News and Comment

The Security Program: New AEC Regulations Are a Reminder of How Much Things Have Quieted Down

The Atomic Energy Commission has issued new regulations providing (with very limited exceptions) employees and applicants whose fitness has been challenged under the security program with a right to demand a confrontation with their accusers. The AEC so became the first government agency to grant this right. Coming, as it did, from one of the most security-conscious agencies in the government, it appears likely that this procedure will eventually become standard throughout most of the government. Indeed, even without a formal change in the regulations, the tendency for some years has been to allow more and more opportunity for confrontation, even though, except for the industrial security program described below, there has been no right to demand confrontation written into the regulations.

What the new regulations mean is that a man accused, for example, of associating with communist sympathizers will normally have the right to insist that the informant be called before the review board considering the man's case and be open to cross-examination by the man's attorney. The additional protection this gives to the accused man can be very substantial: he not only can determine far more precisely than he could from a written statement of charges just what he is supposed to have done which has brought his fitness into question, and so be better able to offer a rebuttal, but perhaps more important, he can, through the process of cross-examination before the review board, give the board a clearer idea of whether the charges ought to be taken seriously at all. A charge that a man is a communist sympathizer looks considerably less serious if, on cross-examination, the accuser turns out to be someone who regards reading the New Republic as evidence of communist sympathies; a charge of excessive drinking looks considerably different if it comes from a neighbor who is a passionate prohibitionist.

What led up to the new policy was a Supreme Court decision in 1959 (Greene v. McElroy) which had to do with the industrial security program for private employers doing work for the government on classified projects. McElroy was Secretary of Defense at the time; Greene was an employee of a private firm when his clearance was revoked by the Department of Defense. He lost his job, since the job necessarily required access to classified information. The Court threw out the revocation on the narrow grounds that neither Congress nor the President had explicitly authorized the industrial security program to deny the right of confrontation and cross-examination. It deliberately left up in the air the question of whether the procedure might be inherently unconstitutional, whether explicitly authorized or not. This narrow ruling was in line with the traditional reluctance of the Court to commit itself to a consitutional interpretation if a case can be decided on narrower grounds. As it happened, the Court was never forced to meet the constitutional question, for the Eisenhower Administration responded to the Court's nudge by providing the right of confrontation and cross-examination in cases coming up under the industrial security program.

The new AEC regulations now extend this right, for the first time, to people employed directly by the government.

Exceptions

The AEC regulations, like those for the industrial security program, allow exceptions in three kinds of cases, essentially: 1) to protect the identities of undercover agents working for the government within subversive organizations; 2) to allow the review board to consider important and apparently reliable adverse information when the informer is clearly unable to appear in person, usually due to death or serious illness. In these cases the identity of the informer is disclosed; 3) finally there is an escape clause allowing an exception to be made "due to some other cause determined . . . to be good and sufficient." But this clause has never been invoked under the several hundred cases that have come for review under the revised industrial security program, and indeed in only 11 cases has the right of full confrontation been denied on any grounds. A protection against possible arbitrary use of any of these exceptions is that the head of the agency involved must personally authorize any exceptions.

The most significant thing about these new regulations is, in a real sense, that they have been put through so routinely: 8 or 10 years ago such regulations would have been major news; today they have been largely ignored, and indeed the experience since 1960 with the revised industrial security program suggests that they have not really made much difference in the results of the security program. This might be interpreted to mean either that the investigations of security cases have been prudently handled so that few cases reach the review stage in which the informants can be shown on cross-examination to be unreliable; alternatively, it could be suspected that the review boards are so set against the charged man that even the right of confrontation does not help him much. In fact, the former is clearly the more reasonable hypothesis, for a check with the American Civil Liberties Union reveals that the ACLU has been asked for help on security cases very rarely in recent years, a sharp contrast with the situation of the early 1950's.

Nothing has been heard in recent years of the kind of cases which were so notorious earlier in the decade in which a man was forced to go through a harrowing, lengthy, and expensive procedure where the case turned out to be based on nothing more serious than the gossip of unfriendly neighbors. What led to such cases in the early years was apparently a combination of a certain amount of hysteria; a desire by the Administration (Truman's as well as Eisenhower's) to appease McCarthy, or at least to reassure the general public that the Administration was getting

after subversives; and during the first Eisenhower years, pressure on the agencies by the Administration to find a reasonable number of security risks to fulfill the campaign promises to clean out the government. One of the results of this pressure was the famous "numbers racket" in which some extremely odd techniques were used to swell the totals of the cleanup; for example, the security files of people leaving the government perfectly voluntarily were checked, after they had left, and if adverse information turned up they were counted as among the security risks the Eisenhower administration had gotten rid of. This apparently left quite a few people leery of taking a new job outside of the government for fear they might then be classified as security cases on the basis of adverse information that could easily have been answered had they ever known it existed. With this sort of attitude at the top levels of the Administration, it is not surprising that the screening boards were sometimes over-quick to decide that the raw files contained enough adverse information to warrant bringing charges against a man. In recent years, the screening boards have simply been doing a better job in making the "commonsense judgment" required by the regulations for evaluating the raw files. There is undoubtedly a certain amount of unavoidable unfairness left, particularly in the treatment of applicants for routine jobs, who may be passed over (without being labeled security risks) simply because they are dubious cases and their jobs are not important enough to be able to go to great lengths to definitely decide whether they are clearable. But the serious problems of the early '50's seem to no longer exist.—HOWARD MARGOLIS

Cigarettes and Cancer: Pressure Grows for the Government To Respond to Health Hazard

"If tobacco were spinach," said a longtime cancer researcher, "the government would have outlawed it years ago, and no one would give a damn."

Tobacco, however, bears only a superficial botanical resemblance to spinach; it thereafter soars to a unique place in mass affection and economic significance to become politically and socially immune to legal banishment. As a consumer product that is neither food nor drug, it qualifies for federal scrutiny only under regulations affecting deceptive advertising, and these regulations have been invoked only to exclude health claims. The consumption of tobacco, in short, is not a matter that comes under any existing federal authority.

In 1957, Americans paid $5.3 billion to buy 442 billion cigarettes; last year, they paid $6.9 billion for 528 billion cigarettes. But while they have been puffing, the conclusion—valid or not—has been growing that cigarettes are detrimental to health and that they contributed heavily to some 37,000 deaths from lung cancer last year. The tobacco industry vigorously disputes this conclusion, but the "position" of the American government on the relationship between smoking and lung cancer is a 1959 report of the surgeon general, which states:

"The weight of evidence at present implicates smoking as the principal etiological factor in the increased incidence of lung cancer." (The American Cancer Society stated the case more strongly 2 years ago when it concluded that a variety of studies had established "beyond reasonable doubt that cigarette smoking is the major cause of the unprecedented increase in lung cancer.")

The surgeon general's expression was not followed by any government action outside of stricter policing of advertising, nor, as the sales figures would seem to indicate, has cigarette consumption been adversely affected. Recently, however, at a number of points in the federal government, the conviction has grown that the health hazards of cigarette smoking have been sufficiently well established to warrant more potent federal action, that the government should move from its role of cautioning bystander to a more positive role.

Action Abroad

The economic importance of the tobacco industry and the power of the tobacco-producing states in Congress preclude, for the present at least, anything resembling the vigorous anti-smoking campaign recently undertaken by the British government. The British action followed a report by the Royal College of Physicians which concluded "that cigarette smoking is the most likely cause of the recent world-wide increase in deaths from lung cancer."

The Royal College report was promptly endorsed by the government, and the Ministry of Health subsequently distributed more than 400,000 posters, which, if they do not discourage smoking, will most certainly undermine the mental well-being of cigarette advertising copywriters. One of the posters states: "Danger! Heavy cigarette smokers are thirty times more likely to die of lung cancer than non-smokers. You have been warned."

The British cigarette industry responded by scheduling its television advertising for after 9 P.M., a concession of questionable realism to the Royal College's concern over the effect of cigarette advertising on youth. One British firm has also removed its product from vending machines to help prevent circumvention of the law which forbids cigarette sales to persons under 16. In Italy, meanwhile, Parliament vigorously assaulted the problem by slapping an outright prohibition on cigarette advertising.

Prohibition Not Feasible Here

In this country, there is no easy political path to direct action of the British and Italian variety. In addition, the experience with prohibition has left behind deep suspicion of any effort to promote government regulation of individual tastes. At the same time, however, the accumulation of evidence on the hazards of smoking is providing support for the view that it is the responsibility of the government to do something. The White House is steering clear of the issue, for it can only further arouse congressional elements that are already generally hostile to the Administration. But Kennedy's broad view of the role of government in American life has created a background that favors government concern about tobacco consumption.

Against this background, the following developments have taken place:

The Federal Trade Commission is becoming increasingly dissatisfied with its ability to regulate cigarette advertising. It has succeeded in banning health claims, but sales have not been affected, and, of particular concern to the FTC, the manufacturers are putting considerable effort into wooing younger smokers. This is reflected, in part, by the heavy promotional campaigns conducted on college campuses, with prizes ranging from small amounts of cash to sports cars. There is growing sentiment at the FTC for further restricting advertising by requiring "affirmative disclosure" of health hazards,