More repressive legislation

Spend the summer at Camp (concentration)

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When Congress reconvenes November 16, it will be considering some bills of an astoundingly repressive nature. While the Organized Crime Bill (FREE PRESS, Nov. 6) and the DC Crime Bill (FREE PRESS, July 31) are already law, some of the new bills make those already passed seem liberal by comparison.

Congress will be considering H.R. 19163, referred to in many circles as the Concentration Camp Law. Although this is by no means the only piece of repressive legislation they will be considering, it is certainly one of the most repressive of the bunch. A great sense of urgency has arisen over H.R. 19163 and the other bills, because there is a great likelihood that they will all become law within the next month.

H.R. 19163 was written as a response to a bill (S. 1872) which would repeal Title II of the Emergency Detention Act of 1950. Passed into law during the McCarthy Era, Title II provides the groundwork for detention centers in America.

Section 102 of Title II reads: "In the event of. . . insurrection within the United States in aid of a foreign enemy. . . the President is authorized to make public proclamation of the existence of an 'Internal Security Emergency.'"

Section 103 of the law reads: "Whenever there shall be in existence such an emergency, the President, acting through the Attorney General, is hereby authorized to apprehend and by order to detain, each person as to whom there is reasonable ground to believe that such person will probably engage in, or probably will conspire with others to engage in, acts of espionage or sabotage."

As a point of clarification, Title II has been law since 1950. Senator Inouye drafted a bill (S. 1872) which would repeal Title II. S. 1872 passed the Senate and went to the House, which sent it to the House Internal Security Committee (HISC). HISC not only rejected the Title II repeal, but reported out a new bill, H.R. 19163.

In order to fully understand the necessity of repealing all of Title II, one must understand some of the basic objections to Title II. The Japanese American Citizen's League has been fighting for the repeal of Title II for quite some time now and they have done extensive research on the law. In one of their analysis of the law, the JACL lists seven major areas of objection to Title II. The following is a synopsis of that analysis: (Quotes are directly from the JACL Analysis)

1) Standard of Guilt---The fact that someone is guilty because they "may probably commit a future act," is, at best, "certainly vague, indefinite, and illusory." "No showing is required that the accused committed or attempted to commit a crime. The fact that he may do so is sufficient to justify detention even though what may probably happen is equally consistent with the concept that it may probably not happen."

(please turn to page 8)

(continued from page 3)

2) Right of Counsel---"There are no provisions allowing for the basic right of any indigent person criminally accused to be represented by an attorney."

3) Right to a Reasonable Bail---The accused is not permitted the right to bail.

4) Warrant for Arrest---"Under this Act, the prosecution (Attorney General) issues the warrant for the arrest of the accused whereas, under the traditional rules of criminal procedure, the court or a judicial magistrate is entrusted with this responsibility."

5) Prosecution-Appointed Hearing Examiner — "The detention hearing under Title II is held before a hearing officer appointed by the prosecution (Attorney General) rather than permitting a trial before an impartial jury or judge."

6) Presumption of Guilt---The accused is presumed to be guilty until proven innocent.

7) Cross Examination and Secret Evidence---The prosecution has the right to bar the accused from seeing evidence, because doing that would endanger "national security." Thus, how can the accused properly evaluate his case, or cross-examine witnesses, when he is not allowed to see all "evidence" against him.

The JAGL concludes with the following summary: "The arrestee, (a) confronted with a presumption of guilt, (b) unapprised of the secret evidence against him, (c) charged with the crime of a future probable act, (d) arrested by a warrant issued by the prosecution, (e) subjected to a hearing before an examiner appointed by the prosecution, (f) denied the right to legal counsel if indigent, (g) disallowed reasonable bail pending his hearing, in truth, has but one feeble recourse remaining, to wit, to waive his right against self-incrimination and to testify on his own behalf."

While H.R. 19163 would amend Title II, many Congressional critics point out that the amendments would not eliminate the basic objections of Title II. H.R. 19163 would make four basic changes in Title II.

First, it would require a concurrent Congressional resolution to go along with the Presidential declaration, in order to declare a state of "Internal Security Emergency."

Second, it provides that "No citizen of the United States shall be apprehended or detained pursuant to the provision of this title on account of race, color, or ancestry." While this amendment could somewhat calm the fears of the Japanese (imprisoned in camps during World War II) and the Blacks (In 1968, HUAC reported the necessity of Black Detention Centers in the event of insurrection, guerrilla war, or "acts of violence"), another section of H.R. 19163 provides for detention along political lines. (Dealt with later.)

A third amendment which H.R. 19163 would make is to make legal counsel available for the indigent. The question must arise though---how much good is legal counsel? They are accused first (without bail) with legal proceedings taking place later. Within 48 hours, or "as soon as provision for it may be made," a preliminary hearing shall be held. At the preliminary hearing, the accused may waive further legal proceedings and consent to be detained. If the accused does not waive further legal proceedings, "the preliminary hearing officer shall hear evidence within a reasonable period of time." Still, though, no jury trial is permitted: the presiding hearing officer is the one who signed the warrant for arrest, and evidence may be hidden from the detained defendant. According to the law, the "Attorney General or his representative shall not be required to furnish information the revelation of which would disclose the identity or evidence of government agents or officers which he believes it would be dangerous to national safety and security to divulge." So the accused may be denied the right to even see the evidence against him because to do so would be contrary to national security.

The fourth Amendment which H.R. 19163 makes actually raises the number of people which can be incarcerated. This section expands the definition to any "organization, or movement which is Communist or which has as a purpose the overthrow or destruction by force or violence of the Government of the United States or any of its political subdivisions." Thus, the new bill would extend Title II to all "movement" organizations, whether they are Communist or not.

Pursuant to the writing of H.R. 19163, the House Internal Security Committee held hearings on the question of security risks and detention centers. One of those who testified was Robert J. Goddard, Director of Corporate Security for Hughes Aircraft Company. The following are excerpts from Goddard's testimony (given on April 21, 1970):

"My name is Robert J. Goddard. I am Director of Corporate Security for Hughes Aircraft Company. My associate is Russel E. White, who is Industrial Security Consultant for the General Electric Company. We appear before you as representatives of the Electronic Industries Association. . . (which) represents more than 300 manufacturers of all types of electronic systems. We would like assurance that there is a lawful and otherwise proper mechanism for detention of known security risks---whether Communists or whatever---in the event of national emergency. . . As we read Title II, we find nothing unreasonable about the intent of Congress to provide authority for selective detention of any individual 'as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage' during a state of Internal Security Emergency. In this connection, it would seem that the law is properly is placed in Title II of the Internal Security Act of 1950, and that it includes sufficient safeguards to protect individual freedoms. . . the biggest threat to the orderly conduct of business in defense facilities, of course, is people---the wrong kind of people. . . (thus) it is highly important in our judgement that known security risks be taken out of circulation."

It should be noted, though, that three months later, both Hughes Aircraft and General Electric issued statements proclaiming that Goddard and White were expressing their own views. James Beam, Hughes spokesman in Culver City, said, "As a member of EIA, Mr. Goddard simply stated a view of his own."

In many circles, the amendments which H.R. 19163 makes are meaningless. Thomas Emerson, Professor of Law at Yale University and the Advisor on Constitutional Law for the National Committee Against Repressive Legislation, says, "The changes embodied in the bill, however, are in part trivial and in part even more repressive than the original. . . in short, H.R 19163 would leave the detention camp provisions on the books in a form which, on balance, is probably more restrictive than the present law."

Emerson goes on to state that "the crucial constitutional objections all remain. The Act makes provisions for holding people in detention camps, upon suspicion of the Attorney General, where no overt act has been committed, where the safeguards of trial by court are denied, and where the person incarcerated does not even know the evidence against him."

Anyway, H.R. 19163 is expected to reach the House floor soon after Congress reconvenes November 16. Along with H.R. 19163 are many other bills, such as S. 12, sometimes referred to as the "Police State Bill," H.R. 14-864, which provides for inquisitions along Orwellian lines (This one has already passed the House, 289-89, story, FREE PRESS, August 14) and the Bail Reform Act (provides for Preventive Detention). Next week, I will try to deal with some of the others.

For more information on all the repressive legislation in front of Congress, contact the National Committee Against Repressive Legislation, 555 N. Western, or phone 462-1329.