August 26, 1950

Honorable Scott W. Lucas
United States Senate
Washington, D.C.

My dear Senator:

I am writing to you concerning S. 4037, known as the McCarran bill, which will shortly be considered by the Senate.

As you know, Sections 18, 19, 20, 21 and 23 of that bill generally embody the President's recommendations for strengthening existing laws with respect to national security. Sections 18-21 are derived from S. 595 (the internal security bill proposed by the Executive branch) which as H.R. 4703 has already passed the House of Representatives by an overwhelming vote. These sections considerably broaden and tighten up the espionage laws, extend the statute of limitations under the espionage laws from three to ten years, extend the Foreign Agents Registration Act to cover persons with foreign training in espionage or sabotage, and give to the Secretary of Defense broad powers to issue regulations protecting defense installations from sabotage.

The provisions which I have described conform to the President's recommendations except in one important respect. Section 21 of S. 4037 (the McCarran bill) omits a provision of S. 595, as passed by the House, which would have authorized the President, in time of war or national emergency, to extend the anti-sabotage provisions of that section "to such property and places as the President may designate *** in the interest of national security." The restoration of this provision would serve the important purpose of enabling the President to provide for the exclusion from any industries or facilities relating to the national security of any persons suspected of a purpose to engage in sabotage or espionage. You will note that H.R. 9490 (another version of the Mundt-Ferguson provisions) as recently reported by the House Committee on Un-American Activities, provides for the exclusion from employment in "defense plants" designated by the Secretary of National Defense of any person who is a member of a Communist controlled or Communist front organization registered or required to register under what is Section 7 of S. 4037 (the McCarran bill). As I shall point out,
these registration provisions will not be operative for a considerable time, if ever. What is needed is authority to take preventive action against the specific danger of sabotage without prolonged legal proceedings. The authority requested by the President, and which I hope will be restored in S. 4037, will provide the tools for this necessary job.

Section 23 of the McCarran bill is derived from H.R. 10 (the Hobbs bill) and deals with the problem arising out of the fact that many aliens under final orders of deportation cannot actually be deported because no other country will receive them. Section 23, in accordance with the President's recommendation, provides the Attorney General with new powers of supervision over such aliens which in my judgment will be sufficient to cope with the problem. As you know, the President in his recent message to the Congress strongly opposed any provision for the indefinite detention of such aliens. I should also like to add that in my opinion the provision for criminal penalties recommended by the President, and set forth in Section 7 of S. 4061 will be more enforceable than the corresponding paragraph (c) of Section 23 of S. 4037 (the McCarran bill) and I urge that it be substituted for the latter provision.

With these changes, Sections 18 through 21 and Section 23 of S. 4037 (the McCarran bill) will embody all of the recommendations of the Interdepartmental Intelligence Committee consisting of representatives of the military intelligence services and the Federal Bureau of Investigation. If enacted into law, they will provide the additional weapons which we need to deal with fifth column tactics, while leaving intact our Constitutional liberties.

Sections 1 through 17 of S. 4037 embody the provisions of S. 2311, better known as the Mundt-Ferguson-Johnston bill. Since I am sure that you are familiar with the constitutional problems posed by these provisions, I shall only state that in my judgment they will be completely ineffective to accomplish their purpose. They will be ineffective because the registration provisions, upon which most of the other provisions are hinged, will not apply to any Communist organization until after prolonged administrative and judicial proceedings. When, finally, an organization is required to register, it will in all probability dissolve itself, then reappear with a new name and new officers. Even if this registration process could be made effective, most of the penalties which would be imposed upon registered organizations and their members would be superfluous in that they are already applied under existing law. Communists and
fellow travellers are already excluded and removed from Federal employ-
ment under the President's Loyalty Program, the State Department denies
passports to Communists, and the Bureau of Internal Revenue withholds
tax exemptions and deductions from subversive organizations and their
contributors — and all this without going through the cumbersome pro-
cedures of the Mundt-Ferguson provisions. Thus, the new result of
these procedures will be meager in contrast with the staggering and
perhaps futile enforcement burden which would be placed upon the Depart-
ment of Justice.

Also, I wish to point out that Section 22 of the McCarran bill,
embodying the objectives of S. 1832, would change the laws governing the
exclusion and deportation of aliens in respects that will probably create
serious problems in the conduct of our foreign relations. I trust that
these proposed changes will receive the most careful consideration.

Finally, it must be assumed that these provisions will have
the effect of hastening the present tendency of the Communist Party to
go underground. In this connection, I wish to call your attention to
a paragraph contained in the Department's report to the Judiciary Com-
mittee of the Senate on an earlier form of this legislation.

"Outlawing of the Communist Party appears to this
Department to be unwise, even if doubts as to the
constitutionality of such a step were removed. Out-
lawing would materially increase the Department's
problem of law enforcement. Whereas the Communist
Party, to some extent, now operates on the surface,
if this bill becomes law it will be forced underground
where surveillance of its activities will become in-
creasingly difficult. Mr. J. Edgar Hoover, Director
of the Federal Bureau of Investigation of this Depart-
ment, in his testimony before the House Un-American
Activities Committee in March 1947, admonished that
he "would hate to see a group that does not deserve
to be in the category of martyrs have the self-pity
that they would at once invoke if they were made martyrs
by some restrictive legislation that might later be
declared unconstitutional."

The present world situation requires the prompt enactment of practical
and constitutional legislation which will give to the Department of
Justice adequate weapons to deal with the precise dangers which we
face, while preserving our traditions of personal liberty. We in
the Department favor the general purpose of this type of legislation, but we do not feel that there is time enough remaining for novel experiments in law enforcement over a period of years, with doubtful, meager, and inadequate results.

Yours sincerely,

J. HOWARD McGRATH

Attorney General