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STATEMENT

by

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before

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Our principal legal weapons that are aimed most directly at the special problem of Communism itself are the Internal Security Act of 1950, the Smith Act, and the immigration and nationality laws.

The Internal Security Act of 1950 provides a carefully thought out approach to meet the special menace of the Communist conspiracy by striking at its most vulnerable point - the secrecy that masks its foreign domination and its devious methods. The Act makes formal findings that the Communist movement in the United States is a part of a foreign-dominated world-wide conspiracy to overthrow all free governments by force and violence. It requires those organizations operating in the United States as a part of that conspiracy, those defined as Communist-action or Communist front organizations, to register, and Communist-action organizations must disclose their members and officers and their financial backing. Before any organization can be characterized as a Communist-action or Communist-front organization, however, a full hearing is provided for with a right of judicial review to any party adversely affected.

There are two alternative results to be anticipated from the registration requirement. The organization may register, and if it does, it would not be outlawed or necessarily subjected to any penalty. The Act contemplates that if the Communist movement operated only in the full glare of publicity, its peculiar menace would be seriously impaired. Registration providing full information as to its personnel and backing would give us the means we seek to protect ourselves.

While registration would in all probability accomplish the desired result of diminishing the Communist menace, the law also contemplates that these organizations may not register. In the event a Communist-action organization does not register, the Act imposes the requirement for registration, not merely on the officers of the organization, but upon each of its members, and each day of failure to register is made a separate criminal offense, punishable by fine and imprisonment. Under this alternative then, actions might be instituted against individuals, in which case proof of Party membership would be the critical fact.

Essential to the validity of this careful plan, however, is the provision of section 4(f) of the Act, that the holding of office or membership in any Communist organization shall not constitute in itself a violation of that Act or any other criminal statute; and further, that the fact of registration cannot be received in evidence in any criminal prosecution against the person registered. In the absence of such a provision, the registration requirement, in many of its contemplated applications, might well be held to be a requirement that the person registering thereby give incriminating evidence against himself. The constitutional privilege against self-incrimination would in those instances operate to make the application of the Act ineffective.

It is apparent that the enactment of legislation making membership in the Communist Party per se a crime would be in direct conflict with these provisions of the Internal Security Act. If membership alone is made criminal, to require a member to declare his membership is to require

him to give self incriminating evidence. By nullifying this portion of the Act, its entire operation would be jeopardized unless there is added a grant of immunity so broad as to vitiate wholly the legislation now proposed.

We regard the Internal Security Act as a most apt and effective instrument. Under it, after arduous hearing, the Communist Party of the United States has been found to be a Communist-action organization required to register. That determination is now on appeal in the Court of Appeals of the District of Columbia. While that is the first and most important case, we are presently proceeding against twelve other organizations. Yet all of our preparation, and all of the carefully-drawn provisions of the Internal Security Act, would be substantially nullified even before it has been given a fair chance to reach the success it promises by enactment of any legislation providing that membership in the Communist Party is per se a crime. Moreover, such legislation would add nothing in lieu of the Act it vitiates, for failure to register under the Internal Security Act carries with it stiff penalties.

We have another powerful weapon against the Communist conspiracy in the Smith Act. The first conviction under this Act was sustained by the Supreme Court in 1951. Since that time, there has been a sustained use of this weapon, with the result that 105 leaders of the conspiracy have been indicted. Of these 67 have been convicted. Fourteen are now on trial. Under this Act we hope to cripple the domestic leadership of the Communist Party and thereby destroy a large part of its effectiveness. It should be observed that membership in an organization dedicated to violent overthrow of government, knowing the purposes thereof, is made criminal by Section 2(a)(3) of the Smith Act, which provides:

"Whoever organizes or helps 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 group, society, or assembly of persons, knowing the purposes thereof ***"

is guilty of a crime. The enactment of legislation again to proscribe such conduct would be surplusage, unless it sought the punishment of membership as a crime without proof that the individual concerned personally knew of the illegal objectives of the organization. As later discussed, to make membership alone a crime is of questionable legality under the principles of our Constitution.

The immigration and nationality laws are of obvious importance to this problem because the domestic Communist movement is but a part of a world-wide Communist conspiracy. The effectiveness of that conspiracy depends largely on the ability of its agents to travel freely into and out of the United States, or to remain here for long periods of time. Our ability to stop their entry, to deport those who may have already entered, and to denaturalize those who may have acquired citizenship strikes a serious blow at the Communist movement.

Finally, there are criminal statutes not specifically aimed at subversives or Communists, which have also proved effective. Those who are sufficiently close to the conspiracy to have first-hand knowledge of it are rarely willing witnesses. In our search for information as to the ramifications of the conspiracy, it is frequent that such persons are

directly questioned as to their knowledge. In these instances, the laws of perjury, false statement and contempt have a direct and forceful application. The enactment of proposed legislation to make Communist Party membership per se criminal, might prove a basis for applying the privilege against self-incrimination in cases where it does not now apply, and thus further complicate prosecutions under these laws.

Most of the pending proposals to make Communist Party membership illegal per se provide a conclusive legislative finding that the Communist Party in the United States is dedicated to the overthrow of the Government by force and violence. Unlike the Smith Act (18 U.S.C. 2385) and the Internal Security Act (50 U.S.C., Supp. V, sec. 781), which require the court to determine on the evidence the nature of the Party and the legality of its activities, these measures seek to foreclose court review of that fact.

It is true that a legislative finding in this regard is entitled to great weight. Communications Assn. v. Douds, 339 U.S. 382, 387-389. The Supreme Court has consistently recognized the illegal objectives of the Party. Dennis v. United States, 341 U.S. 494, 498; Harisiades v. Shaughnessy, 342 U.S. 580, 590; Carlson v. Landon, 342 U.S. 524, 535. Since the executive, legislative, and judicial branches of the Government have all recognized the special character of the Communist Party, it is unlikely that any court would hold that such a finding was arbitrary, capricious, and so discriminatory as to be lacking in due process of law. On the other hand, the Court might well hold that the legislative finding must be open to court review, for non-reviewable fact-finding by legislative fiat may not afford due process of law. Under these circumstances, it is not clear that the legislative finding would add anything of material importance.

More serious, however, is the provision common to most of these bills, that a person is guilty of a crime if he knowingly becomes or remains a member of the Communist Party or of any organization having similar purposes. In effect, this means that membership in the Communist Party per se is a violation of the statute even without any showing of personal knowledge of its aims or purposes. There are doubts as to the constitutionality of such a provision in the light of the recent Supreme Court decision in Wieman, et al. v. Updegraff, et al., 344 U.S. 183. That decision struck down the Oklahoma loyalty oath on the ground that "indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." And in Dennis v. United States, supra, the court held that an unlawful intent to overthrow the Government by force and violence was an essential ingredient of proof of violation of the Smith Act, despite the absence of express language to that effect.

Finally, it would undoubtedly be argued that the rights protected by the First Amendment would be affected by such a law, giving the courts additional cause to scrutinize most closely the constitutionality of such a law.

The sum of the constitutional doubts as to such proposals suggests at least that several years might be required before final ruling could be anticipated. During the intervening period, the uncertain status of the legislation would in itself impede and disrupt the orderly operation of the present program. Moreover, as already noted, the probability that the element

of personal knowledge would have to be shown, would mean that after this period of inevitable delay, we might well then have nothing more than we now have in the Smith Act.

The usefulness of any new legislation must also be measured against the practical problem of proof of Party membership. It has generally been assumed that by making Party membership per se a crime, a large number of Communists would automatically be convicted and in short order. This is a false impression.

It is estimated that the Communist Party in the United States now has about 25,000 active members. To undertake to prove the membership of each of these individuals would be a tremendous task. Party members no longer carry cards or other identifying documents. Thus, proof of Party membership in many cases might well be established only through the oral testimony of confidential informants, people whose value for such purposes would be thereafter completely destroyed. And, in the absence of documentary proof or of available informants, Party membership would be provable principally by circumstantial evidence of party-line activity and association. This is, of course, in part the same evidence which is now used in prosecutions under the Smith Act. In most instances, a statute to make membership itself a crime would not materially alter the problems of the prosecution of Communists.

Moreover, to the extent that enactment of such a bill would force the Communist movement underground cause it to close its headquarters, terminate its publications, it would at the same time and to the same extent increase the already difficult investigatory job of the FBI.

There are loopholes in our laws dealing with subversion that need to be plugged. Therefore we recommend the following new legislation:

1. Internal Security Act of 1950.

We have presently under study and will submit shortly amendments to the Internal Security Act of 1950 which will broaden the registration provisions to include not only Communist-action and Communist-front organizations, but also labor unions or businesses which are under the domination of Communists and are in a position to damage our national security. This amendment should prove of great importance in removing a potent Communist menace to the operation of defense facilities.

2. Subversives in Industry.

We also have under study certain proposed amendments to existing law to permit removal from industries important to our defense of those persons who, because of their sympathies and associations, cannot safely be permitted access to such industries.

3. Sabotage.

We have transmitted to the Congress a comprehensive revision of the laws dealing with sabotage, 18 U.S.C. 2151 et seq. In general the changes recommended have two purposes: (1) to broaden the definition sections to include within them modern war materials and new defense utilities now important to national defense; and (2) to make these laws uniformly applicable in time of national emergency as well as in time of war.

4. Statute of Limitations.

The Department of Justice urges the enactment of S. 1451, a bill to extend from three to five years the statute of limitations applicable to all non-capital offenses for which no specific statutes are otherwise provided. Increasing the time limitation will increase the opportunities for detecting

and prosecuting Communists and other subversives guilty of criminal activities.

5. Espionage.

We are recommending that peace-time espionage be made a capital offense and also an amendment to correct the deficiency in 18 U.S.C. § 794 which now prevents the imposition of a term of imprisonment for more than 30 years for war-time espionage, already a capital offense.

6. Harboring Fugitives.

At the request of the Department, there has been introduced H.R. 7486, which will increase the penalties for harboring fugitives, now only a misdemeanor. Its enactment should act as a deterrent to many who now shield fugitive Communists with relative impunity because of the light penalty which now attaches to such a violation.

7. Expatriation.

As a result of the President's recommendation, there was introduced on January 18, 1954, H.R. 7325, which provides for the expatriation of United States citizens convicted of Smith Act violations and certain other offenses. A similar but more extensive bill, S. 2757, which includes deportation, was introduced in the Senate on the same day. Loss of citizenship is a fitting punishment for those who by their actions prove themselves to be aligned with foreign interests inimical to the United States.

8. Perjury;

We have requested the introduction of legislation to amend the perjury chapter of title 18 so as to eliminate the irrelevant need for proving which of inconsistent statements wilfully made under oath is false in order to obtain a perjury conviction.

9. Immunity Legislation.

One great menace of the Communist conspirators is in the potential of its "if and when" activity. The Communist movement is the advance guard of the military power of Russia. It has a professional, skilled, highly organized and mobile cadre. What it does now, dangerous as it is, may be far less dangerous than what it might do if permitted to lay deliberately its plans for action against the time its small but disciplined force might tip the scales against our survival. The bulk of the Communist adherents is now under orders to place themselves in readiness in positions where, at the propitious moment, they will be available to carry out the dirty business of sabotage, espionage and subversion, to disrupt internally our citadel of defense. Therefore, it is essential that we secure the means of informing ourselves in advance of where these conspirators will seek to act, and to forestall them before their damage is irreparably done.

The greatest single source of information as to the ramifications of the Communist conspiracy is the conspirators themselves. To avail ourselves more effectively of that source, we have asked for the enactment of legislation such as H.R. 6899. It would permit the compelling of testimony under certain conditions by witnesses before the courts, grand juries, and Congressional bodies, by granting to the witnesses under compulsion immunity from prosecution for matters disclosed in such testimony. It is anticipated that with such a law the Government could secure vital information as to Communist identity and aims. It would also provide further leads to assist the tireless and effective investigation of this hideous conspiracy so well conducted by the Federal Bureau of Investigation.

10. Evidence Procured by Wire Tapping.

Much of the evidence now available of the illegal actions of Communists and of their future plans, is derived from wire tapping surveillance legally conducted by the Bureau under my supervision as Attorney General. Yet, as you know, wiretap evidence is now inadmissible in prosecutions in Federal courts.

Information is not an end in itself. The knowledge gained is important only to the extent that we can use it to forestall threatened danger to our internal security. Consequently, it is essential that the information we procure be admissible in court at the proper time and place to accomplish the objective of jailing those who have offended our laws. For this important reason the Department has strongly recommended the enactment of legislation to authorize the introduction in Federal courts in national security cases, of evidence procured by wire tapping.

The sum total of our present laws, plus the early enactment of the measures recommended by the Administration, make up a comprehensive and effective program to destroy the Communist menace.