

# John T. McTernan, Prominent Defense Lawyer in McCarthy-Era Trials, Dies at 94

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John T. McTernan, a left-wing legal gunslinger who prowled the nation to defend people accused of being Communists in the McCarthy years and who aided unpopular clients like Angela Davis and Cesar Chavez's United Farm Workers, died on March 28 at a nursing home in Santa Monica, Calif. He was 94.

His son, Garrett, announced the death.

In a book about the McCarthy years, "The American Inquisition: 1945-1960" (Bobbs-Merrill, 1973), Cedric Belfrage listed Mr. McTernan as one of a dozen or so leftist lawyers who professed not to view the American justice system as a capitalist charade. These lawyers, Mr. Belfrage wrote, battled in many courtrooms and legislative chambers for scant remuneration to defend people and principles, almost always defined on constitutional grounds.

Mr. McTernan, who for some time was a member of the Communist Party himself and won four of the six cases he took to the United States Supreme Court, was known for several high-profile cases. One was his defense of 14 of 16 Communist leaders tried in Manhattan in 1952 on charges of plotting violent revolution.

The Daily Worker, a Communist newspaper, said Mr. McTernan, who lived for most of his life in the Los Angeles area, took the case after 200 local lawyers refused it. The Daily Worker and mainstream New York newspapers covered the trial extensively.

Former Communist Party members testifying for the government told of "Aesopian language" in party documents that they contended was code for overthrowing the United States government, The New York Times reported. For example, they said, the phrase "material progress in the Soviet Union" meant forcible revolution.

Mr. McTernan countered that the party advocated peaceful, not violent, overthrow, and he ridiculed the notion of secret codes, Aesopian or otherwise. The judge directed verdicts of acquittal for two defendants, and said the performance of Mr. McTernan and his legal team made him "proud of his profession." The others were convicted.

In 1954, Mr. McTernan defended Clinton Jencks, a union organizer accused of falsely signing an affidavit saying he was not a Communist. The star witness in the trial, in El Paso, was Harvey Matusow, a paid government informer who after this trial and others admitted falsely accusing people of being Communists in about 200 cases. The main issue was whether the government was compelled to share with the defense an informer's statements to prosecutors.

In his confessional book, "False Witness" (Cameron & Kahn, 1955), Mr. Matusow wrote that he respected Mr. McTernan's ability to embarrass him. But he bragged it had not been easy.

"It was my job to checkmate him," Mr. Matusow wrote. "Only this was dirty chess, and there could be no rematch if I won."

Mr. Matusow did win. But Mr. McTernan prevailed over the federal government's lawyer, John V. Lindsay, the future mayor of New York, when the case reached the Supreme Court in 1957.

The resulting greater difficulty in trying people accused of being traitors was later cited by the Justice Department as a reason it was abandoning prosecutions under the Smith Act, the principal law it used to hunt Communists.

Another influential case Mr. McTernan took to the Supreme Court involved three men in Pennsylvania who possessed books that the state, under its own sedition law, deemed dangerous. None of the 1,400 lawyers in Allegheny County would take the case, so Mr. McTernan was summoned from California. He could not stop the men from being convicted, but his appeal to the Supreme Court won their release by overturning the law.

In 1959, he convinced the Supreme Court that a lawyer had been wrongly convicted of violating legal ethics for making a speech about her client, who was accused of being a revolutionary, while the trial was going on. In 1967, the Supreme Court agreed with his argument that a person with an up-to-date passport could travel to any country that had not been specifically prohibited by the State Department. (There was then no criminal statute barring travel to Cuba.)

John Tripp McTernan was born on Nov. 25, 1910, in White Plains.

His father was a trust deed officer and his mother a schoolteacher who instilled in her son a love of education. He graduated from Amherst College and Columbia Law School, paying his way by winning scholarships and working odd jobs.

Mr. McTernan's son said he did not know when his father joined the Communist Party nor exactly when disillusion with Stalin's Russia provoked him to leave the party. Mr. McTernan's first job was with the United States Shipping Board Bureau, an agency in the Commerce Department, and his second was with the United States Maritime Commission.

He then worked for the National Labor Relations Board, rising to regional counsel for Northern California. He moved on to the Office of Price Administration, then joined a private law firm in 1944.

At the firm, he teamed up with Ben Margolis, who won fame by spiritedly defending movie-industry figures who had been blacklisted. The firm paid its bills with labor, personal injury and product liability cases, but the passion of Mr. Margolis and Mr. McTernan was defending the needy and the leftist.

One case they won together involved Anna and Henry Laws, a black couple in Los Angeles who were evicted from the house they owned because of a covenant saying it could be occupied only by whites. The Supreme Court in 1948 ruled against such restricted covenants.

Another case involved overturning the murder convictions of 23 Mexican-American youths in what were popularly known as the Sleepy Lagoon killings. Another involved 15 leaders of the Communist Party in California whose convictions the Supreme Court reversed on the ground that their subversive talk was more abstract than dangerous.

Mr. McTernan succeeded in winning Angela Davis, the black militant and avowed Communist, reinstatement as a professor at the University of California. He also won an antitrust case against lettuce growers and Teamsters that paved the way for the United Farm Workers to represent field workers.

In addition to his son, who lives in Pacific Palisades, Calif., Mr. McTernan is survived by his wife of 53 years, Anne, whom he met while defending accused Communists in Pittsburgh; three daughters, Kathleen McTernan of San Anselmo, Calif., Deborah McTernan of Felton, Calif., and Karla K. McTernan of Santa Cruz, Calif.; a granddaughter; and a great-grandson.

In an interview with The Los Angeles Daily Journal in 2000, Mr. McTernan said, "I'm still what I'd call a left-winger."