

The Boston Phoenix
"Briefcases"
By Harvey Silverplate
Re: McCarran-Walter Act
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President Harry Truman in 1952 vetoed the McCarran-Walter Act. In doing so, he wrote: "Seldom has a bill exhibited the distrust evidenced here for citizens and aliens alike...." The 34 years that have elapsed since the passage of this infamous law during the height of the McCarthy anti-Communist hysteria, have proven Truman to be quite correct. If Rep. Barney Frank has his way, however, McCarran-Walter's provisions, allowing for the exclusion of aliens from our shores on ground of ideology, belief and association, will become history.

McCarran-Walter establishes more than 30 grounds according to which a foreigner wanting to visit this country may be refused an entry visa. Some of these grounds are more or less non-controversial, such as those which permit the exclusion of terrorists, drug traffickers, and people with highly communicable diseases. Other provisions -- the so-called "ideological exclusions" -- remain both controversial and, in the eyes of many, a constant source of embarrassment to Americans.

Under this infamous law, the Immigration and Naturalization Service ("INS"), and in some instances the State Department, has the authority to refuse to grant a visa to a foreigner, for any number of reasons, many of them vague and extraordinarily discretionary.

One section denies entry to a foreigner who believes in communism or anarchism, who writes about these doctrines, or who belongs to a group that directly or indirectly promotes these doctrines -- in the eyes of the INS.

Even more of an affront to the notion of the right to travel (not to mention the right of American citizens to hear dissenting views from abroad) is the provision of the Act which bases exclusion upon a belief by an American consular officer or the Attorney General that the visa applicant seeks to enter the United States "solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States."

McCarran-Walter is not a product of the Reagan Administration. Indeed, both Democratic and Republican administrations have shamed themselves and all of us by invoking its provisions. The administration of John F. Kennedy, for example, excluded the well-known and highly-respected Mexican writer and diplomat, Carlos Fuentes, from our borders in 1961, when he was invited by the National Broadcasting Company to speak and debate on Kennedy's pet program, the Alliance for Progress.

The Reagan mob, however, has taken to this law like a fish

to water, or a pig to garbage. The INS under Reagan used the Act in October of last year to exclude Patricia Lara, a respected Columbian journalist invited to attend an awards ceremony in New York. When Lara asked the basis for her exclusion, our government refused to specify the reasons, but merely cited a section of the Act that bars aliens suspected of being about to engage in espionage or sabotage. Since the excluded alien has no standing under the Act to contest the exclusion in the courts, she did not learn enough about the reasons to even make an attempt to rebut the government's purported information about her. She was deported after five days' of humiliating and outrageous detention. (However, a month later, a member of the State Department, on a television program, described Lara as a member of a Columbian terrorist organization. This, presumably, was the information that Lara herself was not given the opportunity to rebut.) It's a helluva way to make friends and influence people -- to incarcerate a foreign journalist for five days and then deport her. It's not much better than the Soviet treatment of Nicholas Daniloff last year, which sufficiently irked the Reaganites to prompt them to exchange an accused Soviet spy for our man from U. S. News & World Report.

Other exclusions have been equally if not more difficult

to fathom. For instance, very early in the Reagan Administration's tenure, the government in 1980 excluded Dario Fo, an Italian playwright of substantial accomplishment, with a reputation for harboring leftist leanings. The State Department sought to justify this decision with the following explanation: "Fo's record of performance with regard to the United States is not good. Dario Fo has never had a good word to say about [the United States]." This is an incredible statement, coming from the duly-elected government of a country whose Supreme Court has characterized it as a nation committed "to the principle that debate on public issues should be uninhibited, robust, and wide-open."

Even more bizarre was the exclusion of Nino Pasti in 1983. Pasti is a former four-star general in the Italian Air Force, an expert on nuclear weapons. He was actually stationed at a post in the Pentagon in the 1960's, and he was Vice-Supreme Allied Commander of NATO for Nuclear Affairs between 1966 and 1969. Pasti had earlier visited this country at least five times for work and travel, yet when in 1983 he was invited to speak at a disarmament rally here in Boston, on the controversial subject of the deployment of American cruise missiles in Europe, he was denied entry, on the ground that his presence here would be "prejudicial to the public interest."

The list of excluded foreigners goes on and on. It is in some respects an Honor Roll, as it includes such luminaries on the world scene -- for better or for worse -- as Canadian naturalist Farley Mowat, Salvadoran presidential candidate Roberto D'Aubuisson, Columbia Nobel Prize-winning novelist Gabriel Garcia Marquez, Japanese peace activist Sato, Hortensia de Allende (widow of slain Chilean President Salvador Allende, who ran into the wrong end of a CIA plot), and British and Irish politicians on both sides of the Irish question (including Bernadette Devlin, who was at one point elected to the British House of Commons). It is critical to note that the exclusion of these and many others was based not upon any belief that they would commit crimes if allowed here. The ideological exclusion was the sole ground.

Barney Frank has just introduced in the House of Representatives legislation to substantially revise the McCarran-Walter Act and to repeal the most offensive provisions of that law. It seeks to repeal not only the ideological exclusion, but also equally offensive, albeit non-political, grounds, such as the exclusion of gay men and lesbians, people who were once mentally ill (even if they have completely recovered), and foreigners who "advocate the practice of polygamy."

In addition, Frank's proposal provides for the right of an American citizen or lawful permanent resident of this country to go to court to contest the government's decision to exclude any particular individual, when that citizen or resident is someone "who intends to meet in person with, or hear in person [the excluded alien], and whose rights under the First Amendment to the Constitution to communicate with the alien may have been denied by the denying an alien the issuance of a visa...."

Frank introduced his bill in the now-expired 99th Congress, and even though it had more than 60 co-sponsors, it went nowhere, due, it would appear, to Congress' obsession at the time with revision of the rules governing the entry of illegal workers. Frank has again garnered a substantial number of co-sponsors, including many members of the Massachusetts Congressional Delegation, and there seems to be more optimism this year than in prior years that, at last, the effort will succeed. In the first place, the Reagan Administration has been largely discredited and severely weakened by the Irancon/Conragate imbroglio. Second, as has been observed by Steven Shapiro, staff attorney of the New York Civil Liberties Union, writing in the current issue of The Harvard Law Review, there has been unprecedented press coverage and adverse

editorial commentary concerning recent abuses under McCarran-Walter. Criticism has also become increasingly vocal in the Congress, and while the courts have been half-hearted and timid in reviewing actions by the INS and State Department under all of the immigration laws, many judges have shown a particular distaste for ideological exclusions.

Furthermore, Frank is the second ranking Democrat on the Immigration Subcommittee -- the Chairperson is Rep. Romano "Ron" Mazzoli (D - KY) -- and hence is in a good position to get his bill on the agenda.

Finally, the most recent INS outrage in the name of ideological purity under McCarran-Walter may be helpful in spurring the repeal effort. In January, federal agents in Los Angeles arrested seven Palestinians and a Kenyan married to one of the Palestinians. Agents also kidnapped a 22-year-old student from her college library, according to a report in The New York Times, handcuffed her and drove her to a building where they reportedly threatened and abused her throughout the night, in an effort to get her to testify against the aliens arrested in Los Angeles, who were her friends. The behavior of the agents was so bad, that Anthony Lewis of the Times has demanded punishment for what he termed "the federal agents who behaved like totalitarian thugs."

McCarran-Walter was bad the day it was passed. It has not gotten any better. Indeed, many legal observers argue that this McCarthyist relic is inconsistent not only with the free speech provisions of our Constitution, but inconsistent as well with the Helsinki Accords resulting from the 1975 Conference on Security and Co-operation in Europe (to which the Soviet Union and the United States, among others, are signatories), which obligates the participating nations to "facilitate wider travel by their citizens" by easing "regulations concerning movement of citizens from the other participating States in their territory...." (This is the same international agreement that the Reagan folks keep accusing the Russians of violating.)

The fact that The Harvard Law Review published, in its vaunted Centennial Issue, an article openly hostile to and critical of McCarran-Walter, is perhaps an indication for just how deeply the legal establishment is embarrassed by this law. And given the about-to-commence Bicentennial Celebration of the Constitution and the Bill of Rights, the time would surely seem ripe, at long last, for repeal of this long-standing insult to a free people.