Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Critical Thinking Question

1. What is the role and importance of First Amendment liberties in maintaining government by consent?
Liberty and Security in Modern Times

The Alien Registration Act of 1940, more commonly known as the Smith Act, made it illegal to be a member of the Communist Party. It provided fines and other punishments for attempting to undermine the morale of the armed forces, speaking or writing anything that advocated the violent overthrow of the government, and organizing or joining any group that engaged in any of these activities. In 1941, members of the Socialist Workers Party in Minnesota were prosecuted under the Smith Act, and in 1948 twelve members of the Communist Party’s Central Committee were convicted of violating the law. They raised a First Amendment free speech challenge to the law, but in *Dennis v. United States* (1951), the Supreme Court upheld those convictions. After that, 141 Communist Party leaders were indicted throughout the country.

In 1950, Congress enacted (over President Truman’s veto) the Internal Security Act, also known as the McCarran Act. This law created the Subversive Activities Control Board to administer the registration process that it required for the Communist Party and all related groups that advocated “certain un-American and subversive activities.” Such associations were to submit to the attorney general’s office lists showing names and addresses of their officers and members, as well as the groups’ sources of income and expenditure reports. Members were prohibited from working for the U.S. government, labor unions, or defense facilities. They were denied passports and restricted from entering or leaving the U.S. They were required to label all broadcasts, publications and mailings as sponsored by “a communist organization.” The president was authorized to declare an “internal security emergency” in the event of insurrection, invasion, or war. Congress appropriated money to construct detention camps where, without due process, the federal government could hold suspected subversives indefinitely during such an emergency. During the 1950s, the government’s anti-communist campaign accelerated, and in *Communist Party v. Subversive Activities Control Board* (1961) the Supreme Court upheld the registration requirements.

What events set the stage for these laws that severely restricted the speech, press, and assembly rights of Americans, and what were the results for liberty and security in America?

**Cold War and Red Scare**

Born in 1908, Joseph McCarthy was one of nine children belonging to a farming family in Wisconsin. He completed elementary school and then went into business for himself selling chickens and eggs. At the age of twenty, he enrolled in high school, completing the full high school course of study in less than a year. He then enrolled at Marquette University, studying engineering and then law. After enjoying limited success as an attorney, McCarthy was elected a Wisconsin circuit judge, but left that position in July 1942 to join the U.S. Marines. He served as an intelligence officer stationed in the Pacific theater during World War II. While still on active duty, he announced his surprising decision to run for U.S. Senate in 1944. Failing to win the Republican primary, he began an early campaign for 1946. In this campaign, McCarthy inflates his war record, calling himself “Tailgunner Joe” and he was elected U.S. Senator from Wisconsin. In the Senate, McCarthy became known as loud, impulsive, dishonest, opportunistic, and ruthless.
Following World War II, American foreign policy turned intensely against communism. During what became known as the Cold War, the United States and the Soviet Union vied for influence around the world, and by 1950, the communists appeared to be winning. Soviet puppet governments had been established in Albania (1946), Poland (1947), and Czechoslovakia (1948). Beginning in June of 1948, Soviet dictator Joseph Stalin imposed what would be a year-long blockade of West Berlin. In 1949, the Communists won China’s civil war, and the Soviets tested their first atomic bomb. Espionage convictions of Klaus Fuch in England and Judith Coplon in the United States further powered the building Red Scare. In June 1950, the communist government of North Korea invaded South Korea. Joseph McCarthy had an explanation for all of these setbacks of U.S. foreign policy goals: Communists had infiltrated the U.S. State Department where they carried out their plans to advance communism around the world. He fueled—and rode—a virulent Red Scare, the wave of anti-communist hysteria that ensued.

Though there were many examples of state and federal anti-communist legislation prior to 1945, the post-World War II Red Scare may have begun with the Truman Administration’s loyalty program and its lists of people scrutinized for possible subversive activities. In a 1947 executive order, Truman established loyalty boards to conduct investigations of federal employees. The boards reviewed every employee, checking for past or current involvement in any “totalitarian, fascist, communist, or subversive” organization. The attorney general created a growing list of such organizations based on vague and shifting criteria. A loyalty board’s doubt about a federal employee’s background or associations was grounds for a full FBI probe, involving interviews of former and current friends, acquaintances, enemies, and associates of any kind. In the inquisition-like hearings that followed, the employee could consult an attorney and present witnesses and documents in his favor, but had no right to challenge his accusers or even to know who they were. As anti-communist fervor swept the country, hyper-vigilant people eager to inform on their neighbors and co-workers, submitted “evidence” of disloyalty built in some cases on unsubstantiated hearsay, mistaken identity, or an old grudge. Though the boards discovered only a few employees whose loyalty could reasonably be questioned, charges and rumors of communist affiliation destroyed the reputations of many people. A donation to a “suspect” group, a conversation with a “questionable” individual, a visit to a foreign film, a piece of “communist literature” in one’s home or office—all these and more were grounds to call one’s loyalty into question.

In a campaign speech just a week before Election Day in 1948, President Truman appealed to fear of communism in the United States, proclaiming, “I want you to get this straight now. I hate communism. I deplore what it does to the dignity and freedom of the individual. I detest the godless creed it teaches. I have fought it at home. I have fought it abroad, and I shall continue to fight it with all my strength. This is one issue on which I shall never surrender.” President Eisenhower employed a similar process of fighting communism through loyalty hearings in which witnesses who pled the Fifth Amendment before a loyalty board were dismissed from their federal jobs.

Not only did the executive branch conduct an anti-communist crusade among federal employees; senators and congressmen also sought to bolster their reputations as protectors of real Americanism. The House of Representatives had established the Un-American Activities Committee (HUAC) in 1938 to investigate communist and fascist organizations. After World War II the committee renewed its efforts to ferret out communist and subversive influences. In 1947, HUAC subpoenaed dozens of individuals to testify about their alleged connections with or knowledge of communists in America. HUAC’s inquisition-like methodology paralleled that of the loyalty review boards in the executive branch. In the 1940s and 1950s, Americans could lose their jobs, their reputations, and their liberty because of alleged
ideals or connections considered unpatriotic. In this atmosphere any criticism of the government was suspect, and meaningful debate was stifled.

**McCarthyism**

These events set the stage for Joseph McCarthy’s anti-communist crusade. In a Wheeling, West Virginia speech on February 9, 1950, he waved a piece of paper in the air, claiming that he had a list of 205 known members of the Communist Party working in the State Department. Over the next few days and weeks, McCarthy’s numbers changed as he made vague accusations of subversion at the highest levels. Such serious charges led the Senate immediately to begin an investigation. Though he could provide no substantial evidence to the subcommittee investigation headed by Senator Millard Tydings, McCarthy had found the issue that kept him in the news for the next four years.

The press, eager to sell newspapers, publicized the witch-hunt until it captured the public imagination and dominated the political scene. Whenever critics condemned McCarthy’s rudeness and extremism or questioned his sources, he branded them “liars, crooks, or traitors.”

Not all press coverage of McCarthy’s activities was positive; in 1950, the cartoonist, Herb Block, coined the term, “McCarthyism” and pointed out the menace to civil liberties inherent in McCarthy’s tactics. When the senator in 1952 accused *Time Magazine* of “twisting and distorting the facts about [his] fight to expose and remove communists from government,” *Collier’s Magazine* ran a critical editorial pointing out his hypocrisy.

In 1951 the trusted radio broadcaster Edward R. Murrow made the transition to the new medium of television. He hosted a popular and respected program presenting in-depth reports of current events, and in 1954 he broadcast an episode that used clips from McCarthy’s own speeches, to create a portrait of Joseph McCarthy and McCarthyism. The report made clear McCarthy’s extreme rudeness and disregard for the truth. Beginning the following month, the televised Senate hearings in which McCarthy charged that the U.S. Army was riddled with communists finally ended his reign of terror. Viewers who had followed McCarthy’s accusations with interest now watched his bullying tactics and reckless badgering of witnesses on live TV. When McCarthy provided no proof or evidence for his bogus charges, his approval ratings plummeted, and his reputation never recovered. In December the U.S. Senate voted to censure Joseph McCarthy for abuse of power. He died of acute hepatitis in 1957.

Communism and the specter of losing the Cold War were genuine threats to the ideals that Americans held most dear: individual liberties, private property, and government by consent. Bishop Fulton J. Sheen explained the communist threat this way: “The basic struggle today is not between individualism and collectivism, free enterprise and socialism,” but a more important battle over whether “man shall exist for the state or the state for man.”

How imminent was the national security threat of communism? How extensive was any Soviet spy ring that may have existed? In 1995, the federal government declassified a U.S. Cold War counterintelligence program called the Venona Project. While some of the Venona information is ambiguous, overall it indicates that Soviets actively engaged in espionage in the U.S. To what extent did Joseph McCarthy’s activities help uncover that real threat? Not at all. McCarthy was chief among politicians of both parties who attempted to use and inflame public hysteria for political gain. His charges never resulted in a single conviction for espionage or subversion. McCarthyism had two main results: First, thousands of Americans were dismissed from their jobs and blacklisted from future employment due to baseless accusations fueled by a panicky witch-hunt. Second, it chilled public discourse for a decade, making it unsafe to question political orthodoxy. The national security peril posed by communism in postwar America is debatable. The loss of First Amendment liberties through suppression of opinion and public discourse is clear.
Critical Thinking Questions

1. In what ways and to what extent did the effort to root out communism in America during the Cold War actually threaten the liberties Americans hold dear?

2. What specific constitutionally-protected rights did the federal loyalty programs, HUAC investigations, and McCarthy hearings violate?

3. For what reasons did some Americans trample the constitutional rights of other Americans during the Cold War?
House Un-American Activities Committee Mission Statement, 1948

Directions: Read the statement and answer the questions below.

“The House Committee on Un-American Activities has...a very special responsibility. It functions to permit the greatest court in the world—the court of American public opinion—to have an undirected, uncensored, and unprejudiced opportunity to render a continuing verdict on all of its public officials and to evaluate the merit of many in private life who either openly associate and assist disloyal groups or covertly operate as members or fellow travelers of such organizations.”

Critical Thinking Questions

1. To what extent do you think that HUAC carried out its work in and “undirected, uncensored, and unprejudiced” way?
2. Did HUAC violate its own mission statement? Why or why not?
The Alien Registration Act of 1940, also called the Smith Act (Excerpts)

Directions: Read the excerpts and answer the questions below.


Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof--

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms “organize any society, group, or assembly” refers to the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

Critical Thinking Questions

1. Explain in your own words what specific actions were prohibited under the Smith Act.
2. Do you think that the Smith Act’s prohibition of these actions violated the First Amendment? Why or why not?
To protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations, and for other purposes.

TITLE I-SUBVERSIVE ACTIVITIES CONTROL

Section 1. (b) Nothing in this Act shall be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated hereunder having that effect...

Sec. 4. (a) It shall be unlawful for any person knowingly to combine, conspire, or agree, with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship...

(d) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States...

Sec. 5. (a) When a Communist organization [is registered or ordered to register] it shall be unlawful-

(1) For any member of such organization ... (B) to hold any non-elective office or employment under the United States; or...(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility. 

(2) For any officer or employee of the United States or of any defense facility ... (A) to contribute funds or services to such organization...

Sec. 6. (a) When a Communist organization ... is registered...it shall be unlawful for any member of such organization... (1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or (2) to use or attempt to use any such passport.

Sec. 7. (a) Each Communist-action organization [and Communist-front organization shall submit an annual report which provides]

(1) The name of the organization and the address of its principal office.

(2) The name and last-known address of each ... officer of the organization...

(3) An accounting of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months next preceding the filing of such statement.

(4) In the case of a Communist-action organization, the name and last-known address of each member of the organization ...
Sec. 10. It shall be unlawful for any [Communist] organization which is registered ... 
(1) to transmit or cause to be transmitted, through the United States mails or by any means ... any publication ... unless such publication, and any envelope, wrapper, or other container in which it is mailed ... bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name of the organization appearing in lieu of the blank: “Disseminated by ________, a Communist organization”; or 
(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: “The following program is sponsored by ________, a Communist organization”.

Sec. 12. (a) There is hereby established a board, to be known as the Subversive Activities Control Board, ... (e) It shall be the duty of the Board ... to determine [through hearings] whether any organization is a “Communist-action organization” ... or a “Communist-front organization” ...

Sec. 13. (1) All hearings conducted under this section shall be public. Each party to such proceeding shall have the right to present its case with the assistance of counsel, to offer oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. ...

(e) In determining whether any organization is a “Communist-action organization”, the Board shall take into consideration - (1) the extent to which its policies are formulated and carried out ... pursuant to directives or to effectuate the policies of the foreign government or foreign organization ... or under the ... direction and control of the world Communist movement referred to in section 2 of this title; and (2) the extent to which its views and policies do not deviate from those of such foreign government or foreign organization; and (3) the extent to which it receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization; and ...

(7) the extent to which, for the purpose of concealing foreign direction, domination, or control, or of expediting or promoting its objectives, (i) it fails to disclose, or resists efforts to obtain information as to, its membership ... and (v) it otherwise operates on a secret basis; and (8) the extent to which its principal leaders or a substantial number of its members consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization. ...

TITLE II - EMERGENCY DETENTION

Sec. 102. (a) In the event of any one of the following: (1) Invasion of the territory of the United States or its possessions, (2) Declaration of war by Congress, or (3) Insurrection within the United States in aid of a foreign enemy, ... the President is authorized to make public proclamation of the existence of an “Internal Security Emergency”. 
(b) A state of “Internal Security Emergency” (hereinafter referred to as the “emergency”) so declared shall continue in exercise until terminated by proclamation of the President or by concurrent resolution of the Congress.

Sec. 103. (a) Whenever there shall be in existence such an emergency, the President, acting through the Attorney General, is hereby authorized to apprehend and by order detain, pursuant to the provisions of this title, each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage.
Critical Thinking Questions

1. Explain in your own words what specific actions were prohibited under the McCarran Act.
2. According to the text of the McCarran Act, was it intended to limit free speech and press? To what extent did the implementation of the law limit free speech, press, and association?
3. Which parts of the law, if any, might ease your mind if you were a communist or had been one in the past, but had taken no subversive action of any kind?
4. If you were president, would you sign or veto this law, and what would be your reasoning? What consequences would likely result from your chosen course of action?
5. Did the McCarran Act make assumptions about organizations deemed to be communist? If so, are the assumptions valid?
To the House of Representatives:

I return herewith, without my approval, H.R. 9490, the proposed Internal Security Act of 1950...

The idea of requiring communist organizations to divulge information about themselves is a simple and attractive one. But it is about as practical as requiring thieves to register with the sheriff. Obviously, no such organization as the Communist Party is likely to register voluntarily...

In so far as the bill would require registration by the Communist Party itself, it does not endanger our traditional liberties. However, the application of the registration requirements to so-called communist-front organizations can be the greatest danger to freedom of speech, press and assembly, since the Alien and Sedition Laws of 1798. This danger arises out of the criteria or standards to be applied in determining whether an organization is a communist-front organization...The bill would permit such a determination to be based solely upon “the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those” of the communist movement...

The basic error of these sections is that they move in the direction of suppressing opinion and belief. This would be a very dangerous course to take, not because we have any sympathy for communist opinions, but because any governmental stifling of the free expression of opinion is a long step toward totalitarianism. There is no more fundamental axiom of American freedom than the familiar statement: In a free country, we punish men for the crimes they commit, but never for the opinions they have. And the reason this is so fundamental to freedom is not, as many suppose, that it protects the few unorthodox from suppression by the majority. To permit freedom of expression is primarily for the benefit of the majority, because it protects criticism, and criticism leads to progress.

We can and we will prevent espionage, sabotage, or other actions endangering our national security. But we would betray our finest traditions if we attempted, as this bill would attempt, to curb the simple expression of opinion. This we should never do, no matter how distasteful the opinion may be to the vast majority of our people. The course proposed by this bill would delight the communists, for it would make a mockery of the Bill of Rights and of our claims to stand for freedom in the world.

And what kind of effect would these provisions have on the normal expression of political views? Obviously, if this law were on the statute books, the part of prudence would be to avoid saying anything that might be construed by someone as not deviating sufficiently from the current communist propaganda line. And since no one could be sure in advance what views were safe to express, the inevitable tendency would be to express no views on controversial subjects.

The result could only be to reduce the vigor and strength of our political life—an outcome that the communists would happily welcome, but that free men should abhor. We need not fear the expression of ideas—we do need to fear their suppression.

Our position in the vanguard of freedom rests largely on our demonstration that the free
expression of opinion, coupled with government by popular consent, leads to national strength and human advancement. Let us not, in cowering and foolish fear, throw away the ideals which are the fundamental basis of our free society...

Section 22 is so contrary to our national interests that it would actually put the Government into the business of thought control by requiring the deportation of any alien who distributes or publishes, or who is affiliated with an organization which distributes or publishes, any written or printed matter advocating (or merely expressing belief in) the economic and governmental doctrines of any form of totalitarianism...

This is a time when we must marshal all our resources and all the moral strength of our free system in self-defense against the threat of communist aggression. We will fail in this, and we will destroy all that we seek to preserve, if we sacrifice the liberties of our citizens in a misguided attempt to achieve national security...

No considerations of expediency can justify the enactment of such a bill as this, a bill which would so greatly weaken our liberties and give aid and comfort to those who would destroy us. I have, therefore, no alternative but to return this bill without my approval, and I earnestly request the Congress to reconsider its action.

HARRY S. TRUMAN

NOTE: On September 23 Congress overwhelmingly passed the bill over the President’s veto. As enacted, H.R. 9490 is Public Law 831, 81st Congress (64 Stat. 987).

Critical Thinking Questions

1. Underline or highlight President Truman’s main objections to the McCarran Act. To what extent do you agree with Truman’s reasoning? What are the most persuasive/important points he made in his veto statement?

2. Why do you think Congress overrode President Truman’s veto?

3. Why did Truman see the McCarran Act as “a step toward totalitarianism”?

4. Why, according to Truman, would this act “delight the communists”? 
Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather, Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged...

Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected. If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase “clear and present danger” of the utterances bringing about the evil within the power of Congress to punish.

Obviously, the words cannot mean that, before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required...

Chief Judge Learned Hand, writing for the majority [in Masses Publishing Co. v. Patten, New York, 1917] interpreted the phrase as follows:

“In each case, [courts] must ask whether the gravity of the ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.”

We adopt this statement of the rule... The mere fact that, from the period 1945 to 1948, petitioners’ activities did not result in an attempt to overthrow the Government by force and violence is, of course, no answer to the fact that there was a group that was ready to make the attempt. The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score. And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger. If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added...

We hold that [the sections of the Smith Act] do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendments because of indefiniteness. Petitioners intended to overthrow the Government of the United States as speedily as the circumstances would permit. Their conspiracy to organize the
Communist Party and to teach and advocate the overthrow of the Government of the United States by force and violence created a “clear and present danger” of an attempt to overthrow the Government by force and violence. They were properly and constitutionally convicted for violation of the Smith Act. The judgments of conviction are Affirmed.

Critical Thinking

1. Explain in your own words the following passages:
   a. “In each case, [courts] must ask whether the gravity of the ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.”
   b. “And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger. If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added...”

2. To what extent do you agree with the Court’s majority that the Smith Act did not violate the constitutional rights of the Communist Party leaders convicted under the law?
...Backed by the prestige of his office, [McCarthy] sent a letter to “practically all Time advertisers,” according to his own statement, which, while it did not come right out and ask them to take their business elsewhere, suggested that they were doing their country a disservice by their continued support of the magazine...

Naturally Mr. McCarthy anticipated some criticism. “I realize,” he said, “that bringing these facts to the attention of Time’s advertisers will cause some of the unthinking to shout that this is endangering ‘freedom of the press.’” But, he added, “To allow a liar to hide behind the cry ‘You are endangering freedom of the press’ is not only ridiculous, it is dangerous.”

To this we can only answer that when a man hides behind the cry “You are a liar” before anyone has accused him of endangering freedom of the press, he must be feeling rather insecure. And when he tries to intimidate a critical publication by seeking to alienate its chief sources of revenue, he is something less than courageous.

Senator McCarthy has set himself up as the final authority on loyalty and Americanism. He insists that his accusations are not to be doubted, and his judgment is not to be questioned. Yet, a few weeks after he wrote his letter to Time’s advertisers, he testified in Syracuse, New York that the Washington Post and the New York (Communist) Daily Worker “parallel each other quite closely in editorials.” And when he was asked whether he would consider the Christian Science Monitor a “left-wing smear paper,” he replied, “I can’t answer yes or no.”

Those are the statements of a man who is either woefully unperceptive or wholly irresponsible. And when such a man asks that his wild-swinging attacks be accepted without question, he is, to borrow his own words, not only ridiculous but dangerous.

We are not concerned that, on the basis of this editorial, the senator may now add us to his company of “left-wing smearers,” or that he may also warn our advertisers of the danger of supporting another publication which pollutes the waterholes of information. What does concern us is the real danger of Communist infiltration in government, and the fact that this danger is too serious to be obscured and clouded by Senator McCarthy’s eccentricities, exaggerations and absurdities.

Critical Thinking Questions

1. Compare and contrast the Collier’s editorial (Handout H) with the concluding statement issued by Edward R. Murrow (Handout I). Underline or highlight both journalists’ assessment of McCarthy to show which statements or passages you think make their points most powerfully.

2. What, according to McCarthy, are the limits of free speech?

3. What, according to Collier’s, are the limits of free speech?
On March 9, 1954, Edward R. Murrow broadcast a documentary that used clips from McCarthy’s own speeches to create a portrait of Joseph McCarthy and McCarthyism. The report made clear McCarthy’s extreme rudeness and disregard for the truth. Here is Murrow’s concluding statement about McCarthy.

“No one familiar with the history of this country can deny that congressional committees are useful. It is necessary to investigate before legislating, but the line between investigating and persecuting is a very fine one, and the junior Senator from Wisconsin has stepped over it repeatedly. His primary achievement has been in confusing the public mind, as between the internal and the external threats of Communism. We must not confuse dissent with disloyalty. We must remember always that accusation is not proof and that conviction depends upon evidence and due process of law. We will not walk in fear, one of another. We will not be driven by fear into an age of unreason, if we dig deep in our history and our doctrine, and remember that we are not descended from fearful men—not from men who feared to write, to speak, to associate and to defend causes that were, for the moment, unpopular.

This is no time for men who oppose Senator McCarthy’s methods to keep silent, or for those who approve. We can deny our heritage and our history, but we cannot escape responsibility for the result. There is no way for a citizen of a republic to abdicate his responsibilities. As a nation we have come into our full inheritance at a tender age. We proclaim ourselves, as indeed we are, the defenders of freedom, wherever it continues to exist in the world, but we cannot defend freedom abroad by deserting it at home.

The actions of the junior Senator from Wisconsin have caused alarm and dismay amongst our allies abroad, and given considerable comfort to our enemies. And whose fault is that? Not really his. He didn’t create this situation of fear; he merely exploited it—and rather successfully. Cassius was right: “The fault, dear Brutus, is not in our stars, but in ourselves.”
In its ruling in *Yates v. United States* (1957), the Supreme Court majority reversed the Smith Act convictions of all defendants, holding that the law prohibited only express incitement to specific unlawful conduct. This interpretation provided a higher level of protection for rights of free speech, press, and association, and only 29 of those indicted under the law actually served time in prison.

Since 1971, the McCarran Act has been essentially obsolete. In *Albertson v. Subversive Activities Control Board* (1965), the Court unanimously ruled that, in spite of the Section 4 statement to the contrary, the McCarran Act’s required registration of the Communist Party and its members amounted to self-incrimination under the Fifth Amendment, and was therefore unconstitutional. The Court overturned another provision of the law in 1967. In *United States v. Robel* the majority ruled that the provision making it unlawful for a member of a communist organization to work for a defense facility is a violation of the First Amendment’s right of association. Finally, in 1971 Congress repealed the “internal security emergency” detention camps provision with the Non-Detention Act.

**Critical Thinking Question**

1. In what ways did these later actions by the Supreme Court and by Congress provide a higher level of protection to civil liberties than that of the earlier laws and decisions?