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THE DISCLAIMER AFFIDAVIT OF THE NATIONAL DEFENSE EDUCATION ACT

BY

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INTRODUCTION

The National Defense Education Act of 1958 contained loyalty provisions which have been opposed by a large portion of the academic community and by liberal thinkers and groups concerned with civil liberties. The object of their protest is Section 1001(f) which requires that all applicants for funds under the act sign both an oath of allegiance and a disclaimer of disloyalty affidavit. This much discussed provision reads as follows:

> No part of any funds appropriated or otherwise made available for expenditure under authority of this Act shall be used to make payments or loans to any individual unless such individual (1) has executed and filed with the Commissioner an affidavit that he does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods, and (2) has taken and subscribed to an oath or affirmation in the following form: "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic." The provisions of section 1001 of title 18, United States Code, shall be applicable with respect to such affidavits.

This thesis is a legislative study of the loyalty provisions of the act. It will be concerned both with the

reasons for their insertion and the attempts by the academic community to remove them. The study will deal with three main subjects in an attempt to obtain an understanding of Section 1001(f) and the movement for deletion of its loyalty provisions.

At the outset we will attempt to present a general history and analysis of oaths and affidavits in the American experience. They are not new here, but what is hard to explain is why some oaths have been considered offensive and others not, and why some groups and activities have been selected as proper for oath requirements and others not. Inevitably, of course, the courts have been called upon to express their opinions on the constitutionality of various oaths. The principal opinions and decisions will be reviewed as a necessary part of the background for a discussion of the N.D.E.A. requirements. This chapter should, incidentally, be of interest to political scientists not especially concerned with legislative behavior because of the close relationship between national security provisions and the civil liberties of individual citizens.

The principal focus of the study, with which most of the rest of the thesis will concern, is on the performance

of the national legislature which made the loyalty requirements a part of its national defense educational legislation and which has so far refused to take them out. The first question is how the provisions came to be put in the Act. A popular conception of democracy probably would hold that most legislative acts are a product of a felt need on the part of a substantial portion of the public. Operating through interest groups and their members of Congress, people get laws made which reflect their fears and desires. In the case of the loyalty provisions of the N.D.E.A. this popular conception proves to be altogether wrong. Evidence will be presented which suggests that there were no "felt needs" in operation, and indeed that most members of Congress and even the members of the legislative committees with jurisdiction were not even aware that the provisions had been inserted in the Act. The process by which the provisions of Section 1001(f) <u>were</u> put in the Act therefore becomes a second major interest of the study.

If the loyalty provisions were not enacted in response to community pressures (and we shall argue that they were not) the next question then would be why, when strong opposition developed, they were not removed from the

Act forthwith. The major portion of the descriptive material will focus on this question. One part of the answer will be sought in the peculiar nature of the problem itself: the provisions deal with loyalty; it is hard to be against them without appearing to be against loyalty itself. This dilemma of the legislator tells us much about the meaning of representation in this democratic system. Another part of the answer must be found in legislative structure, in the difficulty generally experienced by some interest which must force its policy through Congress over the many varied hurdles which the Constitution and the history of Congress have erected. This is the "defensive advantage" David Truman talks about, which has been the despair of successive generations of interests intent on making new laws or changing old ones.

The last part of the answer will require an examination of the character of the principal interest involved, the "academic community." This part of the answer is suggested by the difficulty involved in even naming, much less describing, this loose grouping of people. It is not an association, organized and knit for legislative

battle, although there are loose and not especially effective organizations in it. It is not an institution, though there are institutions which shape its character and play a large role in the struggle we will describe. It is not united; on the contrary, it is not possible to say even what the majority view among its constituent parts is on this issue. There are individuals and institutions among it which have supported the loyalty provisions which others have opposed. We use the term "academic community" for lack of a better one. We refer to those individuals and institutions and associations which loosely and together make up the part of our population which devotes their energies and their professional lives to higher education. We speak of the "academic community" as being opposed to the loyalty provision of the National Defense Education Act because its more prestigious, more aggressive and more vociferous members, individual, institutional and associational, <u>were</u> opposed to them.

One part of the answer to the question why repealer efforts have failed will, we believe, turn on the tactics employed by this academic community, tactics which rallied much support to their side but also stiffened the opposition

and made repeal even more difficult in the light of the resultant public attention. The rationale for the tactics employed must be found by considering once again the character of the academic community; given its lack of organization, even of an official voice, and the character and experience of the people who compose it, the question is whether it could in fact have used tactics substantially different. The people who make up the academic community are by vocation and inclination intellectuals and individualists, not easy to arouse and unite in a single-minded effort. The traditions of their craft require that the arguments they advance be arguments that the consider intellectually respectable, the right arguments, which they can accept themselves. Tactics and arguments which might be available without conflict of conscience to some other groups are foreclosed to academic people.

In sum, this thesis is a study of the efforts of an interest to effect a change in the law, and how that effort was affected by the character of the issue, by the structure and procedures of the legislature, and by the characteristics of the interest itself as a grouping of human beings.

CHAPTER I

A LOOK AT LOYALTY OATHS AND DISCLAIMER AFFIDAVITS

In this chapter we will look at the general nature of loyalty oaths and affidavits, so that we can better understand the overall context in which the N.D.E.A. loyalty provisions emerged. We will begin with general definitions of oaths and affidavits, including their major characteristics. Following this, a survey of the history of loyalty oaths and disclaimers in American history will be presented. Finally, in order to clarify the present constitutional status of oaths and disclaimers, we will include a brief study of court decisions in this area.

Definition

The loyalty provisions of the N.D.E.A. which are found in Section 1001(f) require applicants to file both an oath of allegiance and a disclaimer affidavit. The general purpose of these provisions is to separate the loyal from the subversive, and to deny the latter certain rights and privileges. It is also hoped that the loyalty

provisions will serve to strengthen the traditional loyalties of the devoted citizen.

It is important to recognize at the outset that the loyalty oath and the disclaimer affidavit are not of the same nature. Because these provisions are inherently different we will find later in this study that many persons who were opposed to the affidavit of the N.D.E.A. were not similarly disposed in regard to the oath. An oath of allegiance merely requires a promise of future fidelity to the sovereign, whereas a disclaimer affidavit (and similarly test oaths) are more complex. Instead of simply calling for future adherence, the disclaimer is often retrospective. Thus the signer must reveal past as well as present affiliations and beliefs.

Although the concept of allegiance is fixed, the standards of loyalty are ever changing. The language of disclaimers must therefore be specific so as to define loyal action at one point in time. In other words, action which may have been considered disloyal in past years, (e.g., sympathy with Britain during the Revolutionary war) may be regarded as totally innocent today. Since the effort to define loyal behavior is a difficult one, authorities often circumvent the problem by establishing what is <u>not</u> considered to be patriotic activity. There-

fore, disclaimers are stated in negative language. In short, a loyal person is defined as someone who has not become involved in certain specified activities or adhered to particular beliefs (e.g., a loyal citizen is one that is not a member of the Communist Party).

On the other hand, oaths of allegiance are neither negative, retrospective, nor specific in wording. Such oaths require the signer to indicate future allegiance in very general terms (e.g., to uphold the Constitution). Past actions are never questioned and particular future action is not stipulated. Thus, we find a clear distinction between the substance of a simple loyalty oath (or oath of allegiance) and a disclaimer affidavit (or test oath).

Since it is the avowed purpose of loyalty oaths and affidavits to ferret out subversives and to instill or strengthen fidelity to the nation, they have been imposed in periods when the government has felt threatened or insecure. It is at these times that the authorities feel the need to make distinctions between the loyal and the disloyal and to deprive the latter of government benefits of various kinds. On the other hand, when it is felt that there is no significant group threatening internal security,

loyalty provisions have no use or are not demanded. Thus, it is usually in the climate of fear and anxiety that loyalty oaths have been most prevalent.

> Loyalty tests are crisis products. They emerge from the felt needs of authorities during wars, rebellions and periods of fear of subversion.[1]

By tracing the pattern of loyalty oaths in United States history, one can more fully understand their place in American life.

Early History

Loyalty oaths were introduced to America by the early colonists who patterned them after the English religious test oaths. When Henry VIII broke from papal domination, he established a series of loyalty tests to measure the worthiness of individual Englishmen. Those who refused to sign were suspected of adherence to Roman ecclesiastical authority and disloyalty to the British crown. Non-juring was considered an admission of guilt. Persons who did not swear were then subject to varying degrees of punishment ranging from property confiscation,

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[1]Milton Greenberg, "The Loyalty Oath in the American Experience" (unpublished Ph.D. dissertation, Department of Political Science, University of Wisconsin), p. vii.

to exile, or even death.

Loyalty tests were continued by subsequent English monarchs. James I required in Virginia that every company officer and colonist swear an oath of "allegiance and supremacy" in order to prevent Catholics from settling there. Thus, the first settlers at Jamestown were affected by the loyalty tests.

The Pilgrims who arrived on the shores of New England in 1620 had been persecuted as non-jurors in England and had fled to Holland before coming to America. Yet the Mayflower Compact which they formed, served in part as a loyalty test so that they might establish their own Pilgrim community without internal dissent.

The Pilgrims were followed by other Puritans who established a loyalty oath in 1634 to insure strict adherence to their theocratic government. In fact, in 1639, the loyalty oath was the first item to be run-off when the first printing press in the English-speaking colonies was put to use. It is interesting that the printing of the oath took precedence over any religious text.

As the colonies became more populated and the geographical area for settlement increased, loyalty oaths were employed as an attempt to unite the various colonies under the authority of the Crown. These oaths were prerequisites for suffrage and office holding. However, such loyalty tests were largely unsuccessful, since they ultimately failed to keep the colonies bound to the Empire.

After 1763, when the British began a new tax and trade policy toward the colonies, the groups who were adversely affected organized and adopted retaliatory measures. Illicit Whig committees were formed and they agreed to boycott British goods. Local committeemen recruited other colonists to "buy American" in order to make the boycott effective. In 1774, at the meeting of the Continental Congress, a uniform boycott for all the colonies was formulated. This agreement, known as the Continental Association became "the colonists' first standard loyalty test".[2]

The Continental Congress called for all citizens to subscribe to the Association and adhere to its policies.

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[2] Ibid., p. 64.

Refusal to support the Association and the boycott was considered to be a disloyal act by the Whigs. Colonists were "persuaded" to join the Association by the threat of social ostracism, economic loss or physical violence. These pressures became intensified once actual fighting with the British had begun.

Before the signing of the Declaration of Independence in 1776, the colonists were ostensibly loyal to the Crown. The Continental Congress and the Association were extralegal agencies. They advocated measures to change British policies while still paying lip service to the Empire. However once the decision to make a clean break with King George was made, all colonists were required to take a stand. One had to either profess his allegiance to America or be labelled a traitor.

> The Declaration of Independence divided those who hoped to solve the problem of imperial order by evolution from those who preferred to solve it by revolution. By calling into existence a new nation it made loyalty to King George treason; and in most colonies patriot committees went about forcing everyone, on pain of imprisonment of person and confiscation of property, to take an oath of allegiance to the United States.[3]

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[3]Samuel Morison and Henry S. Commager, The Growth of the American Republic (New York: Oxford University Press, 1938), II, 83.

Because the American Revolution was in one sense a civil war, the Whig military command felt the need to identify the loyalists in their midst in order to prevent them from doing damage to the patriot cause. The army joined the civil authorities by agreeing that loyalty oaths were a proper method to accomplish this task. George Washington stated:

> I think...that it is high time a test act was prepared and every man called upon to declare himself; that we may distinguish friend from foes.[4]

In response to this call, the Continental Army entered the sphere of loyalty testing. With oaths in hand they entered heavily populated Tory areas and demanded that the residents either sign or go to jail.

Thus, loyalty tests played a significant role in the American colonial experience. Although loyalty oaths became a part of colonial life with the arrival of the first settlers, they were most widely used in the tense period of the Revolution.

The question as to the role to be played by loyalty oaths in the new government of the United States of America was deliberated at the Constitutional Convention

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[4]Harold M. Hyman, To Try Men's Souls (Berkeley: University of California Press, 1959), p. 74.

in 1787. There were some present who advocated a standard loyalty oath for American officials. But others attending the convention were aware of the inherent faults of such a system of national security. James Wilson of Pennsylvania sympathized with the anti-oath arguments. He asserted that he "was never fond of oaths, considering them as a left-handed security only. A good government did not need them and a bad government could not or ought not to be supported."[5]

The final draft of the Constitution contains only one oath. This oath merely requires the President to swear that he will "preserve, protect and defend the Constitution of the United States".[6] The Constitution also calls for a similar oath of office to be taken by all Congressmen, members of state legislatures, and all federal and state executive and judicial officers.[7] However this oath, unlike the Presidential one, is not written into the Constitution itself.

The Constitution provides a safeguard against the

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[5] Ibid., p. 144

[6] U.S., Constitution, Art. 2, sec. 1

[7] U.S., Constitution, Art. 6.

introduction of hated British religious test oaths in America. Article VI stipulates that "no religious test shall ever be required as a qualification to any office or public trust under the United States." However, the Constitution makes no specific prohibition against any other type of oath.

Civil War Oaths

The next great crisis period in American history which evoked oaths was the Civil War. This conflict went to the very foundations of the American nation, for the issue at hand was the relationship between the state and federal governments. A preliminary round was fought during the nullification controversy thirty years prior to Fort Sumter. Loyalty oaths were brought into use by South Carolina as part of her campaign for states' rights. In 1833, South Carolina required that all officers swear allegiance to the state.

Loyalty oaths were used extensively during the Civil War. Both the Unionists and Rebels relied on oaths in order to ascertain the sympathies of the population. It was difficult to distinguish between friends and enemies because the parties on all sides were Americans and each considered its position to be

faithful to the Constitution.

Loyalty tests were found to be an expedient measure for emptying overcrowded jails during the Civil War. Freedom was granted to both military and civilian prisoners simply upon their swearing loyalty to whichever side held them captive. Many gladly took any oath in order to end their confinement. There were others, however, who refused to sign. These were often civilian inmates who had been jailed on flimsy evidence and were in most cases innocent; they felt that by swearing loyalty they were in fact validating the charges against them.

> Several hundred troublesome political prisoners, North and South, refused the proferred oaths because they felt ethical scruples about incriminating themselves by implying that the original disloyalty charge might have had merit after all, else why the loyalty oath?[8]

Loyalty oaths were also used by occupying armies. When Union troops conquered Southern territories, oaths were used to distinguish those among the population who remained loyal from the active rebels. Citizens who signed were to be granted certain privileges, including protection of their homes, traveling passes and food rations. Non-

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[8]Harold Hyman, "Hamlet's Soliloquy and American Loyalty," AAUP Bulletin, XLIV (December, 1958), 736.

jurors were labelled disloyal and had to face jail, destruction of their property and loss of all privileges.

Both the loyalty tests administered by jailers and those imposed by occupying armies were often lightly taken. People would sign anything to obtain freedom or protection. Residents of areas which changed hands frequently might swear loyalty to the North on one occasion or fidelity to the Confederate States at another time.

The Radical Republicans in Congress caused the national legislature to enter the loyalty-testing arena. It was upon their instigation that the "ironclad" oath was passed in July of 1862. This oath required all government officials, both elected and appointed, to sign affidavits as to past as well as future loyalty.

The scope of loyalty testing during the Civil War was certainly great. Oaths were also to be the crux of Lincoln's plans for Reconstruction. The President's blueprint, which was formulated in December, 1863, called merely for an oath of future loyalty.[9] Those who signed

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[9]Lincoln was against retrospective oaths. He stated that, "On principle I dislike any oath which requires a man to swear he has done no wrong. It rejects the Christian principle of forgiveness on terms of repentence. I think

the oath were to receive Lincoln's pardon for rebelling. This sworn statement was to serve as a prerequisite for all political participation in the national as well as the newly formed loyal state governments. (Lincoln's death and subsequent Congressional domination of national policy-making severely altered the nature of the Reconstruction of the South.)

Recent History

World War I was the next great crisis period of American loyalty. At this time there was a marked limitation on individual rights and an extension of national security legislation. However, loyalty oaths were "conspicuously absent from national security programs"[10] during the First World War.

Congressional legislation in the field of internal security was marked by the passage of two major bills. The Espionage Act of June 15, 1917,[11] and, more specif-

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it is enough if a man does no wrong hereafter". Hyman, To Try Men's Souls, p. 188.

[10] Ibid., p. 267.

[11] Act of June 15, 1917, c. 30, 40 Stat. 217, 22 USC 401-408.

ically, the Sedition Act of May 16, 1918,[12] gave the federal government broad powers to ferret out subversives. The federal government also enlisted the aid of amateur "spy-chasers" (e.g., the American Protective League) who were to aid in loyalty investigations. However, these volunteers added nothing to internal security and only served to "add to the war hysteria".[13]

The tension and anxiety which were apparent during the war were not dispelled after the armistice. On the contrary, fear of leftists and radicals was intensified after the Bolshevik Revolution in 1917, and the climate of fear was carried over into the post-war period. A national panic ensued and radical activity became equated with disloyalty. The state of mind of the American public made the time ripe for the Palmer raids, the Lusk investigations in New York State, the exclusion of a Wisconsin Socialist from Congress, and the expulsion of five Socialist members of the New York

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[12]Act of May 16, 1918, c. 75, 40 Stat. 553.

[13]Harry J. Carmen and Harold Syrett, A History of the American People (New York: Alfred Knopf, 1956), II, 429.

State Assembly.[14]

The public concern with Communist and radical elements continued through to the eve of World War II. In the period between the wars various loyalty oaths directed against Communists were enacted on the state and local levels. Oaths for school teachers were the most prevalent. Patriotic groups such as the American Legion and the Daughters of the American Revolution pressured for the passage of these loyalty oath statutes as well as flag salute requirements and criminal laws directed against syndicalist and seditious activities.

The thirties were marked by increased anti-Communist and also anti-Fascist statutes, for it was during the Depression that many Americans turned to these

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[14]The mood of the period is exemplified by the following passage by Frederick L. Allen. "The American people were listening to ugly rumors of a huge conspiracy against the government and institutions of the U.S. They had their ears cocked for the detonation of bombs and the tramp of Bolshevik armies. They seriously thought...that a Red Revolution might begin in the U.S. the next month or next week and they were less concerned with making the world safe for democracy than with making America safe for themselves." Only Yesterday (New York: Bantam Books, 1931), p. 32.

totalitarian ideologies. The year 1934 saw the creation of the Un-American Activities Committee. This same year witnessed the campaign for school flag salute requirements and the Hearst newspaper activities to rid educational institutions of "radical elements".[15] In the following year came the first oaths for political parties "along with increased teacher oath legislation".[16]

In the years just prior to United States entrance into World War II, Congress passed several bills which contained clauses specifically designed to prevent Communists from holding government jobs or receiving any government benefits. Loyalty oath provisions were at the heart of many of these security measures. The Hatch Act of 1939[17] contained a stipulation forbidding federal employment of any member of a political party or organization which advocates the overthrow of the government. Although loyalty oaths were not required of federal employees under this act they were called for from

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[15]Carey McWilliams, Witch Hunt: The Revival of Heresy (Boston: Little Brown & Co., 1950), p. 38.

[16]Greenberg, op. cit., p. 51

[17]Act of August 2, 1939, c. 410, 53 Stat. 1147, 5 USC 118.

recipients of federal relief funds under the Emergency Relief Appropriation Act of 1940.[18] Any person working for the WPA was required to sign an affidavit that he was not an alien, a Communist or a member of the Nazi Bund and that he did not advocate or belong to any organization which advocated the overthrow of the government. "Of almost two million WPA workers 429 refused to sign the oath and were dropped."[19] The WPA test oath was the first one for federal employees since the Civil War.[20]

The Smith Act,[21] which makes advocacy of the violent overthrow of the government a crime, was passed in June of 1940. In the next year Congress began a practice which it has continued in every appropriations act.[22] A rider was added to the Emergency Cargo-Ship Construction Act of 1941[23] which specified that no person

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[18]Act of June 26, 1940, c. 432, 54 Stat. 611.

[19]Hyman, To Try Men's Souls, p. 330.

[20]Greenberg, op. cit., p. 71.

[21]Act of June 28, 1940, c. 439, 54 Stat. 670.

[22]Greenberg, op. cit., p. 73

[23]Act of February 6, 1941, c. 5, 55 Stat. 5.

advocating or belonging to an organization advocating the violent overthrow of the government could receive any of the funds appropriated under the act. A loyalty oath was required and considered to be prima facie evidence of the facts.

World War II security measures did not make use of loyalty oaths (except in the case of the Japanese-Americans confined to exclusion camps), but the post-war period has been marked by a general increase in oath requirements. The cold war extended and exaggerated the fear of Communist infiltration in America. State and local governments joined the anti-Communist crusade by enacting numerous oath statutes.

> By 1956 no less than 42 states and more than 2,000 county and municipal subdivisions and state and local administrative commissions required loyalty oaths from teachers, voters, lawyers, union officials, residents in public housing, recipients of public welfare, and in Indiana, wrestlers-"[24]

In the tense cold war atmosphere, the national government stepped-up its loyalty program. In 1950, Congress adopted the Internal Security Act,[25] which pro-

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[24]Hyman, To Try Men's Souls, p. 338.

[25]Act of September 23, 1950, c. 1024, 64 Stat. 987.

vided for registration of Communist organizations and the detention of potential spies and saboteurs in times of emergency. Four years later the so-called Communist Control Act of 1954[26] was passed. This statute declared that the Communist Party was not entitled to any rights as a legal entity. However, it did not directly punish membership in the party.

This post-war crisis period gave rise to numerous loyalty oath provisions on the national level. The federal government demanded loyalty oaths of all members of the Armed Forces, and in 1954 the same requirement was made for all students enrolled in the ROTC program. The Taft-Hartley Act of 1947[27] called for union officials to file a non-Communist affidavit in order to have access to the services of the N.L.R.B. In 1950 Congress stipulated that all recipients of National Science Foundations fellowships were to sign similar non-Communist affidavits in addition to a simple oath of

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[26]Act of August 24, 1954, c. 886, 68 Stat. 775, 50 USC 782.

[27]Labor Management Relations Act, 1947 (Taft-Hartley) Act of June 23, 1947, c. 120, 61 Stat. 136, 29 USC 141-144.

allegiance.[28] The National Defense Education Act of 1958[29] incorporated a security measure identical to the one included in the National Science Foundation Act.

Arguments Against Disloyalty Disclaimers

It is hoped that from this very general survey of loyalty oaths and affidavits throughout American history we can better understand the context in which the N.D.E.A. loyalty provisions arose. Section 1001(f) appeared, as have most similar security measures, in a crisis period where fear of internal subversives was strongly felt. (The specific origins of the provisions under study here will be dealt with in later pages.)

Thus we have seen that both loyalty oaths and disclaimers have appeared frequently throughout the history of the United States. They were adopted because their advocates believed that they were a useful instrument for the exposure of subversives as well as a method to strengthen the fidelity of loyal persons. However, these contentions have always been under attack. Liberal

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[28] Act of May 10, 1950, c. 171, 64 Stat. 149, 42 USC 1861-1875.

[29] Pub. L. 85-864, Act of September 2, 1958, 72 Stat. 1580.

thinkers all during American history have charged that all types of loyalty oaths (oaths of allegiance as well as disclaimers) have been unsuccessful in fulfilling their purposes. The argument runs in the following vein.

Test oaths, it has been contended, do not really serve to ferret out subversive elements. In fact, actual enemies of the nation are likely to be the first to sign and subsequently are protected in their nefarious activities. Once having affirmed their loyalty and disclaimed past disloyal action they may no longer become suspect.

On the other hand, continues the liberal argument, those who present no security risk are often the nonjurors (those who decline to sign oaths). These persons refuse to sign as a protest against the imposition of oaths. They feel that such loyalty provisions are a denial of basic civil liberties or an invalid presumption of their guilt. Paradoxically, then, many of those who decline to affix their signatures are the very people who are trying to preserve the American tradition. This line of reasoning is presented in the following statement of a well-known scholar of civil liberties, Robert Cushman:

> It is hard to find any evidence that loyalty oaths of any kind serve any useful purpose beyond the

> purging of the emotions of those who set them up. No dangerously subversive character is likely to balk at any oath presented to him. Those caught in the net so far have been wholly loyal, perhaps mistakenly stubborn people who are offended by being asked to take the oath but who in no way threaten the public security.[30]

The liberals also speak to the contention that oaths of all types tend to strengthen traditional loyalties. They assert that oaths are unsuccessful in this area as well. It is claimed by the liberal camp that since in many cases the signing of oaths brings personal advantage in the form of some right or privilege, many pen their signatures to obtain the benefits offered, but do not take the oath itself seriously.

Further, since the position of a non-juror is not a favorable one, the loyalty commitment is in a sense coerced. Since the "essence of loyalty is consent freely given", oaths cannot establish loyalty where it is absent or strengthen devotion where it has weakened. It has been suggested that loyalty oaths are unsuccessful in this area because,

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[30]Robert Cushman, "American Civil Liberties in Mid-Twentieth Century", Annals of the American Academy of Political and Social Science, CCLXXV (May, 1951), 5.

> The loyalty oath invokes no ancient tradition. There is no deepening sense of responsibility. However it may be worded, it is largely negative and negative oaths are singularly uninspiring.[31]

Those elements which are opposed to loyalty oaths and affidavits in general do not limit their attack to the charge that these provisions are ineffectual. They claim in a charge addressed to disclaimers in particular that not only do they fail in carrying out their purposes, but they tend to limit individual rights as well. Loyalty provisions of this type have been charged with persecuting dissenters of all types, reversing the traditional presumption of innocence, and denying First Amendment freedoms. It should be kept in mind that the academic community and civil libertarians made these and similar arguments against the specific provisions of Section 1001(f) of the N.D.E.A.

It is contended by various liberal thinkers that disclaimers do not present real standards of loyalty but rather merely reflect the accepted pattern of conduct of the majority. Therefore nonconformists of all types may fall into the trap laid for subversives. In this way, disloyalty becomes identified with irregular actions and

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[31]Howard B. White, "The Loyalty Oath," Social Research, XXII (Spring, 1955), 100.

loyalty becomes confused with blind conformity.

> Loyalty has become a cult, an obsession, in the United States. But even loyalty itself is now defined negatively. It is thought of not so much in terms of an affirmative faith in the great purposes for which the American nation was created as in terms of stereotypes, the mere questioning of which is deemed "disloyal".[32]

Another criticism which is directed against disclaimers is that they tend to reverse the presumption of innocence. The burden of proof is placed on the affiant who must sign in order to establish his loyalty. Those who decide not to pen their signature will incur either the loss of a right or privilege or the scorn of the community, or both. The following remarks of Alexander Hamilton reflect his indignation at this aspect of negative oaths. He stated that they are

> a subversion of one great principle of social security; to wit: that every man shall be presumed innocent until he is proved guilty. This was to invert the order of things; and, instead of obliging the state to prove the guilt in order to inflict the penalty, it was to oblige the citizen to establish his own innocence to avoid the penalty.[33]

Those opposed to disclaimer affidavits make a further claim against these measures. They charge that

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[32]Alan Barth, The Loyalty of Free Men (New York: Viking Press, 1951), p. 7.

[33]Cummings v. Missouri, 4 Wall. 277, 330 (1867). (Quoted by Justice Field.)

they tend to curtail the First Amendment freedoms of speech, conscience, and association. It is contended by many liberal thinkers that those persons who verbalize, believe in, or associate themselves with organizations which advocate ideas not held by the majority will be denied certain rights or privileges which are readily available to others. For this reason, it is held in some quarters that negative oaths subvert the constitutional rights of individuals in the name of internal security.

The attacks of the liberals which have been described above are assertions on their part. In other words, they are unsupported by conclusive empirical evidence. It is not known just how successful disclaimers may have been in denying privileges to subversives. In the same vein no one has proved empirically that loyalty oaths or affidavits do not strengthen loyalties or give the general population a sense of security in periods of national crisis.

However, the charges which involve constitutional questions (e.g., disclaimers deny First Amendment rights) have been considered by the courts. The court decisions in these cases have established in many cases that oaths

are not unconstitutional. In order to better understand the position which loyalty oaths and affidavits hold in terms of civil rights, we must next examine court opinions in this area.

The Court and Oaths

In the aftermath of the Civil War the United States Supreme Court reviewed two loyalty oath statutes. In Cummings v. Missouri,[34] decided in January, 1867, the Court considered a clause in the Missouri Constitution of 1865 requiring voters, ministers, attorneys, and candidates for public office to swear that they had never engaged in rebellion against the United States or given aid to the rebels or even expressed sympathy for the rebel cause. Cummings was a clergyman who refused to sign and therefore was prohibited from practicing his profession. On the same day, in Ex parte Garland,[35] the Court ruled on the constitutionality of the Federal Test Act of 1865,[36] which required a similar oath for all

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[34] Cummings v. Missouri, 4 Wall. 277 (1867).

[35] Ex parte Garland, 4 Wall. 333 (1867).

[36] Act of January 24, 1865, 13 Stat. at Large. 424.

attorneys practicing before any federal court.

A divided Court (5-4) declared both these statutes invalid on the grounds that they were ex post facto and bills of attainder. However, the court has since strayed from these decisions. Now the doctrine of "conditioned privilege" has for the most part precluded any finding that oaths conflict with these specific constitutional prohibitions.

The "conditioned privilege" doctrine is based on several assumptions. First, public employment, government aid or other public benefits are not rights but privileges. Second, since these privileges are not constitutionally guaranteed to all citizens, the government may demand that certain qualifications be fulfilled before the benefits are granted. It is further maintained that loyalty may be a valid qualification, and the test oath may be a legal measure of a man's loyalty.

In the Cummings and Garland cases the Court agreed that the state has a right to stipulate qualifications for office or employment. However it asserted that when these qualifications deny basic constitutional rights, they are invalid. The courts in recent decisions have refused to accept this argument. Now it is maintained that persons

employed by the government must be prepared to give up certain constitutional rights. The attitude of the courts can be summed up by this statement concerning the validity of a California oath and affidavit required of each officer and employee of Los Angeles county:

> There is nothing startling in the conception that a public servant's rights to retain his office or employment should depend upon his willingness to forego his constitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment.[37]

Because of the courts' adherence to the "conditioned privilege" doctrine and its interpretation of the term "punishment", it has rejected recent attempts to brand loyalty oaths as bills of attainder. A bill of attainder was defined in the Cummings case as "a legislative act which inflicts punishment without a judicial trial".[38] The Supreme Court held in 1867 that denial of employment to a person because he refused to sign a retrospective oath was a punishment. The majority opinion stated that

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[37] Steiner v. Darby, 199 P. 2d 429, 433 (1948).

[38] Cummings v. Missouri, 4 Wall. 277, 323 (1867).

> all men have certain inalienable rights--that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivations or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined. (Italics mine)[39]

The change that has come about in court decisions hinges on the interpretation of the word "punishment". The early courts held that government employment was a right and therefore its denial constituted a punishment. However, today the courts contend that loss of government employment or services is not punishment, but merely loss of a privilege. Now a retrospective oath may be considered to be a valid prerequisite for employment. In 1951 the courts stated:

> We are unable to conclude that punishment is imposed by a general regulation which merely provides standards of qualification and eligibility for employment.[40]

Because of the present position of the courts, oaths which work to exclude nonjurors from certain public benefits or employment cannot be invalidated on the ground that they are bills of attainder.

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[39] Cummings v. Missouri, 4 Wall. 277, 321 (1867).

[40] Garner v. Board of Public Works, 341 U.S. 716, 722 (1951).

The courts today reject the contention that a retrospective oath constitutes an ex post facto law. An ex post facto law has been defined as one

> which imposes punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient.[41](Italics mine)

Because of the courts' present narrow interpretation of "punishment" the acceptance of the ex post facto argument against loyalty oath statutes is impossible.

Loyalty oaths have been attacked in the courts on the ground that they violate the First Amendment freedoms of speech, thought and assembly. In most cases the courts use the "conditioned privilege" doctrine to circumvent consideration of these issues. The courts have never denied a person's right to these freedoms, but they do maintain that a citizen has no right to the privileges which require oaths. Justice Holmes' remark that a man "may have a constitutional right to talk politics, but no constitutional right to be a policeman",[42]

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[41]Cummings v. Missouri, 4 Wall. 277, 325 (1867).

[42]McAuliffe v. Mayor, City of New Bedford, 155 Mass. 216, 216, 29 N.E. 517 (1892).

demonstrated the manner in which the freedom of speech issue has been set aside.

In the Douds[43] case, the Supreme Court did explicitly state that the oath and affidavit required of union officials did in fact restrict freedom of speech. However, the court balanced the limitation on freedom of speech against the danger of political strikes to the free flow of commerce. Chief Justice Vinson, in the majority opinion, maintained that the effect of the statute on the exercise of First Amendment freedoms was relatively small when compared to the public interest to be protected. Congress passed the statute in order to assure the maintenance of unobstructed interstate commerce and was not interested in proscribing beliefs or limiting any person's freedom of speech.

Justice Black in his dissenting opinion rejected the assumption of the majority of his brothers and claimed that the commerce clause could not possibly restrict the First Amendment freedoms. He contended that test oaths are

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[43] American Communications Association v. Douds, 339 U.S. 382 (1950).

inherently evil and that the Taft-Hartley affidavit was a test oath used to "exclude certain beliefs from one area of our national economy".[44] However, Justice Black's position has never been accepted by a majority of the Court.

Opponents of loyalty oaths have also attacked them on due process grounds. It has been claimed that oaths are unconstitutional because they do not include scienter,[45] deny procedural safeguards, are vague or bear no reasonable relation to the statute. In general, courts have used the "conditioned privilege" doctrine to avoid any real consideration of denial of procedural safeguards. Vagueness is an often-used charge against oaths; however, no oath has been declared unconstitutional merely because it was vague.[46]

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[44] American Communications Association v. Douds, 339 U.S. 382, 446 (1950).

[45] Scienter is a legal term which is Latin and means "knowingly". In the cases discussed here it refers to whether a member of a subversive organization has knowledge of the subversive character of the organization. The Supreme Court has drawn a sharp distinction between innocent and knowing membership in these organizations. It has held unconstitutional those loyalty oaths which do not either implicitly or explicitly make this distinction.

[46] Milton Greenberg, "Loyalty Oaths: An Appraisal of the Legal Issues," Journal of Politics, XX (August, 1958), 507.

The question of reasonable relation has been duly considered by the courts. They have maintained that although loyalty may be considered a prerequisite for certain government jobs, the oath must bear a reasonable relation to the purposes of the statute. In the Garner case the court upheld a retrospective oath because it held that past actions may relate to present or future suitability for employment.

> Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust.[47]

The question of scienter has been given much discussion by the courts. Their opinions assert that scienter must be implicit in oaths in order to insure their constitutionality. In Gerende v. Board of Supervisors of Elections[48] the Supreme Court considered a Maryland statute requiring a loyalty affidavit of candidates for public office. The statute was upheld because the court noted that it was interpreted by the state Attorney General so as to include scienter.

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[47] Garner v. Board of Public Works, 341 U.S. 716, 720 (1951).

[48] Gerende v. Board of Supervisors of Elections, 341 U.S. 56 (1951).

In 1952 the Supreme Court unanimously held invalid an Oklahoma statute which required an oath of teachers. The opinion in Wieman v. Updegraff[49] was based on the fact that this statute did not call for knowledge of the subversive nature of organizations to which a person belonged. The factor of scienter distinguished the Oklahoma loyalty oath from similar oaths which the courts have upheld.

We can conclude that United States courts have, in the main, upheld loyalty oath and affidavit statutes. A majority of the Supreme Court has refused to consider oaths to be inherently unconstitutional. The opinions of Cummings and Garland have been by-passed. Instead the courts have imposed the "conditioned privilege" doctrine or favored the contention that individual rights and liberties may be limited for purposes of national security.

The courts have been affected by the cold war atmosphere of "protracted crisis". They reflect the national mood in maintaining that national security is the prime consideration. This general anti-Communist

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[49]Wieman v. Updegraff, 344 U.S. 183 (1952).

hysteria which has manifested itself in America for the past two decades has been clearly illustrated by the great number of loyalty oath statutes and their approval by the courts. The security provisions of the N.D.E.A. can be seen as one specific manifestation of this fear.

CHAPTER II

THE ORIGINS OF THE LOYALTY PROVISIONS OF THE N.D.E.A.

The loyalty provisions of the N.D.E.A. which subsequently caused a great deal of controversy throughout the academic community and the Congress, were inserted with little notice. In this chapter we shall describe the legislative origins of Section 1001(f), which contains the loyalty provisions, and attempt to explain why little attention was paid to this provision of the Act. However, before dealing with this, we will examine the origins and content of the N.D.E.A. itself in order to establish the context in which Section 1001(f) appeared. The N.D.E.A. as a whole was a large step forward in the field of federal aid to education, and therefore, we will first present a general survey of aid to education legislation throughout American history.

Background of the N.D.E.A.

The federal government has been giving "aid to

education" ever since the Northwest Ordinance[1] in 1787 when federal lands were set aside for schools. In 1862 the Morrill Act[2] provided for grants of public lands to the states for the purpose of financing colleges which would be adapted to the educational needs of those persons engaged in agriculture and industry. These land-grant colleges have been allotted federal funds annually since 1887. Many billions of dollars have been spent since 1944 to educate servicemen under the G.I. Bill.[3] Two years later federal grants-in-aid were provided for school lunch programs in both public and private schools.[4] The federal government has spent billions of dollars in an aid for "impacted" areas program.[5] Under this program

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[1]Act of July 13, 1787, 1 Stat. 51.

[2]Act of July 2, 1862, c. 130, 12 Stat. 503

[3]Servicemen's Readjustment Act of 1944, Act of June 22, 1944, c. 268, 58 Stat. 284, 38 USC 1801.

[4]National School Lunch Act of 1946, Act of June 4, 1946, 60 Stat. 230, 42 USC 1751-1760.

[5]Pub. Law 81-874, Act of September 30, 1950, 64 Stat. 1107, 20 USC 241. This act provides for the U.S. Commissioner of Education to make contributions toward "maintenance and operation" of schools in districts which are financially burdened because of federal installations.

Pub. Law 81-815, Act of September 23, 1950, 64 Stat. 967, 20 USC 271. This act provides for construction of classrooms under the same conditions as above.

the federal government provides grants-in-aid for the construction and operation of schools in areas where federal activity (e.g., army bases) places them under a financial burden. The impacted areas' school districts are hampered by an influx of federal personnel and a withdrawal of taxes because of the purchase of land by the federal government. This program is so extensive that it has been estimated that 30 per cent of the school age population is now enrolled in federally affected school districts. In many cases funds which are granted by the federal government to so-called "impacted" areas have been used to help financially limited districts even though they are not heavily burdened by personnel from federal installations. The Congressmen from these districts, especially in the South, often oppose nation-wide federal aid to education while accepting in their home districts, thousands of dollars under the "impacted" areas laws. Recently, President Kennedy denounced this practice.

> School districts originally entitled to temporary Federal assistance during a transition period in which the costs of these Federally connected children could not be absorbed now demand that the aid be continued indefinitely, without any reduction for absorption, and without any regard to the local taxes paid by those parents who entered the community to work on, but not reside on, Federal property. Individuals who profess opposition to Federal aid to education on grounds of State's rights, racial and

> religious controversy, budgetary economy and academic freedom do not hesitate to demand this federal aid to build schoolhouses and pay teachers' salaries in their own areas.[6]

Although considerable aid to education has been evident in American history, it must be noted that any such aid programs have always been coupled with another purpose or have been indirect in nature. This has been true because traditionally members of Congress have not been prepared to advocate an all-out federal aid-to-education bill. However, recently American education has become a greater concern to most citizens because of the cold war-inspired technological race between the United States and the Soviet Union. Thus, it has been under the guise of national defense that recent aid-to-education bills have been advocated.[7]

Because many persons had felt that the United States should maintain its scientific leadership of the world, the National Science Foundation Act[8] of 1950 was passed. Among

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[6]Kennedy, Statement of October 3, 1961.

[7]Charles A. Quattlebaum, "Federal Policies and Practices in Higher Education," The Federal Government and Higher Education, A Report by the American Assembly Columbia University (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1960) p. 36.

[8]Ibid., p. 41.

other things, this act provides for government grants subsidizing research and study in the sciences. Although millions of dollars were expended in the effort, the National Science Foundation Act did not close the ever-increasing gap between Russian and United States scientists graduated from universities each year. Allen Dulles estimated that in 1956 the United States would produce 900,000 graduates in basic physical sciences, while the Soviet Union would turn out 1,200,000.[9] Because of these facts, new demands began to appear for additional federal aid to education.

On January 12, 1956, President Eisenhower reported to the nation that "Shortages now exist in medicine, teaching, nursing, science, engineering and in other fields of knowledge which require education beyond the secondary school".[10] Later that year, on April 19, the President appointed a thirty-three person commission to study education beyond the high school and to consider proposals for federal aid to education.[11]

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[9]U.S., Congress, Joint Committee on Atomic Energy, Engineering and Scientific Manpower in the United States, Western Europe and Soviet Russia, 84th Cong., 2nd Sess., 1956, p. v.

[10]New York Times, January 13, 1956, p. 1.

[11]Charles A. Quattlebaum, "Federal Aid to College

The United States' shortage of scientists and allied technicians was made clear by Representative Melvin Price (D., Ill.), the Chairman of the Subcommittee on Research and Development of the Joint Committee on Atomic Energy. In the preface to a Joint Committee print concerning engineering and scientific manpower in various countries including the United States and the Soviet Union, Rep. Price made a strong plea for an accelerated program to train a greater number of American scientists.

> I suggest that the time has come for strenuous measures, for action by the Government, by business corporations, and universities for what might be called a "crash program" to increase swiftly and steadily the number of adequately trained American scientists and engineers.[12]

In April of 1956 Rep. Price's subcommittee held hearings entitled, "Shortage of Scientific and Engineering Manpower". The witnesses demonstrated to the subcommittee that not only was there an insufficient amount of persons in the theoretical and applied sciences to meet domestic needs, but that the Soviet Union was turning out a greater

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Students," School and Society, LXXXV (March 30, 1957), 104.

[12]U.S., Congress, Joint Committee On Atomic Energy, Engineering and Scientific Manpower in the United States, Western Europe and Soviet Russia, 84th Cong., 2d Sess., 1956, p. v.

number.[13] Following these hearings the Subcommittee on Research and Development issued an interim report which made several recommendations toward increasing the American output of science personnel.[14] Among their suggestions were the establishment of a federal mathematics scholarship award program, federal contributions to private scholarship funds and earlier identification of the potentially ablest students.[15]

As if these reports were not enough to indicate a clear shortage of American scientists and the need for federal funds to be used to educate a larger number of them, the Soviets announced on October 4, 1957 that they had launched a space satellite into orbit around this planet. The reaction to Sputnik I was enormous. In attempting to find the reason why the United States was unable to accomplish a similar feat, many observers placed

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[13] U.S., Congress, Subcommittee on Research and Development of the Joint Committee on Atomic Energy, Hearings, Shortage of Scientific and Engineering Manpower, 84th Cong., 2d Sess., 1956.

[14] U.S., Congress, Subcommittee on Research and Development of the Joint Committee On Atomic Energy, Interim Report, Shortage of Scientific and Engineering Manpower, 84th Cong., 2d Sess., 1956.

[15] Ibid., pp. 3-4.

the blame on American education. It was thought that American technology was not equal to that of the Russians because the Soviet educational system was superior.

The Sputnik launching revitalized the campaign for the initiation of some sort of federal-aid bill. Congress and the Administration were spurred into action in order to give the country the kind of legislation which would provide federal funds for the improvement of scientific education. Although various Administration studies, independent reports, and scientific and educational experts had advocated similar federal action, it took Sputnik I to bring the point home.

Many advocates of federal aid to education were appreciative of the successful Sputnik flight, for they found a more receptive audience for their pleas. Dr. HaroldTaylor, the President of Sarah Lawrence, took the position that

> Soviet scientific achievements were a "boon" to this country because they brought into sharp focus the crisis in the American educational system and forced us to become conscious of our needs. In the past too little attention has been paid to education.[16]

Thomas K. Finletter, in a similar vein, suggested that education was necessary to our defense and that the

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[16] New York Times, February 3, 1958, p. 26.

Sputnik achievement underlined this fact.

> It took the Russian Sputnik and the Russian advances in applied science for war to demonstrate that education is as necessary to the well-being and defense of this country as any other field of activity of the federal government without exception.[17]

Events followed quickly after Sputnik I. On November 11, the United States Office of Education released a report on Russian education. It had been completed a year and a half earlier, but was brought to the attention of the public at this time. The study pointed up the fact that the U.S.S.R. produced eighty thousand engineers per year whereas the United States turned out only thirty thousand. It was also made clear that scientific and technical subjects were considered of primary importance in the Russian educational system.[18]

On November 13, President Eisenhower spoke to a nation-wide audience in order to give some kind of post-Sputnik assurances to the American people. Among other things, he stated that America must produce more scientists and engineers.

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[17] Ibid., April 19, 1958, p. 8.

[18] U.S., Department of Health, Education and Welfare, Office of Education, Education in the U.S.S.R., 1957.

> The Soviet Union now has in the combined category of scientists and engineers a greater number than the United States and it is producing graduates in these fields at a much faster rate...Recent studies show that this gain in quantity can no longer be offset by quality.[19]

He then outlined a program of nation-wide testing of high school graduates, stimulation of mathematically and scientifically gifted students, fellowships for research and education, improvement of laboratory facilities and better teachers' salaries.[20] Thus, the President linked national defense to a forthcoming aid-to-education bill.

On November 26, the report of the White House-appointed National Committee for the Development of Scientists and Engineers was released. This group, which had been created on April 4, 1956, suggested that the United States should step-up its scientific training in order that America might produce enough scientists to compete satisfactorily with the Russian technological advancements.[21]

The release of the reports after the Sputnik

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[19] New York Times, November 14, 1957, p. 14.

[20] Ibid.

[21] Congressional Quarterly Almanac, XIV (1958), 213.

launching and the impact of the satellite flight itself, as well as the pre-Sputnik demands for improved education, all served to prepare the nation to give a warm reception to federal-aid plans. In this climate, the President presented a special education message on January 27, 1958 in which he proposed a temporary bill to provide 1.6 billion dollars for education. However, he made clear that he was, in general, not an advocate of federal aid-to-education. But, he asserted, in an emergency such as this one caused by Soviet technological advances, it was necessary for the federal government to act. Eisenhower, therefore presented Administration proposals for graduate fellowships, college scholarships, improvement of foreign languages and educational statistics, and the encouragement of the sciences in high schools.[22] The Administration program was based to a large extent on the commission studies of 1956 and 1957 as well as on the reports prepared by the Department of Health, Education and Welfare.

Action in the House occurred prior to that in the Senate. On July 2, the full Education and Labor Committee voted 32-2 to approve a clean bill.[23] The committee report

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[22] New York Times, January 28, 1958, p. 1.

[23] H. R. 13247.

which was filed on July 15, indicated that the committee had incorporated all of the Administration proposals in addition to several others.

> The bill contains all of the corresponding proposals recommended in 1958 by the Health, Education and Welfare Department, plus two others; the loan program and the provision for research and experimentation in more effective utilization of television, radio, motion pictures and related media for educational purposes.[24]

On August 1, the House Rules Committee, after two days of hearings, granted a rule for the bill. It allowed for two hours of debate to be "equally divided and controlled by the Chairman and the ranking minority member of the Committee on Education and Welfare" and permitted amendments under the five-minute rule.[25]

Debate on H.R. 13247 began on August 7. On that day the President stated that the bill "fulfills most of my objectives", and urged its passage as a "top priority objective".[26] The bill was passed on the following day,

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[24]U.S., Congress, House, Committee on Education and Labor, National Defense Education Act of 1958, 85th Cong., 2d Sess., 1958, H. Rept. 2157 to accompany H.R. 13247, p. 1.

[25]U.S., Congressional Record, 85th Cong., 2d Sess., Vol. 104, p. 16567: August 7, 1958. (Hereafter cited as C.R.)

[26]Ibid.

but the House approved an amendment which eliminated the $840 million scholarship program entirely.

On August 13, the Senate passed its version of the N.D.E.A.[27] It contained a scholarship program, loyalty oath provisions, and differed from the House in the amounts to be appropriated for various programs. In order to arrive at a compromise bill both houses agreed upon a conference. On August 19, the Senate decided to send Senators Hill (D., Ala), McNamara (D., Mich.), Yarborough (D., Texas), and Allott (R., Colo.), and the House sent Representatives Barden (D., N.C.), Bailey (D., W. Va.), Elliott (D., Ala.), Metcalf (D., Mont.), Gwinn (R., New York), Kearns (R., Pa.), and Haskell (R., Del). The conference report was agreed to by the Senate on August 22 by a vote of 66 to 15, and by the House, the next day, 212 to 85. The bill (which will be described below) was signed into law on September 2.

Description of the N.D.E.A.

Although the National Defense Education Act has been referred to by one educator as, "the most important

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[27] S. 4237.

policy-making action affecting education in recent years",[28] this point was not stressed by Congress. In order to make the Act palatable to those whose philosophies are against a broad federal-aid program in education, the national defense aspect of the bill was emphasized. The entire program was discussed as a "temporary defense measure" and therefore was acceptable to many who would otherwise have opposed such action by the federal government. An example of how the discussion of the bill was directed towards national defense can be seen in the following excerpt from the Senate committee report:

> This legislation comes before the Congress at a time of great decision. Soviet sputniks and intercontinental ballistic missiles, as well as the growing evidence of Russian advances in scientific knowledge and intellectual capacity, have struck a severe blow at American complacency. The bill takes cognizance of the vital relationship between a good educational system and national survival.[29]

Since a vote for national security is easier to justify than a vote for federal aid-to-education, the N.D.E.A. was passed by ample majorities in both houses.

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[28] Quattlebaum, "Federal Policies...," p. 41

[29] U.S., Congress, Senate, Committee on Labor and Public Welfare, National Defense Education Act of 1958, 85th Cong., 2d Sess., 1958, S. Rept. 2242 to accompany S. 4237, p. 2.

The purpose of the Act, as stated in Title I, is to improve national security by insuring the fullest development of the mental resources and technical skills of the young men and women of the United States. In order to accomplish the goal, the Act provides

> substantial assistance in various forms to individuals and to States and their subdivisions, in order to insure trained manpower of sufficient quality and quanity to meet the national defense needs of the United States.[30]

The Act authorizes federal appropriations totaling more than one billion dollars principally over a period of four years. Each of its ten titles initiated a new federal policy. Thus, educationally speaking, the Act is an important advancement.[31] Title II provides for low interest loans where the capital investment of the federal government is 90 per cent, the remaining 10 per cent to be provided by the individual institution. More than 47 million dollars were set aside for this loan fund during the first year of the Act. The amount increases annually up to 90 million dolars, to be utilized by needy students

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[30]National Defense Education Act of 1958, Public Law 85-864, Title I, Sec. 101.

[31]Quattlebaum, "Federal Policies....," p. 41.

during the fiscal year ending June 30, 1962. The third title of the Act provides 70 million dollars annually for four years in order to strengthen science, mathematics, and modern foreign language instruction through the purchase of new equipment or minor remodelling of present equipment. Title IV provides for 1000 to 1500 N.D.E.A. fellowships yearly for four years. The fifth title makes provision for the encouragement of capable students through a program of guidance, counseling and testing. Fifteen million dollars yearly, for four years, was authorized under this title. Title VI furnishes funds for the development of language centers, stipends to individuals undergoing advanced training in any modern foreign language or studying an area related to that language, and to instructors planning to teach foreign languages. Funds for research and experimentation dealing with the more effective use of television, radio, motion pictures and related media for educational purposes, were provided for in the seventh title. Title VIII allots funds for vocational programs in the States. A Science Information Service to be administered by the National Science Foundation was established by the provisions of the ninth title. This service is to provide for the dissemination of

scientific information by indexing and translating available scientific data. The last title makes provision for the improvement of statistical services of state educational agencies by grants-in-aid to the States, not exceeding 50 thousand dollars annually.

From this cursory survey of the N.D.E.A., one can see that although it is far from a complete aid program, its scope is certainly wide. Both public and private institutions are eligible for loans and grants. Both institutions of higher education and secondary schools are affected. Thousands of students receive funds individually through the loan and fellowship programs.

Most educators found this act to be an excellent start for federal-aid programs. In general, the various provisions have been most successful. However, on November 1, 1958 the American Association of University Professors made a discovery which was to cause protest by many educators concerning this otherwise most appealing piece of legislation. It was at this time that a portion of the academic community became cognizant of the fact the Act contained a loyalty provision which required applicants for N.D.E.A. loans and fellowships to sign both

a disclaimer affidavit and an oath of allegiance. This section had heretofore gone unnoticed by most observers and its actual origins are still unknown by many.

Origins of Section 1001(f)

The origins of Section 1001(f) are somewhat clouded. Loyalty provisions were not included in the Administration drafts, nor in the bill which the House passed on August 8, 1958. These provisions were present in the Senate version, but they were not inspired by a Senator. Actually, Roy E. James, the minority clerk of the Senate Committee on Labor and Public Welfare, is said to have initiated the idea of inserting the oath and affidavit into the act.[32]

It is characteristic of the congressional legislative process that most of the actual legislating takes place in committee.[33] The National Defense Education Act was no exception. The actual decision to insert loyalty provisions into the Act took place during an executive

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[32]Daniel P. Moynihan, "A Second Look at the School Panic," Reporter, XX (June 11, 1959), 18.

[33]Bertram Gross in The Legislative Struggle (New York: McGraw-Hill Book Co., 1953) makes this point, as have many political scientists from Woodrow Wilson on. (See p. 309.)

session of the Subcommittee on Education.[34] Daniel Moynihan reports that Senator Smith (R., N.J.) accepted Mr. James' suggestion regarding the loyalty provisions[35] and presented it to the subcommittee as an amendment to the bill. Somehow this provision went unnoticed by the liberals on the committee (Senator Kennedy, as we shall see later, blamed this on sheer oversight) and was included in the bill approved by the full committee and presented to the floor. It would have slipped by without notice but for Senator Karl E. Mundt's comments in favor of the provision.

> I should like to congratulate the committee on the language of (the loyalty provisions) where in carrying out the suggestions of the National Science Foundation and in line with good American practice, the Senate is assured that students qualifying for

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[34]Since executive sessions are not open to public record, we can only suggest what probably occurred. We will base a great deal on Moynihan's "A Second Look...," for it seems to corroborate what we have heard through "unofficial" sources.

[35]Gross makes it clear that it is not unusual for staff assistants to be involved in important legislative decisions. "(Staff aids) are often delegated important functions with respect to the planning of hearings, the handling of contacts with pressure groups, and the preparation of bills, amendments, and reports. Having direct access to committee members they are in a strategic position to exercise an influence upon committee decisions." Op. cit., p. 280.

> the scholarships shall be good Americans and not people involved in Communist or any other subversive organizations.[36]

Senator Mundt then offered an amendment which provided that the security provisions extend to loans as well as to the rest of the bill. The amendment was passed with no floor discussion. Although the House version contained no loyalty provisions, removal in conference might have been possible. This, however, did not occur and therefore the oath and affidavit became part of the National Defense Education Act of 1958.

Thus the section of the N.D.E.A. which subsequently became the most talked-about, was initiated with little or no discussion as to its merits. Congress did not concern itself with this provision as it was most interested in getting the bill passed and with pleasing the various educational interest groups. Actually, the inclusion of security provisions in this type of act is not unusual in light of its defense orientation. The use of these provisions is not a new idea for there are many precedents.

The general precedents upon which Section 1001(f) rests are those of the loyalty oaths and political test

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[36] C.R., 85th Cong., 2d Sess., Vol. 104, p. 17320: August 13, 1958 (Mundt).

oaths which have recurred throughout American history.[37] More specifically the loyalty provisions of the N.D.E.A. can be viewed as a result of the post-World War II anti-Communist climate in which has accounted for numerous oath and affidavit requirements on both the state and national levels.

In 1960, a survey was made which listed the various oaths and disclaimers which are required by the federal government.[38] For example Public Law 330 states that no person shall accept public office who advocates the overthrow or belongs to an organization which advocates the overthrow of the government. Executive Order 10450 sets forth the oath and affidavit which must be taken by all government employees. Oaths and/or affidavits are required by statute of each person working for civil defense in a state or local organization, R.O.T.C. students who wish to receive money from the government and persons who have petitioned for naturalization

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[37] See Chapter I.

[38] At the request of the Senate Committee on Labor and Public Welfare, the Legislative Reference Service of the Library of Congress performed a survey to determine the oaths and affidavits required by the Federal Government.

papers. Persons who are granted access to restricted data or who are granted fellowships by the Atomic Energy Commission must sign an oath. Those receiving grants under the Vocational Rehabilitation Act must file an affidavit. The Small Business Administration requires disclaimers before it will give certain assistance to small businesses and investment companies.[39]

Although all of the above loyalty requirements stand as precedents for Section 1001(f), the statute which most directly influenced its inclusion was the National Science Foundation Act of 1950. The language of the N.D.E.A. security provision was taken directly from the earlier act which requires a recipient of a scholarship or fellowship to file both an oath and an affidavit.

Although the texts of the loyalty provisions of both acts are identical, their legislative histories are quite different. While Section 1001(f) of the N.D.E.A. was included with little notice, the same provision of the National Science Foundation Act was given a good deal

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[39]For a detailed listing of these oath and affidavit requirements, including their specific wording; see, "The Controversy Over the N.D.E.A. Loyalty Provisions," Congressional Digest, XXXIX (April, 1960), 104.

of discussion. Not only was there no opposition to the inclusion of such a provision at the time, there was concern as to whether it was adequate to insure loyalty. In 1950 when Congressman J. Percy Priest (D., Tenn.) reported back to the House from the conference committee, he attempted to assure his fellow representatives that the security provisions were sufficient.

> A careful study of the security provisions now in the conference report will satisfy everyone that the conferees, even as the House was originally, were greatly interested in seeing that adequate, workable security provisions were included in the bill. We bring it here in a form that we believe contains adequate provisions along the line from the standpoint of security, with adequate penalties where penalties may be necessary.[40]

One explanation for the difference in the attention paid to the loyalty sections in 1950 may lie in the public fear of Communist espionage in important state or scientific positions during that period. The loyalty of American scientists became important after the indictment of Klaus Fuchs in England. He was a nuclear physicist who at one time worked at the United States nuclear center at Los Alamos, New Mexico. He later admitted passing valuable atomic information to Russian agents. Since the National

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[40] C.R., 81st Cong. 2d Sess., Vol. 96, p. 5906: April 27, 1950 (Priest).

Science Foundation Act dealt with scientific research, security was an important concern to Congress. This sentiment is eximplified by a comment from Congressman O'Hara (R., Minn.)

> I share with the gentleman his concern over the national security provision. The gentlemen will recall that in the interim between the time the bill was reported out and before it reached the floor of the House the Fuchs case developed which caused everyone a great deal of concern. May I say to the gentleman, I believe we spent time on the security angle of this bill and I believe we did as fine a job as could be done in trying to draw up the strongest provisions possible dealing with our security.[41]

The main concern of Congress in 1958 was not that of loyalty-security or fear of subversives, but rather a deep concern with technical advancement. The knowledge of the Russian achievements in space technology and fear that America had fallen behind because of weaknesses in its educational program were the driving forces behind the N.D.E.A.

> You will note that this measure is called a defense education bill. Probably the reason for that was the belief in the minds of the people just after the first Russian sputnik was launched that more scientists, particularly, were needed to keep us

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[41] Ibid., p. 5907, April 27, 1950 (O'Hara).

abreast of the Russians.[42]

The loyalty question was certainly an afterthought in 1958, whereas eight years before it was foremost in the minds of the lawmakers.

One observer suggests that the difference between the attention given to the loyalty provisions in the National Science Foundation Act and the N.D.E.A. was caused by a dissimilar atmosphere as far as public sentiment was concerned.

> That was the dawn of the McCarthy era and Senators and citizens were already looking about for a shady place against the hour when the full heat of McCarthy's day should be upon them. The National Science Foundation Act does require a disclaimer affidavit and no Senator at that time objected to it. This may have been because provisions of the National Science Foundation Act embraced areas of nuclear research, which conceivably touch closely on our national security. The larger difference is the change of air. There is perceptible impatience in the Senate these days with sloganized patriotism, anti-intellectual innuendo, the exploitation for home consumption of communism as a bug bear and that game-legged rhetoric whose principal device seems to be ruptured enthymeme. (Italics mine)[43]

To continue the comparison between the loyalty sections of the N.D.E.A. and the N.S.F.A. we find that not only were the circumstances surrounding their adoption quite different, but

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[42] Ibid., 85th Cong., 2d Sess., Vol. 104, p. 16568: August 7, 1958 (Allen, R., Ill.).

[43] Kevin Sullivan, "Oathism on Campus", Nation, CLXXXIX (December 5, 1959), 419.

also the public reaction was different in both cases. Although the adoption of the oath and affidavit in 1950 was surrounded by much talk, there was little disturbance caused in the academic community after its passage. On the other hand, Section 1001(f) was included in the Act with little notice, but once discovered the academic world reacted greatly. We will next concern ourselves with the nature of this reaction and the legislative movement to eliminate this section of the N.D.E.A.

CHAPTER III

PROFESSORS AS PRESSURE GROUP (1958 - 1959)

In this chapter we will describe the first reactions of academic community to the oath and affidavit provisions included in the N.D.E.A. The immediate outcry against Section 1001(f) were in the form of public statements of protests and letters to Congressmen demanding repeal. After the academic leaders had succeeded in persuading certain sympathetic Congressmen, several bills were introduced which would have deleted the oath and the affidavit from the N.D.E.A. Although House action was cut off by the pro-loyalty provision stand of Chairman Barden, no similar situation existed in the Senate. Therefore hearings were held in the upper house which dealt with the issue of Section 1001(f) removal. These hearings served as a sounding board for further protests by educational groups as well as other interested organizations.

We will discuss the form in which the academic community registered their opposition to the oath and affidavit provision, as well as the nature of the arguments which they

used. The position of those individuals and groups which favored the loyalty provisions will be examined also.

The events which this chapter will describe can be viewed as an attempt by the academic community and other sympathetic organizations to achieve a goal which was of vital importance to them. Since their aims could only be accomplished through governmental action, they sought to influence the national legislative body. In short, because they wanted something which the government could give them they had to act as a pressure group. Thus the academic community endeavored make use of various interest group strategies in order to gain favorable action by Congress. Because the academic community was not organized for effective influence, they relied heavily on public statements and propaganda. They hoped to extend their public or gain a sympathetic ear from normally apethetic members of their own ranks and the public in general.

Reaction of Academia

On November 1, 1958 the 40,000 member American Association of University Professors took the first formal action in regard to the loyalty provisions of Section 1001(f)

of the N.D.E.A. The protest took the form of a letter signed by the President, Bentley Glass and the General Secretary, William Fidler. Copies of the letter were sent to all members of the Senate and House committees which deal with education.

The letter addressed itself to the disclaimer affidavit only. The writers protested against its inclusion in the act for three specific reasons. They charged that Section 1001(f)(1) was vague because it did not specifically designate which organizations should be considered as subversive and therefore denied due process of law. Secondly Mr. Bentley and Mr. Fidler contended that the affidavit was unconstitutional on the grounds that the provision was not limited by the application of scienter. Their third objection was based on the assertion that the affidavit had all the invidious characteristics of a "test oath".

The writers closed their letter with a general objection to the affidavit. They stated that it was discriminatory because other segments of the population receiving government benefits were not required to undergo similar procedures. This argument was most frequently used by those educators and students who opposed the loyalty provisions.

> Now, in 1958 we are shocked and alarmed to find that students and teachers, when they are to receive funds are placed in a special category and must enter a humiliating disclaimer. The Act seems to say to members of the educational community: "You are an important part of American life and you have an admitted need, but let there be no mistake about the fact that you are a particularly suspect part of the population and will have to pass a special test that other citizens need not take." This is a prejudgment of the teachers and students of America which we cannot believe Congress intended to make.[1]

Science, which is the organ of the American Association for the Advancement of Science, presented their readers with a detailed report of the N.D.E.A. in the September 5, 1958 issue. The loyalty oath and affidavit were not mentioned. After November 1, however, this subject had become controversial and Science took a stand. In an editorial entitled "Big Brother Again," the editors took a strong anti-loyalty provision position. They explicitly advocated removal of Section 1001(f):

> The amendment also helps to create an atmosphere of fear and suspicion inimical to that free and creative play of the mind which is an essential in science as it is in the arts. The fact that organizations which might be subversive are not specified will lead any student who wants to be eligible for a loan to think twice before joining any organizations, even a student discussion group. It will lead him to avoid the healthy give and take of intellectual

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[1] Letter from Bentley Glass, President and William Fidler, General Secretary of the American Association of University Professors, Washington, D.C., November 1, 1958.

> battle and encourage him to be timid and conformist... We hope that the next Congress will strike out the amendment.[2]

On December 16, Secretary of Health, Education and Welfare, Arthur Flemming (who had been President of Ohio Wesleyan University) stated his opposition to the affidavit at a press conference.[3] This was the first stand taken on the issue by a member of the Administration. Later that month Secretary Flemming received personal letters from the Presidents of Harvard, Yale and Princeton. By the end of February 1959, nine more college presidents registered their disapproval with the Secretary.[4]

The December issue of the AAUP Bulletin contained an article in which the officers stated their disapproval of the affidavit provision. The article was substantively equivalent to the letter of November 1 which the officers of the organization had written to several members of Congress. In addition to labelling the affidavit as discriminatory,

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[2]"Big Brother Again" (editorial", Science, CXXVIII (November 14, 1958), 1181.

[3]"Loyalty Provisions of N.D.E.A. Meet Opposition from Educators and Congressmen," Science, CXXIX (March 6, 1959), 625.

[4]Ibid.

the A.A.U.P. contended that the provision acted as a double-edged sword.

> If an individual refuses to sign, he raises a suspicion that he is unworthy of public trust or benefit. If he signs, he endorses the pertinency of the general suspicion about him and his kind which is embodied in the requirement. Social safeguards should be directed to specific dangers; they should not, as in this instance, take the form of inescapable and unwarranted derogatory implications directed toward a whole class of persons and all its members.[5]

With the coming of the new year, the anti-oath and affidavit movement gained momentum. On January 8, 1959, delegates to the convention of the Association of American Colleges officially protested against the disclaimer affidavit.[6] On the 22nd of January, the New York Times reported that six schools had denounced the affidavit[7] (but not the oath) and that Bryn Mawr and Haverford went so far as to refuse to participate in the loan program of the National Defense Education Act. Later on that month, the New York Times ran the headline, "University Heads Hit Loyalty Oath" above an article which reported that the

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[5]"Disclaimer Affidavit Requirement", AAUP Bulletin, XLIV (December, 1958), 771.

[6]New York Times, January 9, 1959, p. 9.

[7]Ibid., January 22, 1959, p. 12.

presidents of Harvard, Yale and Princeton called for repeal of the section requiring oaths and affidavits. The news story also mentioned that the A.A.U.P. announced that it had begun a letter-writing campaign to urge congressmen to delete the "humiliating provision".[8] Thus the pressure upon Congress to remove Section 1001(f) had begun in earnest.

Legislative action for removal began with the introduction of bills to remove all or part of the section, in both the House and the Senate. During the period from January 15 through March 16, seven bills of this nature were introduced in the House. The bipartisan nature of the movement for repeal was evident in the fact that three of these bills were put into the hopper by Republicans and four by Democrats. Also the movement did not seem limited to one specific geographical area. Congressmen from Maine, Iowa, New Jersey and the West Coast were among those who sponsored bills for removal of Section 1001(f).[9]

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[8] Ibid., January 25, 1959, p. 15.

[9] The seven bills introduced into the House were: H.R. 2332 (Frelinghuysen, R., N.J.), January 15; H.R. 2437 (Roosevelt, D., Cal.), January 15; H.R. 4038 (Oliver, D., Me.), February 4; H.R. 4066 (Green, D., Ore.), February 4; H.R. 5315 (Lindsay, R., N.Y.), March 3; H.R. 5725 (Schwengel, R., Iowa), March 16; H.R. 5860 (Johnson, D., Colo.), March 19. All bills were sent to the Committee on Education and Labor.

Senate action began with the introduction of S. 819 on January 29. The bill which was sponsored by Senator John F. Kennedy (D., Mass.) and co-sponsored by Senator Clark (D., Pa.) read simply: "Be it enacted that Section 1001 of the National Defense Education Act be amended by striking out subsection (f)". Kennedy urged Congress to delete both the oath and affidavit (subsection (f) contains both) as they were an "unnecessary and futile gesture toward the memory of an earlier age."[10]

As the year wore on various educational groups and individual institutions continued their denunciations of Section 1001(f). On February 3, President Goheen of Princeton announced that that university would not participate in the loan program.[11] On the 15th of February, the New Jersey chapter of the National Student Association passed a motion condemning the loyalty provisions, stating that they were an interference with academic freedom. This group advocated congressional action and called for deletion.[12]

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[10] New York Times, January 30, 1959, p. 10. This article erroneously credited Senator Mundt with the authorship of Section 1001(f). At this date the origins of the section were still unknown to many.

[11] Ibid., February 4, 1959, p. 67.

[12] Ibid., February 15, 1959, p. 52.

Soon after, the faculty at Amherst unanimously voted their opposition to the disclaimer affidavit[13] and on April 25 Amherst returned the loan money which it had already accepted and thereby removed itself from participation in the N.D.E.A. program.[14] At the Fourteenth National Conference on Higher Education which was held at Chicago on March 4, the one thousand delegates present expressed open opposition to the affidavit. Their protest was directed primarily against the discriminatory nature of the provision.

> We believe in equality of treatment with respect to federal assistance and object to the singling out of students receiving this aid, to demand expressions of loyalty from them.[15]

On May 6, Bennington College followed in the footsteps of several other institutions and in protest returned to the government the loan funds which they had received.[16]

The uproar over the loyalty provisions of the N.D.E.A. was not limited to those who opposed them. Several congressmen who were in favor of the oath and affidavit section began to speak out publicly. One of the persons most

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[13] Ibid., February 25, 1959, p. 34.

[14] Ibid., April 26, 1959, P. 65.

[15] Ibid., March 5, 1959, p. 88.

[16] Ibid., May 7, 1959, p. 66.

vehemently opposed to the movement for deletion was Graham Barden (D., N.C.). Since Rep. Barden was Chairman of the House Committee on Education and Labor and therefore had significant control over the legislation which was under the jurisdiction of his committee, we will examine his remarks in detail.

On February 19, 1959, the subcommittees concerned with education of the Education and Labor Committee held hearings on the subject of the administration of the N.D.E.A.[17] Rep. Barden was present in the hearing room at the time when Rep. Thompson (D., N.J.) and the witness, Commissioner of Education Derthick, were discussing the administration of the loan fund. Thompson, in passing, asked Commissioner Derthick if he agreed with Secretary Flemming's stand in opposition to the loyalty provisions required under the N.D.E.A. Derthick replied in the affirmative and Thompson expressed his pleasure upon hearing the statement. At this point Barden interrupted the proceedings with the following remarks:

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[17] U.S., Congress, House, Subcommittees on General Education and Special Education of the Committee on Education and Labor, Hearings, N.D.E.A. of 1958 (Administration of), 86th Cong., 1st Sess., 1959.

> Mr. Chairman, I would not like for that exchange of remarks to go by as though it had the unanimous approval of this committee. I shall resist with everything that is within me the removal of that provision. Now I have heard enough of this, everytime we pass a law there is somebody who wants to come in and grab the money. They are interested in the money, then they want to raise a great howl over taking an oath of allegiance to America.[18] (Italics mine)

Representative Wier (D., Minn.) at this point mentioned that there was a real distinction between a simple oath of allegiance and a non-Communist affidavit. Barden did not seem to think so.

> I have been signing and swearing allegiance to America ever since I was a Boy Scout; did so when I entered World War I, and have done so thousands of times since, including the oath that I did not belong to any organization that advocated or taught the overthrow of my government...Now up comes a bunch of college professors thinking it is so horrible and terrible to have to say they will not belong or do not belong to an organization that teaches the overthrow of this government.[19]

Not only did Barden claim that the oath and affidavit were equally demonstrative of love of country, but he went on to disapprove of Secretary Flemming's position on the issue.

> Mr. Flemming should entertain himself in some other manner than attacking these requirements which were approved and passed by the Congress of the United States and signed by the President.[20]

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[18] Ibid., p. 27.

[19] Ibid.

[20] Ibid., p. 28.

Because of Representative Barden's opinion regarding both the oath and the affidavit provisions of the N.D.E.A. and his pivotal position as Chairman of the Education and Labor Committee, the chance for any House action favoring removal seemed doubtful. Therefore, all attention was focused on the Senate where public hearings on S. 819 were conducted by the Subcommittee on Education of the Labor and Public Welfare Committee on April 29 and May 5.

Hearings on the Repealer

The two days of hearings were conducted by Senator Kennedy with the assistance of Senator Clark who co-sponsored the bill. Although the purpose of the hearings was to ascertain whether the oath had helped or hindered the objectives of the bill, they were in no sense carried out with a judicial or impartial orientation. In introducing the hearings, Senator Kennedy made his opinions quite clear.

> We believe that the loyalty oath has no place in a program designed to encourage education. It is at variance with the declared purposes of the act in which it appears; it acts as a barrier to prospective students; and it is distateful, humiliating, and unworkable to those who must administer it.
>
> No one can quarrel with the principle that all Americans should be loyal citizens and should be willing to swear allegiance. But this is quite different from

> a doctrine which singles out students, who seek only to borrow money, as a group which must sign a rather vague affidavit as to their beliefs as well as acts.[21]

Senator Kennedy went on to state his opposition to Section 1001(f) on three counts. He contended that (1) It imposes a burden on the educational institutions which must administer it, for they are required to interpret some of the vague wording of the provision. (2) It imposes sanctions for beliefs instead of overt actions and on that ground might be unconstitutional. (3) It presents problems as to federal control over education.[22]

Thus, we see that the legislators in charge of the hearings were definitely involved in the outcome of the proposed bill. Their prejudices were clear and many of the arguments which were stated at the commencement of the hearing by those who were conducting it were also used by witnesses who represented those groups which strongly favored removal.

The witnesses at the hearings, as well as the

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[21] U.S., Congress, Senate, Subcommittee On Education of the Committee On Labor and Public Welfare, Hearings, Amending Education Act of 1958, 86th Cong., 1st Sess., 1959, p. 2.

[22] Ibid.

legislators conducting them, were heavily weighted on the side of those advocating deletion of Section 1001(f). The charges of unconstitutionality, discrimination against educators and students, fear of federal control over education, lack of propriety and limitations on academic freedom were the basic recurrent themes of the anti-oath and affidavit people. Also stressed was the argument that the loyalty provisions were ineffective in fulfilling their purpose, i.e., weeding out subversives and preventing them from receiving government funds. Kennedy himself made this last point at the outset.

> The sole justification for this requirement seems to be that it might prevent a card-carrying member of the Communist Party from benefitting from a loan for educational purposes made by the school and the Federal Government. I would doubt, however, that any member of a truly subversive organization would have the slightest hesitation in perjuring himself. This provision does not keep such persons out of the program.[23]

The witnesses at the hearings can be classified in several distinct categories. First, there were representatives of educational, civil liberties, and other specific interest groups and associations. Second, Administration spokesmen took active part in the committee hearings or sent letters

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[23] Ibid., p. 3.

to the committee which were inserted into the record. Third, there were individual educators or legislators who officially represented no specific group, but rather presented only their own opinions. In addition, editorial opinions from various newspapers throughout the nation were inserted into the record.

The first witness who acted as a spokesman for a specific group was Everett Case, who acted in the name of the Committee On the Relationship of Higher Education to the Federal Government of the American Council on Education. Mr. Case indicated that his organization was opposed to both the oath of allegiance and the disclaimer affidavit, although the latter was considered to be particularly repugnant. He said that his group opposed the provisions on civil liberties grounds as well as the fact that financially burdened students would be most affected.

> Aside from the appropriateness of such requirements as part of a federal program designed to broaden educational opportunities, our faculties and their administrative officers were greatly disturbed first, by this evident invasion of the privacy of an individual's belief, especially as applied to our youth, and also by the circumstance that such requirements were applicable only to those who stood in need of such financial aid as the act provides.[24]

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[24] Ibid., p. 15.

Irving Ferman, Director of the Washington Office of the American Civil Liberties Union, presented the opinion of that group which wholeheartedly supported S. 819. He pointed out that his organization believed the affidavit requirement to be unconstitutional and unjustifiable on national security grounds. Mr. Ferman stressed the importance of protecting individual rights against government threats to limit them. These rights, he contended, are the backbone of the American way of life and should never be disposed of.

> Too many polemicists on both sides of the political fence, in considering some of the cold war problems with respect to civil liberties, have postured the problem in terms of security versus individual liberty. To put the polemic in that posture has been wrong. We have to realize that our personal liberties are our greatest asset, our greatest weapon in the arsenal of defense. It is our liberty that gives us our peculiar strength, and as we're finding ourselves reaching a point of armament stalemate it might be peculiarly this tradition, this fabric in our society that will lead us to ultimate victory.[25]

The Federation of American Scientists claimed to be against the N.D.E.A. requirements, but they made it clear that loyalty provisions were valid under certain conditions. This organization stated that loyalty tests were necessary only in cases where the individuals involved were "privy to secret information or who hold positions in which their

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[25] Ibid., p. 56.

decisions and actions directly and substantially affect the national security."[26] However, they felt that the widespread applicability of the N.D.E.A. oath and affidavit requirements, was not only unnecessary, but tended to "create a conformity of fear".

The testimony of the United States National Student Association served to restate several of the major arguments against Section 1001(f); e.g., problems of federal control, questions of unconstitutionality, limitations on academic freedom, etc. It was the contention of the National Student Association that, not only would the requirement fail in its purpose of exposing subversives and preventing their use of federal funds, but it might in addition impose "hardships on innocent individuals".[27] The National Student Association made a distinction between the oath and the affidavit (see chapter one). They urged removal of the affidavit while advocating only modification of the oath.

The American Association of University Professors, represented by William Fidler, also made a distinction

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[26] Ibid., p. 60.

[27] Ibid., p. 62

between the oath and the affidavit. Mr. Fidler stated that his organization favored removing only the affidavit, for there was nothing inherently bad about a positive oath of loyalty.[28] On the other hand, the faculty of Bucknell University urged removal of both requirements. Their testimony mentioned the discriminatory character of the provisions but stressed the objection that "such oaths implicitly deny the very foundation of our political heritage, that is, the freedom of the individual conscience and the dignity of the individual citizen."[29]

Many other groups made their position plain to the committee either by the personal testimony of their representatives or by letters which were inserted into the record.[30] All groups were opposed to the affidavit and advocated its removal or favored a stronger provision in its place. The Veterans of Foreign Wars were of the latter frame of mind.

> Congress obviously doesn't want these funds to go into the hands of anyone whose loyalty is questioned. If the disclaimer affidavit is not in the best interest of the act then in lieu of the oath we should have a provision which would deny an applicant

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[28] Ibid., p. 90.

[29] Ibid., p. 65.

[30] Ibid., see Table of Contents for complete listing.

> who is a member of the Communist Party or any organization listed by the Attorney General as subversive.[31]

There was one group however, which favored the loyalty provisions as they stood. The American Farm Bureau Federation, which represented one million farm families, stated that it was opposed to the N.D.E.A. itself, because the act constituted federal aid-to-education. Once accepting the N.D.E.A. as law, the Federation felt that the loyalty provisions were important and necessary.

> It seems to us that the recipients of scholarships and payments should be persons so dedicated to the Constitution of the United States and the free enterprise system that they would welcome the opportunity to declare themselves as true Americans.[32]

As for the second category of witnesses, there were two Administrative officials who made their opinions concerning Section 1001(f) known to the committee. Both Philip Hughes, the Assistant Director of the Legislative Reference Service of the Bureau of the Budget, and Arthur S. Flemming, the Secretary of Health, Education and Welfare, opposed the loyalty provisions. In a letter to the committee, Mr. Hughes, representing his Bureau, stated that

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[31] Ibid., p. 138.

[32] Ibid., p. 124.

the loyalty requirements were ineffective as a method for preventing disloyal persons from using government funds. He supported his contentions by demonstrating that the identical requirement in the National Science Foundation of 1950 had thus far not served its purpose.

> For nine years an identical oath and affidavit have been required of scholarship and fellowship recipients under the National Science Foundation Act of 1950. We understand that there have been no prosecutions under the provisions of this act. This suggests that such a requirement in the context of the N.S.F. scholarship and fellowship programs and the N.D.E.A. does not make a contribution to national security. We recommend approval of S. 819.[33]

Secretary Flemming, who publicly announced his disapproval of Section 1001(f) in December of 1958, reaffirmed his stand. He stated that the oath and affidavit provisions not only discriminated against the academic community, but were ineffectual as well. Secretary Flemming asserted that the federal government had adequate internal security laws at its disposal and that these laws could be used against disloyal persons.

> I believe that, if a person receiving assistance under this act is identified as a person who is in violation of our internal security laws, he should be prosecuted immediately under the laws designed directly and specifically for such offenses.[34]

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[33] Ibid., p. 4.

[34] Ibid., p. 85.

The third type of witness were persons who represented their own personal views. Among the individuals who testified before the committee were several members of Congress. Senator Richard Neuberger of Oregon denounced both the affidavit and the oath and supported his opinion with ten specific reasons. In addition to the oft-repeated arguments he stated that the provisions might (1) "discourage the employment of foreign teachers who might significantly aid in the achievement of our goals" and (2)

> tend to defeat the inceptive features of the act which were designed to assure that no student of talent will be denied an opportunity for higher education because of lack of funds. Already colleges have refused money and student groups have said that they will boycott the program if the test oath is required.[35]

Congresswoman Green, who had introduced a bill in the House (H.R. 4066) to repeal Section 1001(f), told the committee that she opposed the entire provision as a "direct slap at the intellectual community."[36]

Senator Mundt, who had been responsible for extending the scope of the oath and affidavit when the N.D.E.A. was debated on the Senate floor in 1958, appeared as a witness.

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[35] Ibid., p. 93.

[36] Ibid., p. 18.

He contended that as an instrument for protecting government funds from use by Communists, the loyalty provisions were not satisfactory. However, he suggested that these requirements, although somewhat inadequate, were better than nothing at all. If Section 1001(f) was eliminated entirely, claimed the Senator, it would act as an "open invitation to Communists to use the funds".[37]

At this point Senator Kennedy asked Senator Mundt just why the removal of the provisions would constitute an "invitation". Senator Mundt replied:

> The invitation would stem from the fact that this committee having written this amendment, then by taking it out, must indicate something to someone... Something must have changed.[38]

Senator Kennedy answered by indicating that the provision was not well thought-out, not discussed when it was originally inserted into the bill, and that subsequent information had shown that it was both ineffective and objectionable.

> I think that we have become somewhat wiser. When this matter was in committee it was put in just before the bill was reported from the subcommittee. There was no chance to discuss it. Most of the

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[37] Ibid., p. 105.

[38] Ibid., p. 108 ff.

> members were not aware that it went into the act. That was our fault, but merely because we made that mistake...[39]

Here Senator Kennedy admitted that because of the load of work before them, the legislators had overlooked this aspect of the bill. In this sense, S. 819 can be viewed as a correction of an error caused by the inadequacies of the legislative process.

In order to prevent subversives from receiving funds and at the same time, please those interests which were against the oath and affidavit, Senator Mundt offered an alternative amendment to S. 819. This amendment would do away with both the oath and affidavit and in their stead provide criminal sanctions for persons receiving funds who are, or have been, members of any organization on the Attorney General's list. The amendment reads as follows:

> Whoever being an individual who is or who within five years has been a member of any organization determined by the Attorney General in conformity with Executive Order 10450 (April 27, 1953) to be a totalitarian, Fascist, Communist, or subversive organization, makes application for or receives any payment or loan under this Act, shall be fined not more than $1,000 or imprisoned not more than one year and one day, or both.[40]

Several college presidents made the committee aware

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[39] Ibid., p. 109.

[40] Ibid., p. 107.

of their pro-S. 819 stand. Brother Augustine Philip FSC, President of Manhatten College, asserted flatly that the "oath will neither insure loyalty nor ferret out disloyalty."[41] The president of Swarthmore College, Courtney Smith, based his argument against the affidavit on the fundamental philosophy of education in a free society. Swarthmore College found the oath of allegiance acceptable, although unnecessary and undesirable. President Smith said:

> Is not the real question, the fundamental question, the question with which those who favor 1001(f) would surely agree, how are strong and capable and constructive citizens produced in a democratic society. I would declare that these qualities depend now, and have always depended, upon the maintenance of freedom in fact as well as in theory. As an educational institution Swarthmore College believes that strong citizens in a democratic society are produced in an atmosphere of freedom where ideas no not need to be forbidden or protected.[42]

President Nathan Pusey of Harvard, supported S. 819 primarily because he felt the loyalty provisions to be discriminatory, while President Whitney Griswold of Yale asserted that ideas cannot be induced by oaths.

Although the great majority of witnesses favored

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[41] Ibid., p. 122.

[42] Ibid., p. 77.

the Kennedy bill, there were a few that expressed disapproval. Del Mar College of Corpus Christi Texas, Alliance College of Cambridge Springs, Pennsylvania and Mercy College of Detroit, Michigan, all registered approval of the loyalty provisions. Enoch Dyrness, the Registrar of Wheaton College, not only went on record in opposition to removal, but claimed that the majority of educators agreed with him.

> I am convinced that...the majority of educators in America still favor retention of the provision in the law. Many of us are alarmed by the position taken by the leaders in the field of education and by inroads of communism in our country.[43]

Editorial comment registering opinion from coast to coast, was inserted into the record of the hearings. The Capital Times of Madison, Wisconsin denounced the provision as "another manifestation of the McCarthy era".[44] The Eugene, Oregon Register-Guard called the requirement a "hangover from Know-Nothingism".[45] Other anti-oath statements appeared on the editorial pages of the Philadelphia

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[43] Ibid., p. 135.

[44] Ibid., p. 73.

[45] Ibid., p. 68.

Evening Bulletin,[46] The Binghamton, New York Press,[47] and the San Francisco Chronicle,[48] and the Asheville, North Carolina Times[49] to name a few.

The hearings acted as a means for each of the groups and individuals concerned with S. 819 to have their opinions heard. Each group which protested against Section 1001(f) did so in the context of the aims of that specific organization. For example, the American Civil Liberties Union expressed the importance of the civil liberties angle and the National Council of the Churches of Christ based their objections on their "committment to God, whose service is perfect freedom".[50]

The vast majority of persons who made their opinion felt at the hearings were in favor of Senator Kennedy's bill. It was clear that those who conducted the hearings

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[46] Ibid., p. 82.

[47] Ibid.

[48] Ibid., p. 86

[49] Ibid.

[50] Ibid., p. 122.

were biased in this direction also. Those who favored the loyalty provisions or persons such as Senator Mundt who advocated even greater protections against disloyal persons formed a small minority. However, several of these groups, such as the American Farm Bureau Federation and the Veterans of Foreign Wars, had considerable strength vis-a-vis Congress. The amount of influence of all the other groups as well as the Administration spokesmen had yet to be tested when the bill came before the Senate. We will next turn our attention to the debate and subsequent action of the Senate.

CHAPTER IV

LEGISLATIVE FAILURE AND REACTION (1959)

After two days of hearings, the Kennedy-Clark bill (S. 819) which called for deletion of both the oath and the affidavit provisions, was brought to the floor. After lengthy debate it was recommitted to the Committee on Labor and Public Welfare. Because passage of the bill failed, the academic community reacted by fighting for deletion with added vigor. However, they tacitly agreed to accept a compromise and support removal of the affidavit only in the future.

This chapter will begin with a description and analysis of the Senate debate on S. 819. We will pay a good deal of attention to the arguments used by the proponants of removal as well as their opponents. Following this we will deal with the reaction of the academic community. We will try to illustrate the tactics which they used to arouse public opinion and gain support for their cause.

Senate Action: Commitment by Recommittal

On June 4, 1959, the Subcommittee on Education approved the Kennedy-Clark bill and on June 29, it was favorably reported out of the Committee on Labor and Public Welfare by a 12 to 3 vote. The Senate scheduled July 22 and 23 for debate on the bill.[1]

During the two days of debate twenty-five members of the Senate participated actively.[2] They were almost evenly divided as to party membership (eleven Republicans and fourteen Democrats) and represented all areas of the country. Party affiliation was not indicative of the positions taken by the senators, for Kennedy's bill received bi-partisan support. Those in opposition to S. 819 were affiliated with both parties too, but a pattern

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[1]The fact that two days of debate were scheduled by the Senate leadership was mentioned by Louis Joughin as an indication that the issue was considered to be important by that body. "The two day debate on the disclaimer affidavit, despite the recommittal action, represents an important accomplishment for American higher education. The majority policy committee and the majority leader saw fit to schedule two days of debate on this matter despite the extraordinary claims of other international business." From "The Disclaimer Affidavit," AAUP Bulletin, XLVI (September, 1939), 339.

[2]See Appendix III.

of Southern Democrat and Republican alliance was somewhat apparent.

The issue as discussed was not a clear-cut one. In other words, the alternatives were not simply to be in favor of or against S. 819. Instead there were several positions available to the legislators. There were, in the main, three possible alternative stands which a senator could take. In the first place, he could take a position which favored the status quo. This involved maintaining the loyalty provisions as they stood. This meant implicitly that adherents to this viewpoint felt that the inclusion of Section 1001(f) had been a good idea and that the section adequately fulfilled its purpose. A second alternative was the advocacy of S. 819, or the position that removal of the entire section was desirable. (During the debate there was much opposition to this stand and Kennedy himself finally agreed to accept repeal of the affidavit only.) The third position fell somewhere between the other two. Those senators in the third group (which was the largest) advocated the removal of Section 1001(f) but they also favored some sort of substitute in its place. The substitutes were suggested in the form of amendments to S. 819.

There were two major amendments offered to Senator Kennedy's bill. The first was the Mundt-Goldwater-Russell amendment. It provided criminal sanctions ($1,000 fine and/or one year in jail) for any member of a subversive organization who accepted money under the N.D.E.A. In addition, the applicant would be required to sign an oath of allegiance. Although this amendment was much discussed on the floor, it never came to a vote.

The second major amendment was offered by Senator Javits (R., N.Y.) and was put forth as a substitute to the Mundt amendment. This alternative called for repeal of the affidavit only and would require that standard perjury penalties apply to those swearing falsely to the oath. (The standard perjury penalty is up to $10,000 fine, five years in jail, or both.) The Javits amendment was adopted by the Senate. Its acceptance precluded any vote on the Mundt amendment.

Thus, the senators had a choice of either voting for the bill as it originally stood, or for one of the proposed amendments. A final alternative was to accept no changes in Section 1001(f) and have the oath and affidavit remain intact. It was the latter choice that the Senate ultimately made, thus committing itself to approval of the loyalty pro-

visions and preparing the way for further attacks by the academic community.

The debate on the Senate floor was somewhat extensive in scope, for it dealt with a great variety of topics. Some discussion concerned such aspects of Section 1001(f) as its propriety, utility, necessity and discriminatory character. Other remarks centered around the proposed amendments to S. 819 and their respective merits. Some debate also dwelt on the nature of academic freedom and whether there existed a distinction between the oath and the affidavit.

One of the topics which was discussed at the outset of the Senate debate was the differences, if any, between the oath and the affidavit. During the hearings it was made clear by many academic groups that there was an important distinction between the two. It was claimed by several witnesses that the affidavit alone was questionable because it interferred with personal beliefs, and carried with it an implicit assumption of guilt. The oath, on the other hand did not carry with it these negative characteristics and therefore was considered to be relatively innocuous. Because of the distinctions which were drawn, most spokesmen for the academic community objected only to

the affidavit.[3]

Senator Kennedy also contended that "we must make a distinction between the oath and the affidavit"[4] and he tried to make this point clear to those Senators who could see no differences. The legislators who fell into this latter category felt that both provisions were equally unobjectionable. For example, Senator Russell (D., Ga.) claimed that he could not understand why the academic community was insulted by being asked to swear to an oath of allegiance. He implied that the affidavit was similarly inoffensive when he stated that, "It seems to me that the oath and the affidavit are of the same nature".[5]

In attempting to refute the argument of Senator Russell and others of a similar frame of mind, Kennedy stated:

> There is quite a difference between requiring someone to take an oath or a pledge of allegiance and requiring a participating group to file non-Communist affidavits.[6]

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[3]The A.C.L.U. consistantly demanded the removal of the affidavit and considered any substitute provision as a compromise of principle. (A.C.L.U. files)

[4]C.R., 86th Cong., 1st Sess., Vol. 106, p. 13989: July 22, 1959 (Kennedy).

[5]Ibid., p. 13988: July 22, 1959 (Russell).

By taking this stand, Kennedy was logically forced into a position that favored the Javits amendment. By claiming that it was the affidavit that was most repugnant to the academic community, he backed down from his "no oath, no affidavit" position and adopted the compromise posture which accepted retention of the oath. (The change in Kennedy's position was used against him by opponents of S. 819, for they then charged him with inconsistency.)[7]

Another topic of debate was that concerning the discriminatory nature of the loyalty provisions of the N.D.E.A. The proponents of S. 819 consistently maintained that Section 1001(f) as well as any substitute acted as a direct insult upon the academic community. They pointed out that many other recipients of federal funds were not required to establish "proof" of their loyalty. Senator Cooper (R., Ky.) presented this viewpoint when he stated that the accusations directed against the academic community, implicit in the loyalty provisions, were unjustified. He maintained that even if some subversives were disclosed, this would not be reason enough

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[6] Ibid., p. 14065: July 23, 1959 (Kennedy).

[7] Joughin, op. cit., p. 340.

for retaining the oath and affidavit.

> Catching even fifty students who have wrong ideas does not justify placing all the thousands of loyal boys and girls in a position different from that of others of us, and saying to them, "you must prove your loyalty".[8]

In order better to demonstrate the discriminatory effect of Section 1001(f), Senator Clark (D., Pa.) offered an amendment which would enlarge the scope of the loyalty provisions so that they would apply to all persons receiving any sort of aid from the federal government. This amendment would require a loyalty oath from

> any individual (including any farmer, homeowner, mortgager, or member of a co-operative entitled to assistance under the Rural Electrification Act) who is eligible to receive any grant or loan from any agency of the United States, or any financial assistance by way of guarantees or insurance by such agency.[9]

Senator Clark's proposal was of course unacceptable to the Senate and this was just his intention. By presenting his amendment to the Senate he hoped to drive home the argument that the academic community should not be singled out from among so many others who receive government

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[8] C.R., p. 14074: July 23, 1959 (Cooper).

[9] Ibid., p. 14079: July 23, 1959 (Clark).

assistance.

> The purpose of my amendment is merely to see to it that those who believe we can inculcate loyalty through the simple process of requiring an oath make that principle applicable across the board to all recipients of government funds.[10]

The opposition countered with two forceful arguments. Senator Holland (D., Fla.) pointed out that although it had been contended that the academic community was deeply insulted by the discriminatory nature of Section 1001(f), in actual fact they were unconcerned. The senator presented figures (which he obtained from statements by Commissioner of Education Derthick) which demonstrated that during the first year of N.D.E.A. operation approximately 40,000 students filed applications which were approved and resulted in loans.[11] Senator Holland concluded that

> No showing from this years experience that the provision of the law which we've been discussing here seriously limited the number of enrollees. Therefore, we have been fighting over nothing.[12]

Another counter to the discrimination argument was

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[10] Ibid., p. 14079: July 23, 1959 (Clark).

[11] Ibid., p. 14082: July 23, 1959 (Holland).

[12] Ibid.

based on patriotism. It was stated that patriotic Americans would deem it a privilege to sign any sort of oath and affidavit which demonstrated their loyalty to America and its principles. Senator Bridges (R., N.H.) contended that for this reason the academic community should be glad that they were singled out for this purpose.

> To this I say they should be honored to be so singled out. I find nothing wrong with asking all persons receiving any kind of United States benefits to pledge allegiance to the principles for which America stands...We need more patriotism in this country, not less. We need as we have never needed before young people who will realize what America means, what is important about its history and principles. And we need young people who are not ashamed to stand up and say proudly that they pledge their allegiance to the United States.[13]

A third argument used to counter that of discrimination was based on the fact that the N.D.E.A. was a defense bill. Proponents of some type of loyalty provision maintained that they were necessary in view of the fact that the Act was passed in order to bolster the security of the nation. Thus the implication was that Congress had not discriminated against the educational institutions and the students, but would have required

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[13] Ibid., p. 14065: July 23, 1959 (Bridges).

loyalty provisions for any group which recieved money under defense purposes. Because the Act tied education with defense the loyalty provisions were not really discriminatory.

One observer suggested that it was because of the strength of this argument that Javits offered his amendment. It did away with the more offensive affidavit, thus satisfying the Kennedy forces, and retained the oath, thus mollifying the opposition.

> Supporters of Kennedy's bill realized that their opponents had apparently a strong debating point in this coupling of defense with education. For this reason Javits moved to amend the bill--continuing the elimination of the affidavit, but preserving the positive oath of allegiance and attaching the standard penalties for perjury.[14]

Javits himself stated that his substitute amendment was offered as a compromise. He described it as a "proposal which would crystallize the conflicting views of the senators".[15]

However, Senator Aiken (R., Vt.) challenged Javits' amendment, saying that it was just as discriminatory as

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[14]Kevin Sullivan, "Oathism On Campus," Nation, CLXXXIX (December 5, 1959), 416.

[15]C.R., p. 14085: July 23, 1959 (Javits).

Mundt's or Section 1001(f) itself.[16] Javits countered by stating that discrimination was not involved. Here again he used the defense-education link as an argument.

> I do not think that it is discrimination in view of the fact that we ourselves opened the door by making this program an aid to defense of the country, instead of allowing it to stand on its bottom as education.[17]

The Mundt amendment itself became another issue in the debate. The supporters of this proposal claimed that it would be acceptable to the academic community, for it did away with the affidavit. In addition, the criminal sanctions which it provided for subversives who accepted loans under the N.D.E.A. were strong enough to satisfy those who were anxious about leaving a security gap in the N.D.E.A.

The Mundt amendment was criticized on various counts. It was charged with being discriminatory but was more vehemently attacked as being a "little Smith Act". The opponents of the Mundt proposal maintained the position that the Smith Act was an adequate instrument for dealing with subversives. Kennedy supporters contended that if it

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[16] Ibid., (Aiken).

[17] Ibid., (Javits).

were discovered that a Communist was receiving funds from the federal government under this Act, he could be prosecuted under the Smith Act. Therefore they concluded that the Mundt amendment was merely redundant and that adequate internal security laws were already in existence. Senator Church presented just this point of view.

> Mr. President, the amendment of the Senator from South Dakota is unnecessary to the accomplishment of our objective. That amendment merely would add a little Smith Act. There is no justification for prescribing a little Smith Act to be applicable only to the youngsters who are attending our colleges and universities. Furthermore such a provision is unnecessary, because the Smith Act already applies to them and to all other citizens equally.[18]

Advocates of the Mundt amendment, in reply to charges that the proposal served as a repetition of the Smith Act, said in effect--so what? The following colloquy demonstrates this clearly.

> Kennedy: The Mundt Amendment is redundant of the Smith Act.
>
> Ervin: If they are the same there is certainly no great harm by placing the same provision on the statute books twice.
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> Kennedy: I agree with Lord Faulkner that when it is unnecessary to act, it is necessary not to act. While the Smith Act is in effect we

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[18] Ibid., (Church).

> don't need another similar piece of legislation.[19]

The Senator from Massachusetts, later in the debate, put forward a suggestion to those Senators who were concerned with the adequacy of internal security legislation. He maintained that they ought to deal with strengthening the Smith Act, rather than with a measure (the Mundt amendment) which would discriminate against college students.[20]

The Mundt amendment was also attacked on the grounds of constitutionality. Senator Javits contended that its provisions were contrary to the Yates decision,[21] in that no distinction was made between belief and advocacy of improper action.[22] Senator Clark's stemmed from this same reasoning as well as a different source. He maintained that under certain circumstances the Mundt amendment requirements would precipitate a violation of the

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[19] Ibid., p. 14070.

[20] Ibid., p. 14100: July 23, 1959 (Kennedy).

[21] Yates et. al. v. United States, 354 U.S. 298 (1957).

[22] C. R., p. 14073: July 23, 1959 (Javits).

Fifth Amendment safeguards against self-incrimination.

> If a student receiving benefits under the Act must disqualify himself because of ineligibility under the terms of the amendment, he is virtually admitting liability under the Smith Act and is forced to incriminate himself in violation of the Fifth Amendment.[23]

Another general topic of discussion was that concerning the relative effectiveness of the various proposals. Mundt claimed that his amendment would be more protective than Javits'.[24] Russell supported this contention by stating that prosecution would be easier under the Mundt amendment.[25] Since the sanctions under the Javits amendment applied only to a perjury charge, it was felt by many Senators that this type of case was difficult to prosecute. Senator Long objected to the Javits amendment on just these grounds.

> We would have merely an oath of allegiance to the United States which any Communist on earth can take. After he takes it, if he is prosecuted for it, or found to be a Communist all he will have to say is, "Just for that one brief moment when I took the oath I did intend to be loyal to the United States and I changed my mind the moment I signed the paper". That is all he needs to do.[26]

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[23] Ibid., p. 14070: July 23, 1959 (Clark).

[24] Ibid., p. 14092: July 23, 1959 (Mundt).

[25] Ibid., p. 14091: July 23, 1959 (Russell).

[26] Ibid., p. 14096: July 23, 1959 (Long).

The advocates of the Javits proposal merely denied the fact that perjury would be difficult to prove. In order to demonstrate further that this amendment was superior to Mundt's they reduced themselves to comparing the severity of the criminal sanctions applicable under both proposals. The Javits faction thus concluded that since a perjury charge carries with it heavier penalties than those proposed by Mundt, it was better in terms of national security.[27]

A somewhat limited discussion of academic freedom was also carried on during the debate on S. 819. One of the main arguments of the academic community had been that the loyalty provisions served to limit academic freedom; that the spirit of free inquiry would be stultified because of them. Proponents of the loyalty oath maintained that although the educators had complained that academic freedom was being denied them, they in turn were guilty of just such a charge themselves. They called the action of several college presidents who withdrew their schools from N.D.E.A. participation an infringement upon academic freedom.

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[27] Ibid., p. 14086.

One last point which was discussed during the Senate debate on S. 819 was the question of propriety. Both Senator Church (D., Idaho) and Senator McCarthy (D., Minn.) implied that the entire Senate debate had for the most part been irrelevant. They contended that the national security was not at issue at all. McCarthy stated: "I don't believe that the security of the United States will be affected whether we include this oath or strike it from the bill".[28] The small number of Communist students (if any) who might make use of the N.D.E.A. funds would not significantly affect this country's future, he claimed. If the dominant issue was not internal security--what was it? McCarthy and Church contended that "The central issue in the debate is not one of security, but of propriety".[29] In other words, these senators believed that the loyalty provisions of the N.D.E.A. were not in keeping with accepted or established standards of action, especially in regard to the academic community.

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[28] Ibid., p. 14080: July 23, 1959 (McCarthy).

[29] Ibid.

After airing these various topics on the Senate floor for two days, the Senate was ready to make its legislative decision. Their first action was the adoption of the Javits amendment by the narrow margin of 46 to 45. Because the Javits amendment was offered as a substitute to the Mundt proposal, its acceptance precluded any action on Mundt's amendment. It seemed at this point that the Senate might then go on to pass S. 819 as amended by Senator Javits.

However, Senator Long (D., La.) who had not been very involved in the debate up to this point, moved to recommit the bill to committee.[30] Senator Russell and Bridges agreed. As a last-ditch effort to save his bill, Kennedy spoke about its merits. In addition he attempted to reinforce in his collegues' minds the obvious fact that recommittal would in effect act to defeat S. 819. Kennedy also reminded the Senate that two administration figures (Hughes and Flemming) had taken a position in favor of his bill. This last effort probably was an attempt to demonstrate that the movement for the repeal of Section 1001(f) was not merely on the part of students and educators.

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[30] Ibid., p. 14096: July 23, 1959 (Long).

In addition, perhaps the Senator from Massachusetts felt that the prestige of the Administration might help to sway some votes.

But Kennedy's remarks ultimately proved futile, as the Senate then voted 50 to 42 in favor of recommittal. With this action the last possibility of altering Section 1001(f) during the 1959 session of Congress was cut off.

A Short Examination of the Effects of Recommittal

Although we will not take time here for any extensive analysis of either the hearings or congressional action in 1959 (see Chapter VII) a few brief comments are in order. The negative results of the campaign to eliminate the oath and affidavit certainly indicate that although those groups involved made a concerted effort they did lack influence vis-a-vis Congress. Besides the problem of effective access, there were other factors which led to defeat. Since House action was made impossible because of Rep. Graham Barden's influential position as Chairman of the Committee on Education and Labor, it became more difficult to gain favorable Senate action. The Senators were no doubt aware that even if they

did succeed in passing some ameliorative legislation, it would never become law--at least during that session. Besides this many Senators might have been hesitant about going on record in "opposition to loyalty". Another factor to consider is that it is always easier to block legislation than to pass it. Thus, the opponents of change had an advantage to begin with. These then are some of the barriers which the advocates of removal had to face in 1959 and in their future attempts to delete Section 1001(f).

The results of the 1959 attempt were not completely negative. The Senate hearings and debate and the resulting publicity served in some part to extend the "public" of those groups interested in Section 1001(f).[31] In addition, several groups felt that the airing of such topics as academic freedom on the congressional level was in the long run beneficial to the academic community. The A.A.U.P. Journal of September, 1959 contained an article by Louis Joughin which had its hopeful aspects.

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[31]See David Truman, Governmental Process (New York: Alfred Knopf, 1951) pp. 372, 387.

> There is ground for a reasonable hope that other legislation in the area of education will in the immediate future not be so likely to embody mistakes like the disclaimer affidavit. Viewed more largely, the effort made by the A.A.U.P. and other education groups appears to have been thoroughly worthwhile. Exploration of a rather particular problem opened the door to general discussion of several vital concerns of Association members. The Congressional Record now contains an adequate introductory exposition of important values and principles which govern teachers and higher education.[32]

Finally, the defeat in the 1959 session served as a new impetus for further attacks on Section 1001(f). The academic community represented by various professional associations and individual institutions went into the fray with renewed vigor. Thus the recommittal motion served as a catalyst for further action by the opponents of the loyalty provisions of the N.D.E.A. Because they had failed to muster a majority in the Senate they hoped that by expanding their public, greater legislative success would be forthcoming.

Reaction 1959: Groups Favoring Removal

After the virtual defeat of S. 819 on July 23, 1959, many individual institutions of higher education

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[32] Joughin, op. cit., p. 341.

and interested organizations stepped-up their efforts to remove or modify Section 1001(f). Because of this new concentrated effort to influence the legislature and to enlarge public awareness of their campaign, the press soon found that the issue was newsworthy. Publicity grew as individuals and academic institutions with nationwide prestige began publicly to denounce the N.D.E.A. loyalty provisions. This new campaign basically did not offer any new arguments against Section 1001(f), but instead attempted to put greater pressures on Congress and attract greater public attention to the "cause".

Formal action by the various academic organizations began with the annual convention of the American Federation of Teachers (AFL-CIO).[33] At this meeting the following resolution was passed:

> That the American Federation of Teachers record its support for the bills to repeal the loyalty oath of the National Defense Education Act of 1958 and that it instruct the corresponding secretary to write both Senators and Congressmen from all states urging them to vote for the bills repealing this provision of the Act.[34]

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[33] New York Times, August 22, 1959, p. 15.

[34] George S. Reuter, Selected Opinions Concerning the N.D.E.A., (Chicago: American Federation of Teachers, January, 1959), 8.

The American Council on Education,[35] The American Assembly,[36] The Association of Higher Education,[37] The Association of Land Grant Colleges and State Institutions,[38] and the American Association of University Professors[39] all made formal resolutions of the same nature and in addition urged their members to make their congressmen aware of their stand. At the annual meeting of the Association of American Colleges, Nathan Pusey, the President of Harvard University, urged the Association to "embark on a program of education to achieve the defeat of the disclaimer affidavit".[40] In addition to the actions of long-established organizations, new groups were formed whose aims were limited to achieving removal of the loyalty provisions. At Harvard University a new group, the Harvard Student-Faculty Committee To Remove Section 1001(f), was established and began an extensive

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[35] New York Times, November 27, 1959, p. 21.

[36] Ibid., May 9, 1960, p. 17.

[37] Ibid., March 10, 1960, p. 33.

[38] Reuter, op. cit., p. 8.

[39] Louis Joughin, "Protesting the Disclaimer Affidavit," AAUP Bulletin, XLVI (June, 1960), 205.

[40] New York Times, January 14, 1960, p. 20.

letter-writing campaign.[41] (Throughout this period the American Civil Liberties Union attempted to work out a co-ordinated program in order to effect positive legislative action by corresponding with influential college presidents and making use of their own access to sympathetic legislators. Besides this, they issued press releases as important new developments arose.)[42] In addition to passing anti-Section 1001(f) motions and urging members to contact their Congressmen, many of the organizations published special flyers and pamphlets stating their reasons for opposition. These pamphlets were fairly well distributed, at least among the membership. Thus the organizations attempted to increase their "public" and gain a larger backing for their cause. One measure of their success was that most of the formal repeal resolutions were considered of enough importance to be carried by the New York Times. Information gleaned mainly from newspaper clippings indicated that as of April, 1960, twenty-two associations recorded opposition to the affidavit.[43]

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[41] Ibid., February 14, 1960, Sec. IV, p. 9.

[42] This information gleaned from A. C. L. U. files.

[43] See Apendix II.

The individual universities also did their share in protesting the loyalty provisions. Although a handful of colleges (six)[44] had originally declined to participate in the N.D.E.A. program in opposition to the affidavit, their action did not attract a great deal of attention. However, during the period between April, 1959, and April 1960, twenty-two schools withdrew from the program and returned any government funds which they had received. Thus, by April, 1960, almost 30 institutions had refused to participate.

It is important to note here that the universities had an additional reason to oppose the affidavit besides the arguments already referred to. According to the terms of the Act, each university or college was required to invest ten percent of its own funds while the government paid the other ninety percent. Also they had to administer the oath and affidavit to each applicant. Thus the educational institutions were forced to play a role in the discriminatory practice to which they were so opposed. And so because of these reasons the list of non-participating institutions gradually grew.

On October 9, 1959, Wilmington College (of Ohio)

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[44] See Appendix II.

returned $7,345[45] and on November 16, Oberlin College returned $68,146[46] in protest of the affidavit. Then on November 17, both Harvard and Yale withdrew from the federal loan program. With their combined action these universities returned almost $500,000.[47] This act of protest by Harvard and Yale received page one coverage by the New York Times and drew a great deal of attention. On the following day the Times devoted an editorial to this subject in which they praised the action of these universities. The editorial stated in part:

> We admire the action of Harvard and Yale Universities in withdrawing from the Federal student loan program because of the Loyalty-oath requirement. (In truth they opposed the affidavit, M.H.) In doing so, they join Princeton and several of the country's leading smaller colleges, such as Amherst and Oberlin, in the one way of effectively protesting the insult to American youth that is implicit in the National Defense Education Act of 1958...The stand now taken by Harvard and Yale should encourage a renewal of such attempts (for removal) at the next session of Congress.[48]

Because of the prestige of Harvard, Yale and Prince-

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[45] New York Times, October 10, 1959, p. 12.

[46] Ibid., November 17, 1959, p. 28.

[47] Ibid., November 18, 1959, p. 1.

[48] Ibid., Editorial, November 19, 1959, p. 38.

ton, many other colleges and universities followed their lead. But in some cases, educational institutions were not as richly endowed as these three and therefore were unable or unwilling to sacrifice the federal funds. But those colleges which opposed the affidavit could not see their way clear to refuse government money, did file formal statements in this regard. Thus, by April, 1960, seventy participating institutions were on record in opposition to the affidavit.[49] (Nine of these colleges also filed protests against the oath.)

In addition to the efforts of college administrations and academic organizations, students and faculty members on individual campuses began to combat the affidavit. For instance, the Harvard Crimson published a fifteen page pamphlet entitled "Worse Than Futile", in which they presented a polemic on Section 1001(f). It contained an introduction by Senator Kennedy and by February of 1960 it had been distributed to 1200 colleges and universities.[50] The American Civil Liberties Union

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[49] See Appendix II.

[50] "Repeal of 'Non-Communist' Affidavit in the Education Act To Be Lively Issue in Congress," Science, CXXXI (February 19, 1960), 488.

reported that faculty and student opposition had been recorded at thirty-eight universities where the administration had not taken a stand. In most cases the faculty protest had taken the form of resolutions made by the individual A.A.U.P. chapters and student action was recorded by motions passed by the student government or editorials appearing in the college newspapers.[51]

Throughout this period the journals published by the various academic interest groups continued to print articles condemning Section 1001(f) and urging members to fight for its repeal. But then magazines which were only indirectly affected by the loyalty provisions began to cover the issue also, for by this time it had aroused national attention. The liberal periodicals such as the New Republic and The Nation ran editorials and articles on the topic. Catholic magazines such as America and Commonweal joined the fight also. In an editorial printed in the December 11, 1959 issue, Commonweal called the affidavit "a foolish offensive form which should be easily seen for what it is today".[52] It

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[51] See Appendix II.

[52] "Loyalty Oaths in School," editorial, Commonweal, LXXI (December 11, 1959), 313.

then went on to praise the universities which had withdrawn from N.D.E.A. participation. In a March article in the same magazine, the N.D.E.A. loyalty provisions were blamed on the sickness of American society.

> In a normally healty society, loyalty can be presumed, as innocence is the presumption in any normally virtuous society...No one can satisfactorily answer those who ask why anyone who really loves his country should object to loyalty oaths. The very question betrays a neurotic element in the questioners' understanding of patriotism. No amount of rational argument is about to change his mind.[53]

The following month Commonweal carried an article by Senator McCarthy in which he put forth his argument that the issue was not one of national defense, but one of propriety. The Senator closed with a warning that the N.D.E.A. loyalty provisions were setting a dangerous precedent.

> If the N.D.E.A. loyalty oath could be isolated, it might well be said to be insignificant, but there is danger that it will establish a trend which will not do honor to democracy or to the traditions of the United States.[54]

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[53]John Gogley, "Loyalty Oath," Commonweal, LXXI (March 25, 1960), 695.

[54]Eugene McCarthy, "The Student Loyalty Oath," Commonweal, LXXII (April 22, 1960), 87.

The efforts of the proponents of the removal of the affidavit to gain a wide hearing were boosted by an article entitled "Loyalty: An Issue of Academic Freedom", which appeared in the New York Times Magazine Section on December 20, 1959. The article, which was written by President Griswold of Yale University attempted to explain to the general public why the academic community was opposed to the affidavit and why various universities have refused to participate in the N.D.E.A. program. President Griswold made his point by referring to the various objections which have already been presented here (see Chapter 3). In addition he traced the affidavit back to the historic test oaths, giving a short history of their usage through the ages. He also made clear the distinction between the oath and the affidavit and set forth the reasons why the academic community objected most strenuously to the latter.

> The colleges and universities are not protesting the oath of allegiance. They do question its appropriateness as a condition to financial aid for college students, as distinct from its traditional usage in connection with the assumption of a public office or trust; and they also question whether more general use may not wear it thin.
>
> Too, they are mindful of the historic fact that any oath by the state can be misused. Nevertheless, they accept the oath of allegiance. By itself the

> oath is no more than an affirmation of the duties every citizen owes to his country, whether he takes the oath or not. It is thus co-extensive with and expressive of the basic law of the land. The disclaimer affidavit, on the other hand, extends beyond the basic law of the land into the realm of belief and conscience, where definitions are vague and actions become matters of debate. What the colleges and universities are objecting to is the disclaimer affidavit.[55]

Magazine coverage, interestingly enough, was not limited to domestic publications. The overall importance of the issue can be demonstrated by the fact that The Economist, a British periodical, devoted some space to it. This magazine presented a survey of the controversy in an article entitled "Should Students Swear?".[56]

No doubt because of the efforts of the educational institutions and the interested organizations and associations, the loyalty oath issue had assumed national importance by the end of 1959. In fact, on December 2, 1959, President Eisenhower was asked to comment on the loyalty provision controversy at a press conference. To the delight of the proponents of removal, Eisenhower made

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[55] A. Whitney Griswold, "'Loyalty': An Issue of Academic Freedom", New York Times Magazine, December 20, 1959, p. 18.

[56] "American Survey-Should Students Swear?", The Economist, CLXCIII (December 26, 1959), 1245.

the following remarks in response to this question.

> I think that when we begin to single out any group of citizens and say, "This is a matter of legal compulsion", I can see why they are resentful. I should think that the loyalty oath, the basic citizenship oath is sufficient.[57]

The New York Times carried this story on the front page headlined "Eisenhower Hits Student Oath Aid". Because of the President's great popularity, his anti-affidavit statement must certainly have aided the cause of the groups advocating removal.

An even more important event in terms of broadening the scope of those concerned with the issue and influencing the members of Congress, was Eisenhower's Budget Message to Congress, which was delivered on January 18, 1960. At this time the President explicitly advocated the removal of the affidavit from the N.D.E.A.

> I am recommending repeal of the provision of the National Defense Education Act that prohibits payments or loans from being made to any individual unless he executes an affidavit that he does not believe in or belong to any organization that teaches the illegal overthrow of the Government. This affidavit requirement is unwarranted and justifiably resented by a large part of our educational community which feels that it is being singled out for this requirement.[58]

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[57] "The Controversy Over The N.D.E.A. Loyalty Provisions," Congressional Digest, XXXIX (April, 1960), 107.

[58] Ibid.

The fact that Eisenhower chose to include such a statement in his Budget Message certainly indicates that the controversy had been considered of importance in terms of national domestic affairs.

Eisenhower's statements were supplemented by other prominent Republicans who also made public remarks in favor of affidavit repeal. On December 11, 1959, Nelson Rockefeller urged that the affidavit be deleted from the Act.[59] Vice-President Nixon also made a similar statement during the early Spring of 1960. He was approached by several college presidents (Chancellor Lawrence A. Kimpton of the University of Chicago, President Virgil M. Honcker of the State University of Iowa, and President Theadore M. Hesburgh, C.S.C. of the University of Notre Dame) who asked him to make a statement in support of Eisenhower's anti-affidavit stand. Nixon obliged them with the following remarks:

> It is my opinion that the affirmative loyalty oath by itself covers the situation, making the disclaimer affidavit unnecessary and, since it is not a general requirement for all recipients of government benefits, unwarrented.[60]

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[59] New York Times, December 12, 1959, p. 8.

[60] "Nixon on the Affidavit of Disbelief," School and Society, LXXXVIII (April 23, 1960), 195.

Thus by the beginning of the 1960 session of Congress, several new developments had taken place in the campaign to remove the disclaimer affidavit of the N.D.E.A. (It was now quite clear that retention of the oath was acceptable to the academic community as well as Senator Kennedy.) Eisenhower's unequival stand for removal as well as those of other Administration leaders, the withdrawal of Harvard and Yale and other highly respected educational institutions, made it appear that positive Congressional action would be in the offing. Because of these occurances as well as nationwide coverage in many magazines and periodicals, it can be assumed that the public concerned with this issue was somewhat enlarged, not merely limited to the academic community. Thus, because of all these factors, it was hoped that Congress would be influenced and the affidavit struck from the Act.

Reaction 1959: Groups Favoring Retention

However, before going on to a discussion of the legislative activity of 1960, it should be made clear that not all the organizational and collegiate activity was

limited to opponents of Section 1001(f). There were several college spokesmen, interest groups, and magazine articles which did speak out in favor of the loyalty provisions.

During the months of November and December of 1959, The New York Times reported that several college presidents had publicly declined to support the anti-affidavit movement. For example, Dr. N. Fawcett, President of Ohio State University refused to go along with his faculty's protest against the affidavit. Although the University's Student Loan and Scholarship Committee took a strong stand against the provision, Dr. Fawcett contended that "chances are remote that the affidavit will affect academic freedom on the Ohio State University campus".[61] Dr. Robert Johnson, Chancellor of Temple University announced his support of the loyalty provisions,[62] and Sister Madelva, President of St. Mary's College (South Bend, Indiana) "called it an honor to sign a loyalty oath".[63]

It should also be remembered that although the American Civil Liberties Union reported a substantial pro-

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[61] New York Times, December 12, 1959, p. 10.

[62] Ibid., November 25, 1959, p. 6.

[63] Ibid., December 16, 1959, p. 8.

test as of April, 1960 (twenty-eight institutions had refused to participate in the N.D.E.A. program, seventy others had filed protests through their administrations but continued participation, and thirty-eight others had protested through faculty and/or student action only),[64] there were still a good number of academic institutions that took no action on any level. The United States Office of Education stated that as of the same period (April, 1960) 1,360 colleges and universities were participating in the loan program.[65] Therefore it was clear that more than 1,000 institutions were unconcerned with the issue. (However, by any objective standards, it seemed apparent that the caliber of those schools which protested was a good deal higher than the remainder.)

There were also several organizations whose objectives were to prevent repeal. The 1959 convention of the American Legion passed a resolution supporting Section 1001(f).[66] In an article in the American Legion's

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[64] See Appendix II.

[65] Congressional Digest, op. cit., p. 103.

[66] Ibid., p. 118.

National Legislative Bulletin of January 15, 1960, members were asked to write to senators urging retention of the loyalty provisions.[67]

On January 28, 1960, the New York Times reported the establishment of the National Student Committee for the Loyalty Oath.[68] This group was made up of students from twenty-three universities and colleges. (The formation of this organization was an example of a potential group which became institutionalized when it felt that its interests were threatened.)[69]

Douglas Caddy, the chairman of the National Student Committee for the Loyalty Oath, in an address delivered on February 27, 1960, made use of the familiar anti-removal arguments. In one instance he stressed the national security angle.

> Repeal of the oath and/or the affidavit would be a serious blow to the internal security of the United States and would moreover provide at this time a great psychological victory for the enemies of the American way of life.[70]

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[67] Ibid.

[68] New York Times, January 28, 1960, p. 5.

[69] David Truman, Governmental Process (New York: Alfred Knopf, 1960), p. 34-35, 51-52.

[70] Congressional Digest, op. cit., p. 122.

Mr. Caddy also supported the loyalty provisions as being part and parcel of the American tradition. Although opponents of the affidavit had stressed its test oath origins, Mr. Caddy reversed this argument. He claimed that those who protested against Section 1001(f) as being opposed to American ideals were misinformed.

> America was colonized by men who lived by loyalty oaths and their sharpest application; we forged our independence under a system of loyalty testing and punishments promulgated by men like Washington and defended by Jefferson and Thomas Paine.[71]

National magazine coverage was also not limited to advocates of removal. For instance, the American Mercury devoted some pages to a denunciation of those who opposed the loyalty provisions. They explicitly stated in part that the Ivy League college heads were "soft" on Communism and that their protests against the affidavit supported this contention. This magazine also suggested that the movement for removal was spear-headed by Communist sympathizers.

> The lukewarmness of our Ivy League college heads in the fight against Communism was never better exemplified than in the acrimonious national debate on the loyalty oath...Protests came not from the students, but from the A.A.U.P. which has usually

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[71] Ibid., p. 124.

> been on the wrong side of most issues involving Communist-sympathizing teachers...It would be a dangerous blow at America's defenses against Communism if the Kennedy-Clark bill should prevail.[72]

Although there was some opposition to the anti-affidavit movement, it was clear that the proponents of removal were more numerous in terms of organizational backing. Most of the press and magazine coverage of the issue was definitely sympathetic to adovcates of deletion. It was also evident that the activity of those interested in removing the affidavit was greatly intensified after the "defeat" of S. 819 during the summer of 1959.

By the time that Congress reconvened early in 1960 several points were clear. There was now no doubt that removal of the affidavit only was the main objective. Also Eisenhower's commitment was quite evident. In addition, because of the action of Harvard and Yale as well as various other high prestige institutions, the issue by this time had grown in national importance. The attention given to the controversy by the press and periodicals supported this. However, it had yet to be seen whether these new developments would affect the actions of Congress and repeal of the affidavit would be achieved.

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[72]Politicus, "Who is Fighting the Loyalty Oath," American Mercury, XC (May, 1960), pp. 119-121.

CHAPTER V

PASSAGE OF PROUTY AMENDMENT: ACHIEVEMENT IN THE SENATE (1960)

In the 1960 session of Congress, there was some progress made in terms of the interests of the groups advocating the removal of the loyalty oath provisions. Although the House took no action, the Senate did pass a compromise measure, the Prouty amendment. This accomplishment demonstrates the proposition that the legislative process involves reconciliation of conflicting interests or, in short, compromise. The Prouty amendment, which deleted the oath but made it a crime for a Communist to accept N.D.E.A. funds, satisfied many persons on both sides. It was acceptable to those who had favored the affidavit because of their fears of internal subversion, for it did provide safeguards in this area. It was also satisfactory to many individuals who believed the affidavit to be offensive and discriminatory, for with the removal of the affidavit the specific section no longer implicitly pointed a finger of guilt at the entire academic community.

In this chapter we shall attempt to demonstrate the process of compromise which took place in the Senate. In addition we will deal with the situation in the House which made action of any kind impossible.

Senate Action

Senate action began with Kennedy's introduction of a bill (S. 2929), late in January, which would remove the affidavit but retain the oath of allegiance.[1] This bill was co-sponsored by Senators Clark and Javits.[2] Less than a week later the Senate Committee on Labor and Public Welfare ordered a favorable report of S. 2929.[3]

Although there had been no hearings held, the committee report[4] incorporated the arguments of the various groups which had shown interest in this issue before. The majority report explained the nature of

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[1] S. 2929 (Kennedy, D., Mass.), January 28, 1960.

[2] It was Javits who had proposed a similar bill in 1959 as an amendment to S. 819. See Chapter IV.

[3] Favorable report ordered February 2, 1960.

[4] U.S., Congress, Senate, Committee on Labor and Public Welfare, Amending the N.D.E.A. to Eliminate the Affidavit of Disloyalty, 86th Cong., 2d Sess., 1960, S. Rept. 1347 to accompany S. 2929.

S. 2929 and made clear the fact that it would not alter the oath of allegiance, but that it "simply removes the redundant, ineffectual, and undesirable disclaimer of disloyalty."[5] The majority also attempted to assure its readers that the oath alone, when used in conjunction with already existing federal laws, would provide adequate sanctions for subversives who attempted to use N.D.E.A. money. The report said:

> The fundamental purpose of section 1001(f) of the N.D.E.A. is to provide a measure of protection against those who would subvert the Nation or seek by unconstitutional means to unseat the government. But the Smith Act already prohibits to the full extent of constitutional power, the advocacy of the overthrow of the government by force and violence or membership in an organization which advances such a position. Thus, a person who is disloyal and seeks to overthrow of the government by force, or belongs to an organization which does, is committing a federal crime, whether or not he or she applies for or takes funds under the N.D.E.A.
>
> In addition to the criminal sanctions imposed on subversives by the Smith Act, Section 1001 of the United States Code (18 USC 1001) makes it a crime willfully to omit or conceal material facts in connection with any dealings with the government.[6]

The committee report also contained the minority

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[5] Ibid., p. 2.

[6] Ibid. For exact wording of Section 1001 of Title 18 of the United States Code, see Appendix I.

views of Senators Goldwater (R., Ariz.) Dirksen (R., Ill.) and Burnsdale (R., N.D.). Their objection to S. 2929 was that it did not provide criminal sanctions for people who might accept N.D.E.A. funds while advocating the violent overthrow of the government. They stated that an adequate method of filling the gap left by the removal of the affidavit had been accomplished by Congress in 1959 with the adoption of the Labor-Management Reporting and Disclosure Act.[7] In that case Congress removed the affidavit requirement of the Taft-Hartley Act,[8] but inserted instead a provision which would make it a crime for a union officer or labor consultant to be a Communist.[9] The minority advocated using this precedent

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[7]Public Law 86-257, 73 Stat. 519.

[8]Subsection (h) of Section 9 of the Labor Management Relations Act (Taft-Hartley) provides in substance that where a labor organization wishes to use the processes of the N.L.R.B. there must be on file an affidavit of each officer of such labor organization that he is not a member of the Communist Party or affiliated with such party and that he does not believe in, and is not a member of, and does not support any organization that believes in or teaches the overthrow of the United States by force or illegal or unconstitutional means.

[9]Section 201 (d) of Labor-Management Reporting and Disclosure Act of 1959 deletes Section 9 (h) of the Taft-Hartley Act (see footnote 8) and Section 504(a) provides that "No person who is or has been a member of the Communist party

and amending S. 2929 to make it a crime for a Communist to take part in the program of the N.D.E.A.[10]

Senator Prouty closed the committee report with his individual views. His argument was similar to that of the other minority members in that he advocated replacing the oath and the affidavit with a stronger loyalty provision.

> I agree with the majority of my colleagues on the committee that oaths and affidavits have their shortcomings as security measures, but I dissent from the view that a life preserver should be thrown overboard to lighten the ship before something has been found to replace it.[11]

In line with this opinion, Prouty announced his intention to propose an amendment to S. 2929 when it came to the floor. This amendment would provide criminal sanctions for persons who were members of a subversive organization and who applied for or received N.D.E.A. funds. Senator

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or has been convicted of or served any part of a prison term resulting from (states crimes) shall serve (1) as an officer, director, trustee, member of the executive board or similar governing body, business agent, manager, organizer, or other employee of a labor organization or (2) as a labor-relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee, of any group or association of employers dealing with any labor organization."

[10] Amending the N.D.E.A...., S. Rept. 1347, p. 13.

[11] Ibid., p. 20.

Prouty believed that his proposal would be a fine compromise.

> I intend to propose a substitute for S. 2929 which would eliminate complaints of those who believe that affidavits and oaths are objectionable. Yet my amendment would at the same time protect the interests of the United States by making it a crime for anyone to accept grants or loans under defense programs while belonging to subversive groups.[12]

The stage was set for Senate debate on S. 2929, which began on June 15. The Kennedy followers brought out no new issues but merely called for deletion of the affidavit only for the same basic reasons that they had advocated removal of both the oath and affidavit the year before. Those who opposed S. 2929, however, did bring some new points to the fore.

For example, Senator Goldwater attacked S. 2929 on the grounds that it was identical to the Javits amendment which had been accepted the year before but was ultimately recommitted. He maintained that recommittal implied a reinvestigation and re-evaluation of the Javits proposal. However, he stated, nothing of the sort had occurred. Since no further hearings had been held by the Senate committee and no new information had been

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[12] Ibid.

received, there was no reason for the Senate, this year, to accept exactly the same bill that it had rejected one year previously.[13]

Senator Clark countered this argument by maintaining that the various interested groups had been communicating with the committee members throughout this period. Since the Senators had been made well aware of the opinions of these groups, no new hearings were necessary. In addition, Clark contended that the amount of discussion which the committee itself gave to this matter had been completely adequate.

> The Senate Committee on Labor and Public Welfare and its various members, in many an informal discussion, in which I participated, including several which I had with the distinguished Senator from Arizona, gave this question careful thought during the remainder of the last session, discussed the subject with many educators, receiving voluminous amounts of correspondence on the subject, under the leadership of the Junior Senator from Massachusetts, to a full committee meeting, where we had a quite extensive discussion as to what should be done.[14]

Senator Clark's statement seems to indicate that the efforts of the academic groups had actually resulted in letters which were sent to Congressmen.

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[13] C.R., 86th Cong., 2d Sess., Vol. 106, p. 12650: June 15, 1960 (Goldwater).

[14] Ibid., p. 12652: June 15, 1950 (Clark).

But, another question to consider is who were the authors of these messages. As we shall see later, members of the House Subcommittees on Education reported that they had received letters only from the elites of the academic world.[15] Senator Clark's words also corroborate the fact that leaders in the academic world did make personal contact with various legislators. As lobbyists, they probably changed no minds but served to inform already sympathetic senators of their aims. In addition, they might have supplied needed factual support for their cause which in turn could be used by "their men" in Congress.

By this period in 1960, the academic community had become very active in their attempts to achieve the legislative action which they sought. They used several tactics in order to achieve their ends. By the use of propaganda, letter-writing campaigns and lobbying by direct contact, they acted out the familiar pattern used by interest groups. Although loosely organized and relatively inexperienced in the art of influencing Congress, they had succeeded in drawing enough national attention to the issue that various public opinion leaders such as

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[15]See Chapter VI, p.

legislators and high executive officials publicly rallied to their aid. Colleges and universities which were nationally known and respected had either withdrawn from the N.D.E.A. loan program or declared their opposition to the loyalty provisions. This action, too, drew public attention to the controversy. The issue, as they posed it, was that Congress had passed a discriminatory, ineffectual, and perhaps unconstitutional measure and should repeal it.

All this activity by segments of the academic community displeased some congressmen and senators. Senator Dodd (D., Conn.), for one, was very concerned about their tactics and brought this issue to the floor during the debate. He believed that those who favored removal had presented the issue to the public in the wrong light. It was not Congress which had initially created conflict between the government and the academic community but vice versa. Actually it was the government which was being "insulted" by the universities and colleges. Therefore, although Dodd agreed that the affidavit should be removed, he said he would not vote for removal. He implied that the academic community had

been unreasonable in their charges and therefore they did not "deserve" to get their way.

> Finally we have the argument that this act has unnecessarily stirred up friction, suspicion and resentment between the educational community and the United States Government. The fact is that a minority of 30 or 40 colleges...have withdrawn from the program. The fact is that this minority has stirred up resentment against the U.S. Government and blown up this controversy to as great a size as they could. The fact is that a minority of colleges and universities are boycotting the U.S. Government and, having done so, they have the gall to claim that they are the offended parties, that they are the innocent victims of the friction, suspicion and resentment.
>
> The tactics of these colleges and educational spokesmen have been one of the reasons why I am reluctant to make any change in this act...The loyalty oath and affidavit provisions were inserted rather perfunctorily, according to the remarks of the junior Senator from Massachusetts last year on the floor of the Senate. There was no intent by Congress to offend the educational community or arouse its resentment. Had the representatives of that group come to the Congress in a reasonable manner and quietly sought to work out their differences, I have little doubt but that the Congress would have gone very far to meet their objections. (Italics mine)[16]

The fact that the campaign of the academic community and its sympathizers had served to create a nationwide public raised other problems. Senator Russell contended that because the issue had been so well publicized, removal

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[16] C.R., 86th Cong., 2d Sess., Vol. 106, p. 12668: June 15, 1960 (Dodd).

of the affidavit (without the addition of substitute loyalty provisions) was nearly impossible. He believed that Congress could not take any action which might be construed by the American public to be favorable to subversives. The deletion of a portion of an act which was devoted to loyalty might be interpreted in just that light.

> Since the original bill was proposed this matter has been widely discussed throughout the entire length and breadth of the United States. It is one of those things that cannot be taken back to the American people in an ordinary news article or in a radio broadcast or in a brief television appearance or news release, and be explained in detail. The vote we shall cast on this bill will be understood by the American people as action by the Senate of the United States on the question of repealing a loyalty oath which is required of students who participate in a loan program financed by appropriated funds.
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> In this critical hour of American history, I shall oppose the taking of any affirmative action by the Senate of the United States which could be considered anywhere on the face of the earth as constituting a protest by the young people of this country against reaffirming their faith in the American system and against stating their abhorrence of the system of collectivism and communism that prevails behind the Iron Curtain.[17]

Thus Senator Russell made clear what is an important fact

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[17] Ibid., p. 12646: June 15, 1960 (Russell).

that when the fundamental issue involved is loyalty it becomes difficult for some legislators to cast a vote which might be construed to be "un-patriotic" or "soft" on Communism.

When Kennedy realized that S. 2929 would have little chance of passage in its original form, he agreed to accept the Prouty amendment as a "happy compromise". Although the amendment as initially proposed contained no oath, Senator Dodd requested that this provision be included also. Since Kennedy had already stated that he did not oppose the oath, he logically could not refuse this addition.

> I accept the amendment. I still prefer the bill that was reported by the committee. I think the substitute follows the precedent we followed in the case of the labor bill which was passed last year, when we enacted a similar section...My judgment is if we accept the language of the amendment of the Senator from Vermont we will have a better chance of carrying this effort through to successful completion this year. After all, our objective is not merely action in the Senate, but by the House also.
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> I express my appreciation to the Senator from Vermont for suggesting what I consider to be a happy compromise.[18]

The Prouty amendment was passed by a voice vote[19]

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[18] Ibid., p. 12669: June 15, 1960 (Kennedy).

[19] For the exact wording of the Prouty amendment as passed

and was considered satisfactory to both sides. Those senators who concurred with Senator Goldwater's opinions obtained the kind of bill which they had originally advocated. The Kennedy followers were also content. Senator Javits stated that the Prouty amendment was an accomplishment for those who opposed the original loyalty provisions of the N.D.E.A.

> We have done a great deal because we have refrained from casting suspicion on all American young people who wish to receive aid under the N.D.E.A... The Prouty amendment is right, although it is not essential, whereas the affidavit was wrong; and by adopting the Prouty amendment the Senate has taken a definite and practical step toward meeting the deep-seated feeling and conscience of the thousands of American students and of great numbers of leading educators in the United States and also the associations which represent them.[20]

It is important to note here that although the Prouty amendment was considered to be a satisfactory compromise in the eyes of the Senate and several academic leaders (e.g., the presidents of Harvard and Yale were pleased with S. 2929 as passed by the Senate), there was a good deal of dissatisfaction among the educational

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by the Senate in 1960 see Appendix I.

[20] C.R., 86th Cong., 2d Sess., Vol. 106, p. 12800: June 16, 1960 (Javits).

community. Many groups expressed the opinion that the imposition of criminal penalties for membership in subversive organizations was not a satisfactory compromise at all.

For example, the American Civil Liberties Union charged Presidents Griswold and Pusey with accepting "half a loaf". This organization also sent letters addressed to the 105 universities which had protested the disclaimer affidavit in which they stated that the Prouty amendment was not a true repealer. The A.C.L.U. claimed that "S. 2929 would condition the right to apply for and receive government loans on the individual's political beliefs, present or past".[21]

The American Council of Education was disturbed about several legal ambiguities of the Prouty amendment and therefore sought an attorney's opinion on the following questions: (1) whether the Prouty amendment legitimizes the Attorney General's list of subversive organizations as a basis of prosecution, and (2) what responsibilities

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[21]Letter from Patrick Murphy Malin, Executive director of the A.C.L.U. and Louis M. Hacker, Chairman of the Academic Freedom Committee of the A.C.L.U., September 9, 1960.

would colleges and universities have in warning students applying for loans and fellowships. The Council contacted Arthur S. Dean, noted lawyer and statesman, who replied that the Attorney General's list did not necessarily apply and that each "institution would have to determine for itself whether it wished to administer the program with these possible ambiguities for its students".[22] Because of the vagueness of the Prouty amendment, it faced opposition on the grounds that it was unconstitutional in terms of due process.

The Prouty amendment was also negatively received by the U.S. National Student Association as well as the American Association of University Professors.[23]

House Action

On June 17, S. 2929 was sent to the House and referred to the Committee on Education and Labor.[24]

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[22]Letter from Arthur H. Dean, Senior Partner, Sullivan and Cromwell, August 17, 1960.

[23]Louis Joughin, "Disclaimer Affidavit," AAUP Bulletin, XLVI (December, 1960), 412.

[24]H. R. 10182 (Ashley, D., Ohio) "To amend the N.D.E.A. of 1958 to repeal certain provisions requiring affidavits of loyalty and allegiance" was introduced in the House on February 4, but there was no action taken on it.

Now the attention of various educators was turned to the House in hopes that the Prouty amendment might be enacted. President Griswold of Yale wrote several letters to the congressmen on this committee. He urged positive action on S. 2929 in a letter to Rep. Robert Giaimo (D., Conn.). It read in part:

> I think that the enactment of the bill now in the present session of Congress would remove a serious obstacle to complete and wholehearted cooperation between the colleges and universities and the government in the critically important field of higher education that is essential to national security.[25]

On June 22, the Special Subcommittee on Education held hearings on the question of repeal of the affidavit. Dr. Nathan Pusey, the President of Harvard, spoke in the name of the American Association of Universities. He urged that the House take favorable action on the Prouty amendment. This bill, he said, would be an improvement on the affidavit for it would not assume the guilt of those applying for government funds.

Pusey's testimony was, however, interrupted by Barden, who had "bitterly opposed repeal"[26] of the affidavit.

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[25]Letter from Whitney Griswold, President of Yale University, June 16, 1960.

[26]New York Times, February 7, 1960, p. 51.

Barden told Pusey that the loyalty provisions were necessary in order to keep taxpayers' dollars out of the hands of Communists.

> Barden: If you think there aren't some of these in America, you're a dreamer.
>
> Pusey: It is clear that you believe colleges are peopled with Communists.
>
> Barden: I do not, but one Communist is a bad egg and can spoil the lot.[27]

The next day the New York Times reported the hearings under the headline, "Pusey and Barden Clash on Oath-Bill".[28]

It was clear that Barden was not amenable to any change in Section 1001(f). As Chairman of the Committee on Education and Labor he had the power to prevent the bill from leaving committee--and this he did. Thus, because in the U.S. Congress committee chairmen have a great deal of power over the bills within their jurisdiction, Barden could easily prevent the Prouty amendment

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[27] Ibid., June 23, 1960, p. 6.

[28] Ibid.

from becoming law.[29]

In 1959 Barden had supported the elimination of the affidavit in the Labor-Management Reporting and Disclosure Act, and the inclusion of criminal sanctions for Communist union officials and labor consultants in its stead. Although the Prouty amendment had a similar arrangement, Barden would not even consider it. Ironically Kennedy, the staunch advocate of affidavit removal as far as the N.D.E.A. was concerned, proposed in 1959 not only to maintain the Taft-Hartley affidavit but to extend it to cover employers as well as employees.[30]

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[29]One observer felt that House action would be near to impossible because of the opinions of other key figures in addition to Barden.

> The real fight will be in the House. Graham Barden, Chairman of the Education and Labor Committee, is opposed to any change in the law. Howard Smith, Chairman of the Rules Committee is also cool towards change.
>
> Carl Elliot, McCormack, and Rayburn have all taken the same position: that while they would favor eliminating the affidavit, they regard it as an essentially unimportant matter and they have no intention of diverting any part of their time and bargaining power at a time when they want to pass on more important matters.

"Student Loyalty Oaths: Chances Nil for Outright Repeal; Compromise Possible," Science, CXXXI (May 13, 1960) p. 1425.

[30]Barden backed the House version of the bill which was the one finally adopted. (See footnote 8 and 9) Kennedy backed the Senate version of the bill which provided "that

Thus at the close of the 1960 session of Congress some success was achieved for those who disapproved of the affidavit. Senate action demonstrated that a compromise could be reached that would be palatable to both sides. However, although those senators who advocated affidavit removal were satisfied with S. 2929 as it was passed, there were many in the academic community who were not pleased with the outcome. Some groups contended that the Prouty amendment was just as discriminatory and/or unconstitutional as the original measure. Prominent academic leaders such as Nathan Pusey and A. Whitney Griswold who were satisfied with the Prouty amendment, were accused by groups such as the A.C.L.U. with accepting a half-way measure.

House action in 1960 was stifled mainly by Rep. Barden, whose key position as chairman of the Education and Labor Committee allowed him to prevent any positive action for deletion of the affidavit. However, since Barden had

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every officer of a labor union and the chief officers of an employer organization shall file at the beginning of each fiscal year a non-Communist affidavit if within a year preceding the date when an affidavit was due, the employer or union had used the facilities of the N.L.R.B."

U.S., Congress, Senate, Committee on Education and Labor, Labor-Management Reporting and Disclosure Act of 1959, Report No. 187 to accompany S. 1555, 86th Cong., 1st Sess., 1959, p. 35.

announced his resignation as of January, 1961,[31] and was to be replaced by the more liberal Adam Clayton Powell (D., N.Y.), the legislative future in the House looked brighter.

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[31] New York Times, January 23, 1960, p. 1.

CHAPTER VI

TWO ATTEMPTS AT AFFIDAVIT REMOVAL: SUCCESS AND FAILURE (1961)

The first session of the 87th Congress marks the latest attempt to date (Spring, 1962) to modify Section 1001(f) by deleting the disclaimer affidavit. Since the N.D.E.A. was to expire in June of 1962, it became imperative to renew its programs. Various proposals from both the Office of Education and individual educators were presented in an attempt to improve the programs offered by the act. Among these proposals was the deletion of the disclaimer of disloyalty provision. Both the House and Senate committees, after holding hearings, prepared bills which provided for the removal of the affidavit. However, the bills to extend and improve the N.D.E.A. never reached the floor in either house. The N.D.E.A. became embroiled in the aid-to-public education controversy and ultimately Congress merely passed a two year extension of the original bill. Therefore, although the House and Senate committees were amenable to deletion, Section 1001(f) stands unchanged to date.

This chapter will demonstrate how the mechanisms of the legislative process in Congress served to stifle any chance for deletion of the affidavit. The powerful position of the Rules Committee in the House of Representatives was the chief obstacle in the way of any positive action. We will discuss the attempts to remove the affidavit made by Administration forces, interested groups and individuals as well as the proposals made by House and Senate committees to meet these requests. In addition, a general description of the aid-to-education controversy will be made with an emphasis on that part of it devoted to the N.D.E.A. Finally we will look at House proceedings which actually removed an identical affidavit provision from the National Science Foundation Act. An attempt will be made to ascertain the reasons why deletion was easily accomplished in the latter case.

Extension and Improvement of the N.D.E.A.

The movement for affidavit removal in 1961 can be considered as part of an overall attempt to improve the N.D.E.A. Although the act was not scheduled to expire until June 30, 1962, it was felt that it was necessary that an extension should be voted in 1961 in order that colleges and universities could plan on their student loans under Title II. In addition, various titles required that states match the federal grants and therefore it was thought that

state legislatures should be given notice so that they could plan their budgets accordingly.

President Kennedy, in his Education Message to Congress on February 20, made several requests for new legislation in the form of grants for scholarships to college students, for construction of elementary and high school classrooms and for teachers' salaries. In addition, the President asked for the extension and improvement of the N.D.E.A. His recommendations for changes in the N.D.E.A. were sent to Congress on April 26. They were incorporated in identical bills H.R. 6774 and S. 1726, which did remove the affidavit. (Section 9(c) of both bills required an oath of allegiance but no disclaimer.) The Administration draft bills were not the only formal proposals for affidavit removal; several bills were introduced in the House and Senate which specifically advocated a similar change in Section 1001(f).[1]

Hearings

Both the Senate and the House subcommittees which dealt with education held extensive hearings on the various proposals to extend and improve the N.D.E.A. Since the administration drafts, which were under consideration at

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[1]The bills introduced in 1961 which would repeal the affidavit were: H.R. 368 (Green, D.,Ore.), January 3; H.R. 1727 (Ashley, D.,Ohio), January 4; H.R. 3361 (Zelenko, D.,N.Y.), January 25; H.R. 4253 (Kearns, R.,Pa.), February 13; H.R. 6006 (Lindsay, R.,N.Y.), March 28; S. 1411 (Clark, D.,Pa., and Javits R.,N.Y.), March 22.

the time, merely deleted the affidavit but provided no substitute, there was no testimony as to the merits of provisions such as the Prouty amendment. Witnesses therefore either registered their approval or disapproval of Section 9(c) of the proposed legislation.

Those individuals who acted as witnesses during the hearings held in the Senate in May and in the House in June can be grouped into several categories. Some persons acted as representatives of interested organizations. The groups which they spoke for included academic, veterans, labor, farm, student and civil liberties associations. A second category was Administration spokesmen. Lastly, persons representing either the faculty or student opinion of individual colleges and universities presented their views to the committees. In considering the testimony presented by the various witnesses, we will use House and Senate hearings interchangeably. This method will not distort their statements since Sections 9(c) of both bills were identical and many witnesses gave similar testimony at both hearings.

All academic groups, including the Association for Higher Education,[2] the Western Association of Graduate Schools,[3]

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[2]U.S., Congress, Senate, Subcommittee On Education of the Committee on Labor and Public Welfare, Hearings, National Defense Education Act, 87th Cong., 1st Sess., 1961, p. 762. (Cited hereafter as Senate Hearings, 1961.)

[3]Ibid., p. 489.

the American Association of Land Grant Colleges and State Universities,[4] the American Association of Colleges,[5] the National Council for Social Studies of the National Education Association,[6] and the American Association of University Professors[7] expressed approval of Section 9(c) of H.R. 6774 and S. 1726.

Three representatives of veterans' groups made their appearance before the committees. Both the American Legion and the Veterans of Foreign Wars favored retention of Section 1001(f) in its original form. Miles D. Kennedy, speaking for the Legion, said that retention of the affidavit was necessary because

> the American taxpayer has a moral and ethical right to this protection of his money. A minority of educators have no right to force their opinions upon their students.[8]

Francis Stover, speaking for the Veterans of Foreign Wars, supported the oath and affidavit on the grounds that the act was designed as a defense measure.[9] However, the third

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[4]Ibid., p. 367.

[5]Ibid., p. 385.

[6]Ibid., p. 236.

[7]Ibid.

[8]U.S., Congress, House, Special Subcommittee on Education of the Committee on Education and Labor, Hearings, National Defense Education Act (Titles II, IV, VI, X), Part 3 87th Cong., 1st Sess., 1961, p. 685. (Cited hereafter as House Hearings, 1961.)

[9]Ibid., p. 747.

veterans' group which made their opinion known, the American Veterans Committee, advocated repeal of the affidavit. They claimed that it was "not only insulting, but unwise."[10]

As for the labor groups, both the AFL-CIO Education Committee and the American Federation of Teachers (AFL-CIO) supported the repeal of the affidavit.[11]

The American Farm Bureau Federation went along with two of the veterans' groups by supporting the disclaimer affidavit. They charged that the movement for repeal stemmed from a minority of education leaders and not the students themselves.

> We are convinced that the support for the elimination of the disclaimer affidavit does not come from college students but comes instead from a small group of college administrators and professors.[12]

This point was supported to some extent by two members of the special subcommittee on Education of the House Education and Labor Committee, Rep. Brademas (D. Ind.) and Robert Giaimo (D. Conn.). Although both of these men personally opposed the affidavit, they maintained that they had received almost no mail from individual students or professors concerning the issue. The Congressman from Indiana stated:

Although I represent a district where there are

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[10] Senate Hearings, 1961, p. 178.

[11] Ibid., p. 407.

[12] Ibid., p. 492.

> several institutions of higher learning, and although I am a member of the committee and the subcommittee that deals with this particular issue of the repeal of the affidavit, I have received until a month ago, almost no mail from either students or university teachers on either side of the issue.[13]

Rep. Brademas' statement was supported by the Congressman from Connecticut.

> I represent a district in Connecticut that contains Yale University, Southern Connecticut College, Albertus Magnus College, a rather large university area in New Haven, and frankly I haven't heard any indication to any extent at all from the student body or even from the faculties, concerning many areas of legislation of vital importance to them. The number of letters that I have received on this question of the disclaimer affidavit has been insignificant. Of course we have received certain letters from various influential people who have taken a position on this problem, such as the president of Yale, and people of that stature. But I am referring to the student body in general. It seems that the student body in America is completely apathetic to this whole problem of politics and government, in which they should be so interested.[14]

Thus we see that although the controversy over the disclaimer affidavit had reached somewhat large proportions, the activity was probably limited to action by organized groups whether on individual campuses or on the national association level. Opponents of removal who used the argument that the movement involved only the academic elite (although failing to meet the substance of the issue itself) may have been justified in this charge.

Although it was claimed that students individually

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[13] House Hearings, 1961, p. 804.

[14] Ibid., p. 805.

took no stand on the issue, they did come forward at the hearings with statements by their national organizations. The U. S. National Student Association which in recent years has been controlled by a liberal faction was represented by its president, Richard Rettig. He pointed out that he spoke for student bodies on 390 campuses and registered their disapproval of Section 1001(f).[15] In actuality he reported on the decisions hard won by the liberals among the delegates to their national convention.

An opposite opinion was stated by Douglas Caddy, the National Director of Young Americans for Freedom. Seventy-five per cent of the membership of this youth organization was comprised of college students. Mr. Caddy supported the contention that a few academic leaders had developed the anti-affidavit campaign but that actually most students did not object to the loyalty provisions.

> We feel that all aspects of the case for retention of the affidavit should be considered, such as the fact that 87% of the national student body in the United States represented by approximately 1,357 universities, are participating in the N.D.E.A. without any murmur of protest against the affidavit.
>
> I feel that the great hue and cry that has been raised by a small minority of administrations, college administrations, across the country has exploded to some extent, and expanded out of proportion to its importance.[16]

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[15] Senate Hearings, 1961, p. 204-208.

[16] House Hearings, 1961, p. 786.

Mr. Caddy's group is avowedly conservative, a junior organization which was formed by the conservative spokesman and journalist, William Buckley. Therefore the views expressed here are no more representative of national "student opinion" than are the statements of the N.S.A.

Here we find that two groups, which claim to represent students across the country, have taken opposite stands on the affidavit issue. Because of the conservative posture of the Young Americans for Freedom, their opinions reflect a small but politically homogeneous membership. This organization has attempted to enlarge their following, and extend their influence over campus politics in general. In fact, in 1961, they attempted to gain control of the U. S. National Student Association at the annual convention. However, they were not successful.

The position taken by the National Student Association presents another pattern of group organization. This group theoretically was not formed to promote one specific political point of view but was supposed to reflect the dominant student opinion on all campuses which are affiliated with it. However the opinions which they presented to the committee are a clear example of the fact that often national associations pass resolutions which indicate only the attitudes of the group leaders and delegates. In this case the majority of representatives from the member campuses were inclined

to a liberal political outlook, whereas the students which they spoke for might not be. An organization as large as the National Student Association cannot really claim to represent the concensus on all campuses with which they are affiliated. Therefore, the testimony given by representatives of large heterogeneous groups must be placed in perspective. They can never fully reflect the opinions nor the intensity of opinion of their total membership.

In calculating group opinion, Congress is well aware of the fact that resolutions passed by national organizations are usually not backed by strong popular support of the part of the membership. During the hearings, Rep. Brademas had occasion to comment on this subject.

> Let me interject at this point, that resolutions are not enough. We get tons of resolutions and it is very easy to get resolutions passed by all kinds of organizations. We pay attention to those resolutions. I don't mean to suggest that we do not. But when you get a resolution that pretends to speak for thousands and millions of people, and you get a half dozen letters, it is a fair conclusion that there is very little interest on the part of the members or associates of that organization in the resolution.[17]

Lawrence Speiser, who represented the American Civil Liberties Union, supported repeal of the disclaimer affidavit. He claimed that the affidavit was a violation of the first amendment and that the oath was unnecessary and discriminatory. However, he called the disclaimer

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[17] Ibid., p. 804.

the "most intolerable" of the two provisions.[18]

A second category of persons who appeared at the hearings were representatives of the Administration. As was expected, both Sterling McMurrin, Commissioner of Education[19] and James W. Moore, Chief, Student Loan Section and Financial Branch of the U. S. Office of Education,[20] advocated deletion of the affidavit.

Lastly, there were letters and telegrams from individual universities, written either by representatives of the faculty, the student body, or the administration. All these letters and telegrams spoke out in favor of deletion of the affidavit.

Thus, although there were several dissenting organizations, the majority of the witnesses at both the Senate and House hearings supported provision 9(c) of the Administration drafts. However, H.R. 6774 and S. 1726 were not to remain intact. In both houses clean bills were drawn up which substituted criminal penalties for Communist membership in place of the affidavit. In terms of favorable congressional action, this change was probably a wise one. In 1959 and 1960 the Senate would not pass a mere removal bill, but did approve the Prouty amendment in 1960.

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[18] Senate Hearings, 1961, p. 186.

[19] Ibid., p. 25.

[20] House Hearings, 1961, p. 609.

Loyalty Provisions of S. 2345 and H.R. 7904

The House bill replaced the affidavit "with a stronger anti-Communist provision."[21] H.R. 7904, the clean bill which was reported out of full committee on July 6, included a "Prouty amendment" section which made it a crime "to apply for or receive assistance under the act if the applicant is a member of the Communist Party or any other subversive organization."[22]

The Senate however took another course. The Committee on Labor and Public Welfare chose, in S. 2345, to reject the Prouty amendment and insert another provision in its stead. This provision defined subversive organizations as those required to register under the Subversive Activities Control Act of 1950[23] and made it a crime for a member of such an organization to apply for or accept N.D.E.A. funds.[24] This alternative to the Prouty amendment might have been based on the fact that several legal experts had found that the Prouty amendment was not sufficiently clear in its definition of subversive organization. Arthur H. Dean, senior partner of the law

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[21]U. S., Congress, House, Committee on Education and Labor, National Defense Education Act Amendment of 1961, 87th Cong., 1st Sess., 1961, H. Rept. 674 to accompany H.R. 7904, p. 3.

[22]Ibid.

[23]Act of September 23, 1950, c. 1024, 64 Stat. 987.

[24]For the exact wording of this provision (Section 1101(f) of S. 2345) see Appendix I.

firm of Sullivan and Cromwell, had indicated that S. 2929 did not furnish a standard for determining whether a particular organization was within the definition provided in paragraph (2) of the bill. (See text of Prouty Amendment, Appendix I.)

> Various governmental officials and departments, e.g., the United States Attorney General, the Subversive Activities Control Board, the Senate Judiciary Committee and the House Committee on Un-American Activities, publish lists of subversive organizations. These lists have been designed to correspond with particular legislation and would not, therefore, necessarily furnish a precise standard for ascertaining the organizations proscribed by S. 2929.[25]

By specifically defining subversive organizations as those required to register under the Subversive Activities Control Act of 1950, S. 2345 circumvented a possible legal loophole.

Senator Goldwater (R., Ariz.) in his minority statements in the Committee report on S. 2345[26] objected to the loyalty provisions favored by the majority. It was his opinion that the Prouty amendment was superior. He objected to the fact that the provision was tied to the Subversive Activities Control Act of 1950. Senator Goldwater feared that this act might in the future be struck down by the Supreme Court and the loyalty

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[25]Letter from Arthur H. Dean to American Council on Education, August 17, 1960.

[26]U. S., Congress, Senate, Committee on Labor and Public Welfare, National Defense Education Act Amendment of 1961, 87th Cong., 1st Sess., 1961, S. Rept. 652 to accompany S. 2345.

provisions of S. 2345 would therefore become useless. Although the Supreme Court had held the registration provision to be valid under the First Amendment, it did not consider its merits under the Fifth Amendment.

> There is a serious question as to whether the registration requirement of the Subversive Activities Control Act does not involve the unconstitutional element of self-incrimination. Four of the justices held that it did. (Communist Party v. S.A.C.B., June 5, 1961). The majority merely deferred a decision on the question until a case comes before the Court in which the privilege against self-incrimination, granted by the fifth amendment, was claimed by an individual against shom it was sought to invoke the penalties and disabilities set forth in the act.
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> Thus if at some future date, the scheme of registration and the disabilities and penalties connected with it, are invalidated by the Supreme Court, then the committee provision must fall as well.[27]

Senator Goldwater also felt the committee substitute to be inadequate because it eliminated the disclosure section of the Prouty amendment (paragraph (3)).

Goldwater's main concern was to provide the strongest security provision possible and disagreed with the majority simple on the grounds that to his mind their provision was not "tough" enough. On the other hand, although the majority was concerned with security, they did not stress this point alone. They chose to appeal to the academic community as well. The majority report explicitly stated that they were in agreement with the academic groups which found fault with Section 1001(f)

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[27]Ibid., p. 130.

because of its discriminatory nature.

> The bill would amend section 1001(f) of the act to remove the requirement that individual recipients of payments or loans under the act execute an affidavit disclaiming subversive beliefs and affiliations. The requirement of an affirmative oath of allegiance on the part of the recipients would remain in the act.
>
> This amendment would carry out the recommendation of President Kennedy. In 1960 President Eisenhower made the same recommendation. The majority of the committee shares the views expressed by two successive administrations and by virtually every educational organization that the disclaimer affidavit is unnecessary and carries with it an unwarranted implication that students' and teachers' loyalty is suspect.[28]

Their reference to both presidents as well as to the academic groups indicated that the appeals of these people were well taken by the committee. Or perhaps this reference was used to help assure acceptance of the substitute provision by the groups which merely wanted removal of the affidavit.

Thus both the House and Senate committees removed the affidavit, but both also included substitute provisions in its place. The House bill used the language of the Prouty amendment, whereas the Senate version tied the security provisions to the Subversive Activities Control Act of 1950. Although both these bills (S. 2345 and H.R. 7904) were favorably reported by committee, neither ever reached the floor. The House bill became entangled in the aid-to-public-schools controversy, and when House

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[28] Ibid., p. 41.

action on the N.D.E.A. became stifled the Senate decided to take no action on what was by then a hopeless piece of legislation.

The Aid to Public Schools Controversy

A controversy arose through Administration efforts to pass H.R. 7300--the public school aid bill. This bill was to provide over two billion dollars in grants to the states for the operation, maintenance, and construction of public schools, and for teachers' salaries. A conflict arose between the Catholics in the House (they were 88 in number) and President Kennedy. The Catholics maintained (as did the Roman Catholic hierarchy) that federal aid to elementary and secondary schools which did not include parochial schools was discriminatory. Therefore they refused to support an aid bill which did not provide funds for non-profit private schools. On the other hand, the President consistently took the position that aid-to-parochial elementary and secondary schools by the federal government would constitute a violation of the concept of separation of church and state inherent in the First Amendment.

Because of this conflict between the Catholics in the House and the President, passage of the bill seemed unlikely; especially in view of the fact that federal aid-to-education, in itself, had opposition from various conservative legislators. Therefore Administration

leaders, in order to preserve the public school bill, attempted to shift the aid-to-private-school issue to the N.D.E.A. Title III of the N.D.E.A. did provide loans to private schools for equipment for teaching science, mathematics and foreign languages. The Administration endorsed the extension of this title to provide for long-term loans to private schools for construction of classrooms where subjects important to the "national defense" would be taught. Both the House and Senate versions of the N.D.E.A. extension provided for 375 million dollars for this purpose.

By including aid to private schools in the National Defense Education Act, it was hoped that the Catholics would be satisfied and would support the public-school aid bill, (H.R. 7300). In addition, it was thought that those who opposed any aid to private schools (particularly legislators from predominantly Protestant districts) would be more likely to accept the provisions when they were made an integral part of the N.D.E.A., which in general was a popular bill.[29]

However, this strategy did not prove to be successful. Many Catholics were fearful that the House would pass the public-school aid bill (H.R. 7300) and then go on to delete the private school loan section from the N.D.E.A. (H.R. 7904). Therefore the Catholics in the

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[29] Congressional Quarterly Almanac, XVII (1961), 235.

House, led by John McCormack (D., Mass.) the majority leader, preferred that H.R. 7904 come to the floor prior to the public-school aid bill. In this way they would be able to attempt to preserve the Title III loans to private schools, and if not successful they would then have a chance to block H.R. 7300.

On June 1, six days after the Senate had passed a similar bill (S. 1021), the Education and Labor Committee of the House reported out H.R. 7300. However the Rules Committee voted 9-6 to withhold floor action on H.R. 7300 until the N.D.E.A. extension bill was reported out. Two Catholic Rules Committee members, James Delaney (D., N. Y.) and Thomas P. O'Neill (D., Mass.), supported the five Republicans and two Southern Democrats on this vote.

The House Education and Labor Committee, under the chairmanship of Adam Clayton Powell, (D., N. Y.) attempted to speed up committee action on H.R. 7904. They presumed that as soon as the bill was in the Rules Committee both H.R. 7904 and H.R. 7300 would be granted rules and sent to the floor. H.R. 7904 (which contained the amended version of the loyalty provisions as well as the crucial loans-to-private-schools section) was reported out on July 6 and on that day Chairman Powell asked the Rules Committee for a hearing on a rule for the bill. But the Rules Committee took no action at this time.

On July 18, however, the Rules Committee took

the step which was to prevent any action on the entire Administration aid-to-education program. James Delaney cast the pivotal vote, joining five Republicans and two Southern Democrats, which tabled not only the N.D.E.A. improvement and extension bill (H.R. 7904), and the public-school-aid bill (H.R. 7300), but also the relatively uncontroversial college-aid bill (H.R. 7215). The 8-7 vote was made possible by Delaney's alliance with seven legislators who were against federal aid on principle. In fact, Howard W. Smith (D., Va.), the Chairman of the Rules Committee, had sent letters to one hundred Southern newspapers which claimed that federal aid to education would result in federal control and forced school integration.[30] Delaney, who "had been long classified as a liberal,"[31] voted for tabling the three measures because he felt that the public-school aid bill constituted discrimination against Roman Catholics. Of course the fact that he represented a highly Catholic district was also an important factor in explaining his vote.

The Senate Committee on Labor and Public Welfare reported out their extension and revision of the N.D.E.A. (S. 2345) on July 31. Because of the realization that House action on the N.D.E.A. bill was virtually impossible, however, Senate leaders never brought S. 2345 to the floor.

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[30] New York Times, June 17, 1961, p. 1.

[31] Ibid., June 24, 1961, p. 10.

The 1961 version of the N.D.E.A. was denied a chance for consideration by the entire House because of the Rules Committee's power to determine what will be allowed to reach the floor. Although the Rules Committee was not particularly concerned with the loyalty provisions in the bill, these provisions, of course, suffered defeat along with the rest of the revised measures. Thus even though both the House and Senate committees having jurisdiction over the N.D.E.A. bill favored removal of the affidavit, the repealer never became law.

After the July 18 defeat, Adam Clayton Powell tried to circumvent the Rules Committee. On August 30, he attempted under Calendar Wednesday proceedings[32] to bring to the floor H.R. 8890, which was an emergency education measure. Its passage would not have affected the loyalty provisions of the N.D.E.A. but would have extended only Title II of this act as well as the impacted areas bills. Powell described the bill when the Education and Labor Committee was called according to Calendar Wednesday procedure.

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[32]The Calendar Wednesday procedure is described by Bertram Gross (Legislative Struggle, p. 347) as one method of circumventing the Rules Committee. "The purpose of (Calendar Wednesday) is to give the various standing committees a chance to call up bills that are not highly privileged in themselves or that have not been given a green light by the Rules Committee. Under it, the committees are called in alphabetical order, and debate on any measure is for all practical purposes limited to one Wednesday. Attempts to use it can be frustrated by adjournments and dilatory tactics."

> Mr. Speaker, I call up (H.R. 8890) to amend P.L. 815 and 874, 81st Congress, so as to extend their expired provisions for an additional year and to authorize payments under P.L. 815 for school construction in school districts with severe classroom shortages, to extend for one year the student loan program of Title II of the N.D.E.A. of 1958, and for other purposes.[33]

Powell's attempt proved futile, for consideration of H.R. 8890 was defeated by a 242-170 vote.

Thus it seemed that the Administration would be unable to pass any new legislation in the field of federal aid to education. The Administration felt nevertheless that the minimum which could be done was merely to extend the N.D.E.A. in its original form. Powell therefore introduced H.R. 9000 on August 31, 1961. This bill provided for N.D.E.A. extension for two years as well as renewal of the impacted areas program. Powell presented this bill reluctantly, for to him it indicated a failure of the Administration's program.

> In presenting H.R. 9000 to you today, I am trying as chairman of the Committee on Education and Labor to save minimal education for this year of Congress.[34]

During the short debate on H.R. 9000 Powell spoke upon the subject of the disclaimer affidavit. He felt it important enough to state that the affidavit had no place in the N.D.E.A. Powell implied that although it would remain in the act under H.R. 9000, he would work

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[33] C. R., 87th Cong., 1st Sess., Vol. 107, p. 16452: August 30, 1961 (Powell).

[34] Ibid., p. 17095: September 6, 1961 (Powell).

for affidavit removal in the future.

> I believe that the disclaimer affidavit should be abolished; and here, the gentleman from California, Mr. Hiestand (R., Calif.) offered in committee an amendment which would take care of this problem without forcing our educators to be placed in an untenable position. I promise that during the coming year proper study and consideration will be given to . . . these portions of N.D.E.A.[35]

Because H.R. 9000 had the support of the leadership of both parties in the House, and at least 319 Congressmen represented districts containing impacted areas, the bill was passed with an enormous majority (378-32).

In the Senate a similar bill (S. 2393) was passed. There was an attempt by Senator Morse (D., Ore.), with the support of President Kennedy, to call for a one-year instead of a two-year extension. A one-year extension would enable Congress to consider aid-to-education legislation in the following session. Morse asserted that a two year extension would put off the matter until 1963.[36] Morse's amendment was voted down (45-40) and the Goldwater-Monroney proposal for a two-year extension was supported by a wide majority (80-17).[37]

On September 18 the House approved S. 2393 and on October 3 it was signed into law with "extreme reluctance" by President Kennedy. The President made the point that among the important improvements which should have

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[35] Ibid., p. 17096.

[36] Ibid., p. 17770: September 11, 1961 (Morse).

[37] Ibid., p. 17879: September 12, 1961.

been made on the N.D.E.A. was the removal of the affidavit.

> The extension of the N.D.E.A. without the amendments submitted by this Administration merely continues the current program, without urgently needed improvements, for two more years . . . Particularly undesirable is the continuation of the discriminatory and ineffective non-Communist disclaimer affidavit. I hope Congress can renew its consideration of these N.D.E.A. amendments next year regardless of the new expiration date.[38]

This chapter has attempted to provide only a cursory review of the federal aid to public schools controversy. However, from this simplified account, the role of the Rules Committee is clear. The eight man majority succeeded in blocking the three education bills, thus preventing any floor action on them. Attempts to circumvent the Rules Committee proved futile and ultimately the amendments to the N.D.E.A. died along with the rest of the Administration program. Ironically enough, just when the opposition in the form of Chairman Barden had been removed, the Rules Committee proved itself an equally insurmountable barrier. But in this case the loyalty oath was not at issue, for the action of the Rules Committee was unrelated to questions of loyalty and internal security.

House Deletion of Affidavit in N.S.F. Act

During the same session of Congress, the House passed a bill which would have removed the disclaimer affidavit from the National Science Foundation Act.

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[38]John F. Kennedy, statement of October 3, 1961.

(There was no action on the bill in the Senate.) This bill (H.R. 8556) called for elimination of the affidavit but also provided for criminal sanctions which would apply to any member of the Communist Party or subversive organization as defined by the Subversive Activities Control Act of 1950, who applied for or used National Science Foundation funds. It was initiated, not by academic leaders, civil libertarians or indignant students. Nor was it backed by liberal elements seeking to remove what they conceived to be an unconstitutional, vague and discriminatory piece of legislation. On the contrary, H.R. 8556 was the work of those concerned with internal security and was an attempt to close up an alleged hole in domestic security legislation. H.R. 8556 was introduced by a Southern Democrat, Overton Brooks (D., La.), with neither fanfare nor a great deal of publicity. It was debated for only a short period, with not a single opponent rising to speak out against it, and it was passed easily by a voice vote on the same day that it was brought to the floor.

What accounts for the apparent ease with which this bill was passed? It removed the affidavit from Section 16 of the National Science Foundation Act which was identical to the controversial Section 1001(f) of the N.D.E.A. Yet, although the academic community, civil libertarians, various liberal congressmen and both Presidents Eisenhower and Kennedy favored a similar

alteration in the N.D.E.A., they met with a good deal of opposition. The clear contradiction here was noticed during the debate on H.R. 8556 by Rep. Ford (R., Mich.).

> I would like to ask the author of this bill why we are abolishing or limiting the non-Communist disclaimer affidavit whereas in another bill to be before us this afternoon, to extend the N.D.E.A., we are retaining such a provision?[39]

The answer lies most probably in the formulation of the problem. Those favoring removal of the N.D.E.A. affidavit stressed the point that the academic community should not be singled out as suspect, that oaths and affidavits could not develop loyalty, and that the affidavit was an offensive reminder of historic test oaths. Thus a vote in favor of removal in this context might be construed as a vote against loyalty or internal security. In the case of the National Science Foundation Act, supporters of affidavit removal stressed its necessity as a positive step in the direction of stronger loyalty-security measures.

While advocating the need for H.R. 8556 Rep. Miller (D., Calif.) indicated that the disclaimer affidavit was not a sufficient protection against subversives and therefore stronger legislation was required. This was not mere speculation on his part for he presented a case in which a "security-risk" had signed the affidavit and had been granted a fellowship by the National Science

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[39] C.R., Vol. 107, p. 17075: September 6, 1961 (Ford).

Foundation. Edward Yellin, the recipient of this grant, had refused to answer questions concerning his membership in the Communist Party while appearing before the House Committee on Un-American Activities. Subsequently Mr. Yellin was convicted of contempt of Congress and sentenced to one year in prison. Rep. Miller stated that H.R. 8556 arose as a result of this situation and was an attempt to prevent recurrences.

> The only reason is that his bill arises from an unfortunate incident where a young man was awarded a scholarship, but without the knowledge of the National Science Foundation had been in contempt of Congress and had been convicted. The committee worked very hard and very long and worked out a plan whereby it would be a felony to withhold any information of this nature including any previous convictions . . . It is ironclad now, under provision of this bill we cannot have a repetition of this case.[40]

Because removal of the affidavit in the case of the National Science Foundation Act was presented to the House as a security measure, it was relatively easy to gain support for it. Congressmen did not fear that their support for this bill might brand them as being "soft" on Communism. For example, Rep. Roudebush (R., Ind.) made this statement during the debate on H.R. 8556:

> I rise in support of H.R. 8556. The provisions of this bill will tighten controls against Communists and assorted fellow travelers who apply for scholarship and fellowship scientific study grants.
>
> Members of this body are well aware of the openly

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[40] Ibid., (Miller).

> announced Communist objective of internal subversion and infiltration of our youth centers and organizations. America's college and university campuses are a prime target of these Red advances.
>
> By enactment of this bill, we can give the National Science Foundation the tools to implement an anti-Communist award program that will forestall further cases of the Yellin type and insure that tax money goes to students of not only outstanding scientific ability and promise but of unquestioned loyalty to the United States of America.[41]

Thus, a Congressman could support H.R. 8556--or removal of the disclaimer affidavit--while taking a strong anti-Communist stand. This had been just the reverse with the N.D.E.A. In that case it was those who opposed removal of the affidavit who took a strong position against internal subversion. The difference stemmed from the fact that the National Science Foundation affidavit removal bill was initiated by legislators who were particularly concerned with tightening internal security, but those who advocated amendment of Section 1001(f) were motivated by entirely different factors.

Only one congressman used the favorable reaction of the House towards H.R. 8556 to support similar action with regard to the N.D.E.A. Rep. Corman (D., Calif.) tried to draw a comparison between the two acts and then made a statement in support of affidavit removal in the N.D.E.A. He also was the only legislator to assert that deletion of the affidavit was a good idea for civil liberties reasons as well as an important step in the

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[41] Ibid., p. 17076: September 6, 1961 (Roudebush).

field of internal security.

> I believe that this statute takes a long step forward, both in the area of enforcible security measures and in the protection of the civil liberties of the truly innocent. It would be my hope that the House and Senate Education Committees give careful consideration to amending the N.D.E.A. at their earliest opportunity, so that those federal fellowships, scholarships and other academic subsidies may be administered under an identical security provision.[42]

Thus after three years the attempts of the academic community to alter the loyalty provisions of the N.D.E.A. proved futile. But last minute action by a few men who became concerned with the Yellin case resulted in easy passage of an act to remove the affidavit in an identical section of the National Science Foundation Act. Ironically, supporters of H.R. 8556 used as a precedent for their bill the fact that "committees in both Houses have favorably reported bills which would eliminate the affidavit."[43] The academic community had worked long and hard to gain their ends; but all they achieved after three years was committee approval in both houses. Yet this limited approval was used to support a bill introduced and passed by the same House who had been so long hostile to the demands of the educators. Therefore it seems that Congress finds it

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[42] Ibid., p. 17073: September 6, 1961 (Corman).

[43] U.S., Congress, House, Committee on Science and Astronautics, Amending the National Science Foundation Act of 1950, 87th Cong., 1st Sess., 1961, H. Rept. 1029 to accompany H.R. 8556, p. 2.

quite simple to pass a piece of legislation which will protect the country against subversives, but will hesitate to pass a bill of identical substance if it is motivated by those who attempt to protect individuals from usurption of their civil liberties.

CHAPTER VII

WHY THE REPEALER EFFORT FAILED

The Situation

The history of the attempt to remove the disclaimer affidavit from the N.D.E.A. is filled with paradox. To begin with, Section 1001(f) was inserted into the act with little knowledge of most legislators. There was no apparent drive to have the loyalty provisions included; rather they were inserted almost "accidentally." But even though few persons had made any pleas to include the oath and affidavit, these provisions have proved thus far impossible to remove.

After having discovered the presence of the loyalty provisions of the N.D.E.A., many educators and academic groups found them to be objectionable on several grounds. They sought to have them removed, and attempted to achieve favorable congressional action by making use of conventional interest-group tactics. Although the academic community and allied groups were very loosely organized and not especially equipped for the job of influencing legislation, they did succeed remarkably in certain areas. Within six months time they had made use of their access to sympathetic congressmen and found them

willing to stand up for their cause and guide the desired bills through the legislative apparatus. Since their access was limited to a minority of legislators and because they were so loosely organized themselves they sought to extend their public. By attaining a strong backing within their own ranks as well as among the public at large, they hoped to improve their chances in Congress. Not only did the academic community succeed in calling national attention to the issue, but they also received explicit support from two administrations. But although the groups which advocated removal of the disclaimer affidavit did prove successful in gaining some support in Congress, the blessings of two presidents, and national publicity, they were unable to achieve their ultimate goal. Section 1001(f) today stands unchanged despite four years of concerted effort to delete it, a clear reminder of failure.

The question which immediately comes to mind is why did the movement for affidavit deletion prove unsuccessful? Why has the academic community been unable to achieve success in Congress? We will attempt to provide some answers.

Why the Academic Community Failed

The cold war era is the historical context in which the movement for affidavit deletion has occurred. As we suggested in Chapter I, it has been in periods of

crisis that loyalty oaths of all types have arisen. It is characteristic of these eras that the population is filled with anxiety as to the presence of an enemy boring from within. Because of the contemporary fear of both the internal and external growth of Communism, loyalty has become a highly sensitive issue. I would submit that the general public is highly emotional when faced with controversies involving questions of loyalty and are quick to react negatively to any proposals which seem on the surface to be "soft" on Communism. Because of this atmosphere, legislators are mindful of the fact that it is politically unwise to cast a vote which might be construed by their constituents to be against national security. Therefore it is easy to see why many congressmen might hesitate to approve a bill which would remove a loyalty provision, especially a provision which was designed to prevent Communists from making use of federal funds. Since the academic community was asking Congress to do just that, one reason for their difficulty in achieving success is clear.

Senator Russell supported the contention that it is very difficult for legislators to support measures which might remove safeguards against internal subversion during the debate on S. 2929 in 1960. He stated that he would not vote for a bill which might be considered anywhere in the world as a vote against loyalty. But the groups which advocated removal posed the problem

in a manner which might lend itself to just such an interpretation. It is, therefore, in the presentation of the issue that the educational community made a tactical error.

In opposing the loyalty provisions of the N.D.E.A. the academic community presented arguments to support their stand which were quite sophisticated. Decisions of the Supreme Court which involved relatively complex legal principles were used to demonstrate the contention that the loyalty provisions were unconstitutional. Philosophical arguments were employed to support the assertion, that Section 1001(f) was a denial of academic freedom. The charge that both the oath and affidavit were discriminatory was not easily understood when it was common knowledge that congressmen, presidents, servicemen and government employees have been signing oaths for years. These high level arguments might have seemed completely irrelevant to a population who asked simply, "Why do students and professors object to signing a statement which says that they will be loyal to the United States and that they are not Communists"? When the situation is seen in this perspective, the barriers which the academic community were faced with become quite evident. In an era in which fear of Communists is widespread, the population will not take time to examine the intellectual arguments of the case for affidavit removal, but will react emotionally in opposition to

this seemingly unpatriotic request. Because the arguments for removal were so sophisticated, a legislator who voted for the bill when it was presented in these terms would have a difficult time explaining the reason for his vote to the electorate. In order to avoid this problem, most congressmen did not support deletion.

The academic community was faced with additional problems because of the manner in which they presented their case. Since they stressed the point that students and educators were being discriminated against, they brought out latent anti-intellectual feelings among some congressmen and therefore increased their potential opposition. The comments of Senator Dodd and Representative Barden are filled with implicit and explicit hostility toward the intellectual community. Both men belittled the movement for deletion because they believed it to be instigated by a "bunch of professors."

Since the academic community did not oppose the loyalty provisions because they were inadequate as a security measure but rather took a completely different approach, they antagonized those legislators who considered themselves as defenders of the nation. These super-patriots were aroused against the educators because they seemed not to be concerned with national security. Senators such as Goldwater and Russell were greatly concerned with the problems of subversive elements within the United States and like many others would only support

affidavit removal if it was replaced by stronger security measures.

Under the circumstances, a majority of the members of Congress were actually uncommitted in either direction. There were only a handful of ardent supporters for affidavit removal and equally few were actively in opposition. In a situation such as this, where a legislator has no significant influences on him which cause him to take a stand, he will ally with the group which can give him a good reason to side with them.

> In politically ambiguous circumstances, and they are common, a group that can give the legislator an indication of the consequences of supporting or opposing a measure, is likely to win his ear at least to some degree.[1]

In this case, opponents of removal were able to make a good argument that their position was politically wiser. They could easily take the position that support of affidavit deletion was inexpedient. A vote for retention of Section 1001(f) would be seen by their constituents as a vote for loyalty, whereas a vote for removal might be construed as being un-patriotic and would not meet with the approval of the electorate. Here again, we see that the manner in which the academic community posed the issue served to hinder them.

If we conclude that the academic community harmed their case because of the way in which they presented

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[1]David B. Truman, The Governmental Process, (New York: Alfred Knopf, 1951), p. 335.

their argument for affidavit removal, does it then follow that if they had used a different approach they might have had more success? The legislative history of H.R. 8556 in 1961 suggests that they would have achieved their ends. H.R. 8556 removed an identical loyalty provision from an act which also affected students and teachers and yet there was literally no opposition to it. Supporters of the bill to remove the affidavit from the National Science Foundation Act argued that such action was a step in the direction of greater national security. They claimed that the affidavit was ineffective and should be removed because it was detrimental to the country. Thus theoretically, if the academic groups had used this approach, the very same forces which had worked to their disadvantage would have aided them. This conclusion will be reconsidered, however, in later pages.

A second factor which might have caused the academic community difficulty in attaining their ends in Congress was the movement to widen their public. Although they did succeed in arousing nationwide attention in periodicals, newspapers and through the support of two presidents, they might have been harmed rather than helped by it. Theoretically it is usually wise for a group which has little support in Congress to gain strength by seeking a broad base of public support. Those organizations which have ready access to a large number of legislators do not have to follow a policy of this kind.

Instead they can work quietly, hidden from the public eye. Because the academics did not have a great deal of support within Congress, it seemed logical for them to attempt to influence the national population. Nevertheless, I would suggest that this tactic served to create obstacles rather than remove them.

Because the educational community protested so vehemently against the loyalty provisions, they aroused their opposition into action. Latent opposition forces might have been brought to the surface by the great outcry which the academic community created. Besides bringing potential opponents into the fray, they might have consolidated the existing forces which sought to hinder them. Sociologists of conflict have suggested that groups often become more cohesive and militant in reaction to an organized and dynamic opposition group. Senator Dodd explicitly stated during the debate on affidavit removal in 1960, that he was personally antagonized by the methods of the academic community. He resented the fact that the educators and students had blown up the issue to great proportions and said he would not support them for this very reason.

In addition to the difficulties which the academic community faced because of the way in which they posed the issues and because of the uproar they created there was a third obstacle. The legislative process in Congress also created hurdles which thus far have proved insur-

mountable. The U. S. Congress is characterized by a legislative structure which favors a defensive position. David Truman asserts that the

> advantage for defensive groups results from certain characteristics of the American legislative structure and procedure. The bicameral organization of our typical legislature and the constitutional separation of powers operate, as they were designed, to delay or obstruct action rather than to facilitate it. Requirements of extraordinary majorities for particular kinds of measures and the absence of limits on the duration of debate have a like effect, as do numerous technical details of the parliamentary rules. Finally the diffuseness of leadership and the power and independence of committees and their chairmen, not only provide a multiplicity of points of access, but also furnish abundant opportunities for defensive groups.[2]

The legislative history of the effort to remove the loyalty provisions of the N.D.E.A. provides a clear example of the advantage which the rules and procedures of Congress give to defensive interests. The unique power which committee chairmen have in Congress enabled Representative Barden to stop any action in the House as long as he held the chairmanship of the Committee on Education and Labor. The bicameral structure of the national legislative body also makes it difficult for offensive groups. Even though the Senate passed a provision which removed the disclaimer affidavit in 1960, it could not become law because House action was not forthcoming. The rules of procedure in the House gives to the Rules Committee a position of great power which

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[2]Ibid., p. 355.

can be used to block bills which the committee members do not favor. In 1961, this committee tabled a bill which would have deleted the affidavit from the N.D.E.A. Although H.R. 7904 was not blocked for reasons concerning the affidavit, the result was that removal could not be achieved that year. Again because of the bicameral nature of Congress, a Senate bill which would also have done away with the affidavit was not brought to the floor when it was realized by the leadership that House action was impossible. Therefore, because it is easier to block a bill than to pass one in Congress, the advocates of affidavit removal were at a distinct disadvantage.

We have argued that although the academic community theoretically went about attempting to remove the affidavit in what would seem to be an intelligent manner, they failed because of the character of the issue and the manner in which they had to proceed. The issue with which they were dealing concerned questions of loyalty and, in the context of the times, it brought them difficulty. The uproar which they created in order to gain support only served to consolidate their foes. Added to this they had to fight against an opposition which clearly had the advantage as far as the Congressional legislative process is concerned. If they could have proceeded with less fanfare, or if they could have posed the issue with more stress on national security, their chances for success might have been better. An additional

question may be posed. Given the nature of the academic community, would it have been possible for them to proceed in a different manner? And, if they did, what success would they have had?

We will first consider the problem of the manner in which the academics presented their arguments. Although theoretically they could have demanded affidavit removal because they favored a stronger provision, in actuality this might have been impossible. The educational community did not really believe this argument and therefore could not with integrity advance such a position. In addition they relied on the "liberals" in Congress to carry out their aims. Legislators such as John Kennedy, Edith Green and Joseph Clark would not have led the fight for deletion inCongress on the grounds that more stringent methods were needed. Their individual beliefs as well as their collective public image were not compatible to such a stand.

As for proceeding more quietly, under the circumstances this too would seem to have been unwise. The academic groups lacked the organization and the leadership needed in order to carry out a legislative campaign of this type. Only by publicly protesting would they be able to arouse their own heterogeneous ranks to action. As it was the educators were criticized by several congressmen because the congressmen did not receive mail which indicated support for removal among students and professors.

Lastly, because there were some students and educators who did support the loyalty provisions, it was important for the anti-affidavit group to attempt to gain as large a following as possible.

APPENDIX I

Pertinent Legal Quotations

Section 1001 of Title 18 of the United States Code reads:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick scheme or device a material fact or makes false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisioned not more than five years, or both.

Section 1101(f) of S. 2345 reads as follows:

> (1) No part of any funds appropriated or otherwise made available for expenditure under the authority of this Act shall be used to make payments or loans to any individual unless such individual has taken and subscribed to an oath of affirmation in the following form: "I do solemnly swear (or affirm) that I bear truth faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic." The provisions of Section 1001 of Title 18 U. S. Code shall be applicable with respect to such oath or affirmation.
>
> (2) (A) When any Communist organization as defined in paragraph (5) of Section 5 of the Subversive Activities Control Act of 1950 is registered or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, it shall be unlawful for any member of such organization with knowledge or notice that such organization is so registered or that such order has become final (1) to make application for any grant, payment or loan which is to be made from funds part or all of which are appropriated or otherwise made available for expenditure under the authority of this Act, or (2) to use or attempt to use any such grant payment or loan.

(B) Whoever violated subparagraph (A) of this paragraph shall be fined not more than $10,000 or imprisoned not more than five years or both.

The Prouty amendment as passed by the Senate reads as follows:

That subsection (f) of Section 1001 of the N.D.E.A. (20 USC 581) is amended to read as follows:
"(f) (1) No part of any funds appropriated or otherwise made available for expenditure under authority of this Act shall be used to make payments or loans to any individual unless such individual has taken and subscribed to an oath or affirmation in the following form:

I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic.

(2) No person may apply for or receive any grant, payment or loan under the Act while he is a member of the Communist Party or any other organization having for one of its purposes or objectives the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State, or political subdivision therof, by the use of force or violence, and has knowledge of such purpose or objective of that party or other organizations.

(3) No person who within five years has been a member of the party or any other organization of the kind referred to in paragraph (2) may apply for or receive any grant, payment or loan under this Act unless his application for such grant, payment or loan is accompanied by a written statement, executed under oath, containing a full and complete disclosure of the facts concerning his membership in that party or other organization and the knowledge possessed by him during the period of his membership therein with regard to the purposes and objectives thereof.

(4) Whoever knowingly violates paragraph (2) or (3) of this subsection shall be fined not more than $10,000 or imprisoned not more than five years, or both."

APPENDIX II

NATIONAL DEFENSE EDUCATION ACT

Disclaimer Affidavit: Nonparticipating and Disapproving Colleges and Universities

List of institutions of higher education which on officially stated grounds have refused to participate in or have withdrawn, in whole or in part, from the NDEA program because of the disclaimer affidavit (as of May 31, 1961)

Amherst College (Massachusetts)
Antioch College (Ohio)
Barnard College (New York)
Beloit College (Wisconsin)
Bennington College (Vermont)
Brandeis University (Massachusetts)
*Bryn Mawr College (Pennsylvania)
University of Chicago
Colby Junior College (New Hampshire)
Goucher College (Maryland)
Grinnell College (Iowa)
Harvard University (Massachusetts)
*Haverford College (Pennsylvania)
*Mills College (California)
Mount Holyoke College (Massachusetts)
Newton College of the Sacred Heart (Massachusetts)
Oberlin College (Ohio)
*Princeton University (New Jersey)
Radcliffe College (Massachusetts)
*Reed College (Oregon)
St. John's College (Maryland)
Sarah Lawrence College (New York)
Smith College (Massachusetts)
*Swarthmore College (Pennsylvania)
Vassar College (New York)
Wellesley College (Massachusetts)
Wesleyan University (Connecticut)
Wilmington College (Ohio)
Yale University (Connecticut)

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*Those Institutions which had originally refused to participate in the N.D.E.A. loan program.

List of Institutions of Higher Education whose Presidents or Boards have Publicly Stated Their Disapproval of the Disclaimer Affidavit Requirement (May 31, 1961)[1]

Allegheny College (Pennsylvania)
Amherst College (Massachusetts)
Antioch College (Ohio)
Bard College (New York)
Barnard College (New York)
Bates College (Maine)
Beloit College (Wisconsin)
Bennington College (Vermont)
Bluffton College (Ohio)
Boston College (Massachusetts)
Bowdoin College (Maine)
Bradley University (Illinois)
Brandeis University (Massachusetts)
Brown University (Rhode Island)
Bryn Mawr College (Pennsylvania)
Bucknell University (Pennsylvania)
University of Buffalo (New York)
Carnegie Institute of Technology (Pennsylvania)
Case Institute of Technology (Ohio)
Central Washington College of Education
Chatham College (Pennsylvania)
University of Chicago (Illinois)
Coe College (Iowa)
Colby Junior College (New Hampshire)
Colgate University (New York)
College of the Pacific (California)
University of Colorado
Columbia University (New York)
University of Connecticut
Cornell College (Iowa)
Cornell University (New York)
Dartmouth College (New Hampshire)
Drexel Institute of Technology (Pennsylvania)
Duke University (North Carolina)
Earlham College (Indiana)
Eastern Michigan University
Eastern Oregon College
Eastern Washington College of Education

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[1]The list does not include those institutions whose presidents or boards have indicated disapproval only through nonpublic statements made to the Office of Education, or by vote as members in educational organizations such as the American Council on Education which have expressed their objection to the requirement. From information available to the association, it is apparent that at least three to four times the number of institutions included in this list have indicated disapproval in one way or another.

Fairleigh Dickinson University (New Jersey)
Ferris Institute (Michigan)
Florida Presbyterian College
Florida State University
Franklin and Marshall College (Pennsylvania)
Goucher College (Maryland)
Grinnell College (Iowa)
Hamilton College (New York)
Harvard University (Massachusetts)
Haverford College (Pennsylvania)
University of Hawaii
Hofstra College (New York)
Hunter College (New York)
University of Illinois
Indiana University
Iowa State Teachers College
State University of Iowa
Iowa State University of Science and Technology
Kalamazoo College (Michigan)
Kenyon College (Ohio)
Knox College (Illinois)
Lafayette College (Pennsylvania)
Lake Erie College (Ohio)
Lake Forest College (Illinois)
La Verne College (California)
Lawrence College (Wisconsin)
Sincoln University (Pennsylvania)
Loyola University (Illinois)
Manhattan College (New York)
University of Michigan
Mills College (California)
Millsaps College (Mississippi)
University of Minnesota
Sarah Lawrence College (New York)
Seton Hill College (Pennsylvania)
Simmons College (Massachusetts)
Skidmore College (New York)
Smith College (Massachusetts)
Southern Oregon College
Stout State College (Wisconsin)
Swarthmore College (Pennsylvania)
Syracuse University (New York)
Temple University (Pennsylvania)
University of Toledo (Ohio)
Tougaloo Southern Christian College (Mississippi)
Tufts University (Massachusetts)
Tulane University (Louisiana)
Vassar College (New York)
Washington State University
Washington University (Missouri)
University of Washington
Wayne State University (Michigan)
Wellesley College (Massachusetts)

Wesleyan University (Connecticut)
Western College for Women (Ohio)
Western Washington College of Education
Wheaton College (Massachusetts)
Wilmington College (Ohio)
Wisconsin State Colleges,
Eau Claire, La Crosse,
Oshkosh, River Falls,
Stevens Point, Superior,
Whitewater
University of Wisconsin
Wisconsin State College and Institute of Technology
Yale University (Connecticut)
Yankton College (South Dakota)
University of Missouri
Mount Holyoke College (Massachusetts)
University of New Hampshire
Newton College of the Sacred Heart (Massachusetts)
College of the City of New York
New York University
State University of New York
North Carolina State College of Agriculture and Engineering
University of North Carolina
Woman's College of the University of North Carolina
University of North Dakota
Northwestern University (Illinois)
University of Notre Dame (Indiana)
Oberlin College (Ohio)
Occidental College (California)
Oregon College of Education
Oregon State College
University of Oregon
University of Pennsylvania
Pennsylvania State University
University of Pittsburgh (Pennsylvania)
Portland State College (Oregon)
Pratt Institute (New York)
Princeton University (New Jersey)
Providence College (Rhode Island)
Queens College (New York)
Radcliffe College (Massachusetts)
Reed College (Oregon)
Rensselaer Polytechnic Institute (New York)
University of Rhode Island
Roosevelt University (Illinois)
Rutgers University (New Jersey)
St. John's College (Maryland)
St. Louis University (Missouri)

Institutions With Faculty and/or Student Opposition Only as of April, 1960

Faculty Action

Baldwin-Wallace College, Ohio (A.A.U.P. chapter)
Boston University (A.A.U.P)
Bucknell University, Pa.
Univ. of California - Berkeley (A.A.U.P.)(Also Students)
Univ. of California - L.A. (A.A.U.P.)(Also Students)
Central Connecticut State College
Colorado State University
Dickinson College, Pa.
Gettysburgh College, Pa.
Hofstra College (A.A.U.P.)
Idaho State College (A.A.U.P.)
Johns Hopkins University
Lewis and Clark College (A.A.U.P.)
Macalester College, Minn. (A.A.U.P.)
University of Maine
University of Massachusetts
University of Minnesota (A.A.U.P.)
University of Missouri (A.A.U.P.)
Modesto Junior College (A.A.U.P.)
Montana State University (A.A.U.P.)
University of Nebraska
New York University (School of Education)
Ohio State University
Oregon State College (A.A.U.P.)
Portland State College
University of South Dakota
Southern Oregon College (A.A.U.P.)
St. Cloud State College, Kansas
St. Norbert College, Wisconsin
St. Olaf College, Minnesota
Syracuse University
Union College (A.A.U.P.)
Western Illinois University (A.A.U.P.)
College of Wooster, Ohio
Washington University

Institutions With Faculty and/or Student Opposition Only as of April, 1960

Student Action Only

Hunter College (editorial)

University of Denver (editorial)

University of Texas (editorial)

Associations Which Have Recorded Opposition
as of April, 1960

1. American Civil Liberties Union
2. American Association of Land Grant Colleges and State Universities
3. American Association of University Professors - national
   AAUP - Chicago Area Council
4. American Association of University Women, Lansdowne, Pennsylvania
5. American Council on Education (through its Committee on Relationship of Higher Education to Federal Government)
6. American Council of Learned Societies
7. American Federation of Teachers (vs. "loyalty oaths")
8. American Jewish Congress
9. Association of American Colleges (through its Commission on Legislation)
10. Association of Graduate Schools
11. Association for Higher Education
12. Federation of American Scientists
13. National Conference on Higher Education
14. National Council of Churches
15. National Education Association
16. State Universities Association
17. U. S. National Student Association
    USNSA - New Jersey area
18. New England Society of Newspaper Editors
19. Women's International League for Peace and Freedom
20. American Association for the Advancement of Science
21. American Association of Law Schools
22. Association of American Universities

APPENDIX III

SENATORS ACTIVE IN THE DEBATE ON S. 819 (1959)

In favor of S. 819

Bush (R., Conn.)
Kennedy (D., Mass.)
Clark (D., Pa.)
McGee (D., Wyo.)
Church (D., Idaho)
Williams (D., N.J.)
Humphrey (D., Minn.)
McCarthy (D., Minn.)
Cooper (R., Ky.)
Javits (R., N.Y.)
Aiken (R., Vt.)
Pastore (D., R.I.)
Kuchel (R., Calif.)

Opposed to S. 819

Mundt (R., S.D.)
Russell (D., Ga.)
Holland (D., Fla.)
Lausche (D., Ohio)
Goldwater (R., Ariz.)
Ervin (D., N.C.)
Allot (R., Colo.)
Thurmond (D., S.C.)
Prouty (R., Vt.)
Dirksen (R., Ill.)
Long (D., La.)
Bridges (R., N.H.)

NDEA-II-5(59)

NATIONAL DEFENSE STUDENT LOAN PROGRAM

OATH AND AFFIDAVIT

Section 1001(f) of the National Defense Education Act provides as follows:

> "No part of any funds appropriated or otherwise made available for expenditure under authority of this Act shall be used to make payments or loans to any individual unless such individual (1) has executed and filed with the Commissioner an affidavit that he does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods, and (2) has taken and subscribed to an oath or affirmation in the following form: 'I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic.' The provisions of Section 1001 of title 18, United States Code, shall be applicable with respect to such affidavits."

Each student borrower from a National Defense Student Loan Fund must, therefore, execute the affidavit and oath provided below. This affidavit and oath must be executed and sworn to before a Notary Public or other officer authorized by State law to administer oaths and affidavits. This form must be deposited in the mail before loan funds may be made available to student borrowers. When properly completed, it should be attached to a copy of Form NDEA-II-7(59) and transmitted to:

Student Loan Section, Financial Aid Branch, Division of Higher Education, Office of Education, Department of Health, Education, and Welfare, Washington 25, D. C.

NOTE: The nature and effect of the following oath is such that it should be taken only by individuals who are nationals of the United States or who are in the United States of America for other than a temporary purpose and intend to be permanent residents thereof.

OATH

I, _____, do solemnly swear (or affirm) that I will bear true faith and
(Type or print full name of applicant)
allegiance to the United States of America and will support and defend the Constitution and laws of the United States of America against all its enemies, foreign and domestic.

AFFIDAVIT

I, _____, do solemnly swear (or affirm) that I do not believe in, and
(Type or print full name of applicant)
am not a member of and do not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods.

I hereby authorize and cause this affidavit to be filed with the United States Commissioner of Education, in conformity with Section 1001(f) of the National Defense Education Act of 1958, and certify that the statements made by me herein are true to the best of my knowledge and belief.

_____
(Signature of Applicant)

Subscribed and sworn to (or affirmed) before me this _____ day of _____

A.D. _____, at _____, _____
(City) (State)

(Seal)

_____
(Signature of officer administering oath)

_____
(Title)

_____
(Name of Participating Institution)

_____
(City and State)

GPO 891183

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Approved by Ralph K. Smith

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