no attempt to evade the consequences of the information as imparted or any possible implications.

In viewing the few instances when it is said in the indictment the defendant refused to make responsive answers it is noticed that the record reveals nothing of an obdurate nature in the manner and demeanor of the defendant. On the contrary he made his objections in the way of observations which seemingly were acceptable to the Committee, since on no such occasion was the defendant ordered or directed to make answer. It happened when one of the questions was asked the defendant was told by the interrogator that he might refuse to answer if that was his desire.

It is clear that the defendant was called as a witness on a very narrow issue at the behest of Senator McCarthy to refute the testimony of Professor Budenz. The examination was not so limited, although it is likely the interest of the majority of the Committee was kept within the scope of such purpose. Simple justice and fairness require that the examination of the defendant be appraised in the light of that setting and that it be weighed as a whole and not as unrelated pieces. The questions and answers must be seen as links in a chain. It would not become this Court nor approach our vaunted concepts of justice to submit this case to the jury on doubtful technicalities. It is revealing to note that during the course of the examination the defendant persisted in knowing the attitude of the Committee concerning his position in refusing to answer the several questions with which we are now concerned. At one point in the questioning the defendant replied, "If you are going to make an issue of this let's have it out as to whether I have to disclose who was present when I met with the Government delegation from China to the United Nations. If I have to testify about that before this Committee I think it is a question which should be very seriously considered and the Committee itself should take a position." It is certain that the Committee at no time announced its opinion or conclusion as to the merits of defendant's objections.

It is asserted that a condition of confusion and discord prevailed in the Committee. As the Court sees this it makes little or no difference what the fact is in that regard. The Court is not concerned with any controversy as to whether the labors of the Committee were performed in good faith to effectuate the purposes of the investigation or whether there was a concerted purpose to whitewash persons whose names had been brought into the hearings as has been asserted. It is more pleasing to this Court that the issues here presented be determined upon the record unclouded by politics or other extrinsic considerations.

That the questions propounded by Senator Hickenlooper as set out in the various counts of the indictment are of doubtful pertinency to the subject of the authorized investigation becomes clear, when the remarks of the Senator at the close of his interrogation of the witness are understood: "these questions, Mr. Chairman, that I have asked have the utmost pertinency to the direct and intimate subject matter of this resolution and I should be glad to go into the matter with the Committee a little more in detail. I assure you that they have a direct bearing." The Court concludes that the Senator suspected that the other members of the Committee did not understand or see the relevancy of his ques-

tions. Notwithstanding his offer to explain such pertinency to the Committee the opportunity was not afforded him to reveal his purposes. It would be an unwarranted assumption to say that the witness understood what the members of the Committee could not grasp and this makes more revealing the failure of the Committee to rule on the defendant's objections or otherwise to enlighten him as to the pertinency of the questions and to advise him as to his obligations and his rights.

The witness informed the Committee that he regarded the inquiry concerning individuals as the beginning of a fishing expedition. When under examination by Senator McMahon the witness evinced a willingness to testify concerning the persons named by Senator Hickenlooper and indeed did give to Senator McMahon in a substantial way the information which Senator Hickenlooper had sought.

When Mr. Browder had been excused and when Chairman Tydings had thanked him for his cooperation the Chairman said, "I would like to ask Senator Hickenlooper if, in that list of names that you read, many of which I have not heard of before, there are any employees who have been in the State Department or are now in the State Department, and if he will not give me those names so that I may see if we can reach an understanding and at the same time try to keep you in the character that you say you want to remain in." Seemingly in replying to the Chairman, Senator Hickenlooper said, "But every one of these questions that I have asked this witness has been asked for the purpose that I believe it can lead to information in connection with the State Department activities." This indicates that Senator Hickenlooper had in mind that the interrogation might possibly lead to information in connection with the State Department activities. In these circumstances the Court thinks that the response of Senator Hickenlooper lends support to the belief of the witness that the Senator was embarking upon a fishing expedition.

At the very end of the examination Senator Tydings in effect relieved the defendant from any obligation to answer the questions which had been propounded to him concerning individuals except Vincent and Service and as to them the defendant said, "To the best of my knowledge and belief, they never had any direct or indirect connection with the Communist Party."

The Committee owed to the defendant a show of sincerity and frankness which was withheld unless indeed it acquiesced in his claim of privilege. His objections were not acted upon and he had the right to believe that his views and explanations were acceptable to the Committee.

Viewing the case in the light of the event, the attending circumstances, the declared yet uncertain purpose of the Committee, the make-up of the Committee, the defendant himself, who he was and had been, his behavior before the Committee, and the obvious and obscure mental processes of persons concerned the Court could not permit a verdict of guilty to stand. The Court is prepared to grant defendant's motion for a judgment of acquittal. It is so ordered

