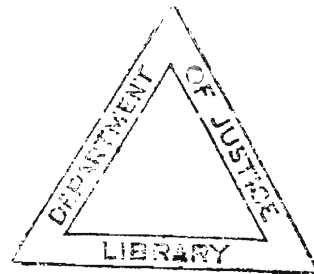


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Thursday, February 5, 1948



STATEMENT

By

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Attorney General of the United States

Before

Committee on Un-American Activities  
House of Representatives

Thursday, February 5, 1948

10 A. M.

Washington, D.C.

February 5, 1948

Gentlemen:

I appreciate the opportunity which your invitation affords me to discuss with you your efforts to frame legislation which will assist the American people to meet the menace of subversive organizations seeking to attack our freedom. My views on all forms of totalitarianism, and particularly on Communism, are known to you. I feel sure that they are identical with your own. We are opposed to the American Communists along with their deceit, trickery and lies! We are opposed to that ideology because it would attempt to substitute for our present social freedoms, a dictatorship that would mean the end of all of our freedoms -- the freedom of speech -- the freedom of the press, and the freedoms of religion and assemblage.

We may say, I think, that you in the Congress and we in the Department of Justice are laboring in neighboring vineyards and that we have the same motives and the same purposes in view. As it is your duty to inquire into the need for legislation and to write onto the statute books the necessary laws, it is mine to interpret and enforce those laws. In this instance I am particularly aware of the difficulties of your task.

The program of this Committee in bringing into the spotlight of publicity the activities of individuals and groups can render real service to the American people. There is no more potent weapon even on the statute books themselves. From your hearings Americans have all become familiar with the charge of "Red baiting" that inevitably follows when the spotlight is placed upon subversive groups. Americans, too, are familiar with the

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vitriolic campaigns of innuendo, deceit, and character assassination that follow in the wake of prosecution against party members. We in the Department have come to realize that it is part of the job to expect charges from all sides.

I shall not dwell on party policies or strategy. Suffice it to say that the American Communist program is a cause for concern. The numerical strength of the Party itself does not concern us. It is insignificant. Their claim however, is important, that for every party member there are 10 others in the shadow ready to fight for the Party. While I think they are doing a little wishful thinking in this regard, we must not discount it too heavily for these fellow travelers corrupt American life. They corrupt it by stealth, by misrepresentation, by penetration and infiltration into many responsible organizations and mediums of public expression. By association they use honest, progressive movements to further their cause by capitalizing upon ill-founded charges. Theirs is a campaign of confusion and discontent.

But, Mr. Chairman, I believe the American public is aware of this. I believe that it is aroused and that the fight against American Communism is well on its way. Victory is assured by continued vigorous prosecutions, by identifying and exposing subversive characters as well as their organizations. If this is done the vaccine of public opinion will render them impotent.

But you requested that I come here to discuss legislation. You have immediately before you several proposed measures which seek to outlaw Communism and the Communist Party. One would make the practice of Communism treasonable; another would make it necessary for members of the Communist Party to register as agents of a foreign principal. There are other numerous proposed measures pending before the Congress which seek to outlaw the Communists as a party or as a way of life.

The Department of Justice has prosecuted and will continue to prosecute with vigor the actions of subversive groups. These prosecutions are the result of intensive investigation and continuous surveillance by the Federal Bureau of Investigation. We are using the deportation statutes to remove from among us those aliens who believe in a foreign ideology -- this goes for Fascism as well as Communism. We have in the past few months proceeded in 19 of these cases. In 5 of them deportation has been effected and 14 warrants of arrest have been issued in the others. An example is the case against John Santo. John Santo was a Roumanian, a Veteran of World War II, whose real name was Desideru Hammer. He was an officer of the Transport Workers Union. We apprehended him under the act of November 16, 1918 and were able to establish his deportability on the basis of testimony from approximately 16 witnesses as to his activities in the Communist Party. We are now investigating and preparing for prosecution 68 additional cases. In addition to the deportation statutes we have successfully used Sec. 80 of Title 18 of the United States Code which makes it an offense to file a false statement with a Government agency. An example of this type of prosecution is the Marzani case, recently affirmed by the Court of Appeals here in the District of Columbia. We now

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have some additional cases of this type under investigation. The third type of prosecution comes under the contempt statutes with which you are familiar. We have had 6 cases involving 28 persons, in prosecutions here in the District of Columbia. These statutes have proved highly useful in this field. Aside from court proceedings, we are also carrying out the mandate of the President and the Congress with respect to the Loyalty Program in the Government itself. Under its procedure last fall I certified to the Loyalty Review Board 91 organizations as coming within the terms of the President's Executive Order. The Federal Bureau of Investigation is now investigating certain groups, and attorneys in the Department are studying a supplementary list. It is our purpose to continuously survey this field in order to prevent the listed organizations from using an alias, as well as additional organizations being used for subversive propaganda. In accordance with the Order, the FBI is also checking on Government employees. At this time 330,954 employees have been checked through the files of the FBI. Out of this number it has been necessary to order full field investigations in 350 cases. As of this date 40 of these investigations have been completed. During the course of the investigations 21 employees have resigned and 15 have been cleared of any charge of disloyalty. In 4 cases we are awaiting review from the Civil Service Commission and employing agencies. Some persons have criticized this program. Let me say that no employee of the Government has a Constitutional right to his job but he does have a constitutional right to fair and impartial action on the part of his Government. He shall get this, but we shall not permit one subversive to be on the Government payroll -- one may be too many.

Our responsibilities, of course, are not properly discharged unless these prosecutions and loyalty hearings proceed in an orderly and legal manner with full protection of constitutional guarantees. I am determined that no action will be taken which will impair the protections of our Bill of Rights.

We should always remember that totalitarian doctrines-- whether Fascist or Communist--destroy civil liberties. If you will but study the history of those unfortunate countries that have been plagued with this ideology you will find the people, under such governments, are stripped of their civil rights. And along with these rights, the dignity of the individual has been crushed under the foot of a Godless creed. As we cleanse our way of life of those who cling to those alien philosophies, we protect and strengthen our own liberty-- we make the more certain a continuance in the hands of the people of those rights that are inalienably theirs. But fairness and justice are not evidences of weakness. They are the signposts of strength.

In your deliberations with regard to legislation you cannot lose sight of the constitutional questions which inevitably arise in attempting to curb the activities of those with whom we disagree and whose actions we deplore. You inquire of me what constitutional questions arise. There are several. Consideration must be given, for instance, to the prohibitions of the First Amendment:

"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," etc. \* \* \*

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In this connection I call your attention to the language of the Supreme Court in the Schneiderman case (Schneiderman v. United States, 320 U.S. 118 (1943)). Schneiderman was a naturalized citizen, whose citizenship we sought to cancel on the ground that he was a member of the Communist Party. In rejecting the Government's request for cancellation the Court said (p. 139):

"Whatever attitude we may individually hold towards persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed."

With reference to the matter of affiliation with a political party or group the Court said (p. 136):

" . . . under our traditions beliefs are personal and not a matter of mere association . . . men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles. Said to be among those Communist principles in 1927 are: the abolition of private property without compensation; the erection of a new proletarian state upon the ruins of the old bourgeois state; the creation of a dictatorship of the proletariat; denial of political rights to others than members of the Party or of the proletariat; and the creation of a world union of soviet republics. Statements that American democracy 'is a fraud' and that the purposes of the Party are 'utterly antagonistic to the purposes for which the American democracy, so called, was formed,' are stressed.

"Those principles and views are not generally accepted--in fact they are distasteful to most of us--and they call for considerable change in our present form of government and society. But we do not think the Government has carried its burden of proving by

evidence which does not leave the issue in doubt that petitioner was not in fact attached to the principles of the Constitution and well disposed to the good order and happiness of the United States when he was naturalized in 1927."

We are told, therefore, that membership in the Communist Party is not enough. In prosecutions against individuals we have to do more than prove that persons are members of the party. We must have proof of adherence to the principles of the party. In addition, of course, the statutes require proof that the Communist Party is one forbidden by law. In other words, it is necessary to prove that it is a party which advocates overthrow of the Government by force or violence.

In further reference to a consideration of the guarantees of freedom, the Supreme Court has said in West Virginia State Board of Education, et al. v. Barnette, et al, 319 U.S. 624, 642 (1943):

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Whether or not a proposal will meet the requirements of due process under the Fifth Amendment is another extremely important consideration. A statute which would define the nature and purposes of an organization or group by legislative fiat is likely to run afoul of the due process requirements. The Congress cannot by statute presume a state of facts that is arbitrary or that attempts to prevent proof of true facts. This we call legislative fiat. The Supreme Court has said, for instance, in Manley v. State of Georgia, 279 U. S. 1 (1929) at p. 6:

". . . A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause. . . Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property."

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The fact that legislation may be subject to objection as being discriminatory cannot be overlooked. By singling out a political party or group for prohibitive legislation you may be charged with discriminatory action which would be objectionable as special legislation.

In this connection also, the protection against the passage by the Congress of any Bill of Attainder (Art. 1, 9, 3) is a most important consideration. In a very recent decision the Supreme Court has given us a definition of a Bill of Attainder (United States v. Lovett, 328 U.S. 303, 315, 317 (1946)):

"... legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution. . ."

\* \* \* \*

"Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty or property of particular named persons because the legislature thinks them guilty of conduct which deserves punishment. They intend to safeguard the people of this country from punishment without trial by duly constituted courts. . ."

These principles deserve careful consideration in your study of possible legislation.

One proposal is to bar the Communist Party from the ballot. Communism in the larger sense is not a political party. I think I cannot improve upon the statement made to this Committee in that connection, by the Director of the Federal Bureau of Investigation, when he appeared before you last March. At that time Mr. Hoover said:

"Communism . . . is not a political Party. It is a way of life -- an evil and malignant way of life. It reveals a condition akin to disease that spreads like an epidemic and like an epidemic a quarantine is necessary to keep it from infecting the Nation."

But an organized group, whether you call it political or not, could hardly be barred from the ballot without jeopardizing the constitutional

guarantees of all other political groups and parties.

Another proposal before you would require that the definition of treason be sufficiently inclusive to authorize prosecution of Communists under the treason statutes. I think I need only read you the Constitution. In this regard, Article III, Section 3, provides:

"Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid or comfort."

These are some of the legal considerations which I consider it essential to observe in attempting to draft new legislation adequate to combat subversive activities.

Turning to the statutes which we now have for use in combating subversive activities, I think it will be helpful to the proceedings of this Committee if those are reviewed briefly at this time.

The so-called Smith Act, passed by the Congress in 1940, contains provisions which prohibit any person from knowingly and wilfully participating either individually or with a group in activities which have for their purpose the overthrow or destruction of "any government in the United States by force or violence." By means of this statute, we are able to prosecute, provided we are able to obtain proof of force or violence.

As you know, this Act is aimed at the individual rather than the group or party. Adequate proof against the individual in this regard is most difficult to adduce. In fact, the dignitaries of the American Communist Party have each denied that they have any aim or purpose to overthrow the Government by force or violence. Because of the shifting program and the character of the party line, which can adjust to suit almost any limitation, we have found it more practical, effective, and speedy to proceed under other statutes.

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The Voorhis Act is a registration statute. It is aimed at organizations subject to foreign control or engaged in civilian military or political activity. Each of these terms is defined by the statute. In order to force a registration or to prosecute any organization for failing to register, we must prove in one or more of the combinations described in the act that the purpose or aim or one of the purposes or aims of the organization is to overthrow by force or violence the Government of the United States, or that the organization is engaged in civilian military activity prohibited by the statute, or is subject to foreign control. The fact is that the description of activities which makes it obligatory for an organization to register is enough to brand the organization as subversive. As soon as the Voorhis Act was passed, the Communist Party changed its constitution for the purpose of disaffiliating, as the announcement put it at the time, from the Communist International in order to avoid registering under the "Voorhis Blacklist Act." Later in 1943 in connection with the dissolution of the Communist International, the Party in the United States became the Communist Political Association. Since the expulsion of the Browder faction in 1945, the official designation has again been the Communist Party of the United States of America. The chameleon character of the organization is shown by its tremendous facility to accommodate itself to changing conditions. You have many examples in your files of how they bury one organization and conceive another one over night.

You have asked me what, in my opinion, is the true character and aim of the Communist Party in the United States. The ultimate question, however, is not what my opinion may be, but what proof exists to successfully prosecute an individual or organization under the above statutes. Although the Voorhis Act has been on the books since 1940, no Attorney General has directed a prosecution under it. Perhaps the fact that the act makes no particular officer of the organization responsible for filing of the registration statement has been as influential as any other in this regard. Moreover, the only effective penalty provided in the act is directed against persons making false statements. The penalty for this offense is much heavier under section 80 of Title 18. Regardless of this or of what the facts may be as to these organizations, we would have several years legal battle before we would be able to force registration. In the event we were successful it would only force the organization underground. In my opinion, under the present verbiage of the act, it would have the same effect as an act outlawing the party. In this connection, I agree with Director Hoover that from a security standpoint it would be best not to outlaw the party by statute. Let me say here that we should not run the risk of turning radicals into martyrs. It should be our effort at all times to expose to the light of public examination the activities of such individuals rather than by means of restrictive legislation to afford them an opportunity to operate underground.

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Registrations under the Voorhis Act have been negligible and the statute has proven largely useless. This is true because the definitions in the Act brand any registrant as subversive and in order to escape the necessity of registration the organization changes its appearance so as to obviate disclosure.

We have also the Foreign Agents Registration Act -- amended by the Congress in 1942. By the provisions of this act, agents of foreign principals are required to file a registration statement with the Attorney General and to label political propaganda disseminated by them. The terms of the act are sufficiently broad to require registration by members of the Communist Party, provided, of course, that proof is available that they are operating in this country as agents of a foreign principal. This is a difficult task and would get no results, even if successful for the act provides no penalty for the offending organization's continued existence or activity after conviction. It continues on its way.

In addition to the Acts I have discussed there are the treason, conspiracy, sabotage and sedition laws; and the provisions prohibiting the employment by the United States Government of persons who are members of an organization which advocates overthrow of the Government by force or violence.

Our strategic objective must be to isolate subversive movements in this country from effective interference with the body politic. In short, every such movement must be rendered completely ineffective as a Fifth Column.

This objective can be reached by:

1. Continuous investigation and surveillance of all subversive activities.
2. Prompt prosecution in the courts of all offenders against Federal law.
3. Deportation, through established procedure, of all aliens adhering to subversive principles,
4. Education of the public:
  - (a) through the Committees of Congress;
  - (b) through public meetings organized by Bar Associations and similar groups; and
  - (c) through the press and radio,
5. Continuous study and public listing by the Attorney General of subversive organizations under the President's Executive Order.
6. Complete elimination of subversive persons from all government positions.
7. Active work by labor unions to eliminate subversive persons from their membership.
8. A tightening of certain statutes, including the Espionage Act.

In order to carry out these strategic objectives a strengthening of certain laws would be helpful. I think you may wish to consider amendments to existing legislation along the following lines:

1. In the Foreign Agents Registration Act a failure of registration might be made a continuing offense with penalties for continuing failure of compliance or for reorganization under another name to evade the provisions of the Act, together with mandatory dissolution.

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2. In the Voornis Act, as I stated, no officer or agent is required to register the organization. Consideration might be given to placing responsibility upon the officers and supervisory personnel for effecting the registration of the association involved. Penalties might be imposed for continuing failure of compliance or for reorganization of the offending organization under another name to evade the provisions of the Act, together with mandatory dissolution.

3. The Smith Act, as I have said, is aimed at individuals rather than organizations. A study should be made of that Act, with relation to proof of individual activity, in the light of present-day techniques of subversive groups. Those techniques, as you know, are designed to conceal evidence as to the participation of the individual.

4. In the field of alien control, there are certain statutory situations in which the government's hand might be strengthened:

Many aliens, and particularly alien Communists ordered deported, cannot be returned to the country of their nationality because of a passport refusal by their own government. The majority will not leave the United States voluntarily to go to some other country willing to receive them. We are, at the present time, doing a tremendous amount of work in cases in which we know we may not be able to deport because of our inability to obtain travel documents. We have roughly thirty-four hundred cases which are in this category. About twenty-one hundred of these aliens are deportable to countries behind "The Iron Curtain." At least one hundred of this group are deportable because charges involving subversive activities have been sustained against them.

How long may such aliens properly be held in our custody? The courts have given no definite answer. The length of time during which deportable aliens may be detained has been said to be limited to a "reasonable" time. The period may be four months, or longer depending on the circumstances. Yet, in many cases, aliens who are at large are able to continue activities prejudicial to the interests of the United States -- the same activities which often rendered them deportable originally.

It has been suggested that a plan should be established, through legislation, to detain these deportees for a limited time under conditions permitting them complete freedom to negotiate for documents for entry into countries willing to accept them. This would also give us an opportunity to curb their activities. This suggestion is worthy of consideration. Under it judicial review, on the issue of custody, should be provided.

I should like to leave with you one further suggestion in the field of alien control. It has been felt that good results would come from an amendment to the Alien Registration Act which would require all aliens to verify their addresses with the registration authorities once each year. We would then have accurate information on all aliens instead of having to wait, as at present, for investigations. We have just announced proposed new regulations tightening the controls on alien visitors. I think such a plan would be of tremendous aid in our controls generally.

5. The Justice Department and other departments of the Government are now engaged in preparing a recommendation to the Congress for the passage of legislation strengthening the Espionage Act. I mention this not because that legislation will deal with the fundamental problem of Communism, but rather because I think it will strengthen the arm of the Government in dealing with national defense against espionage activities--a matter in which your Committee is no doubt keenly interested.

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The amendments which I have suggested will fill in loop-holes and aid us in administering the law. However, I do not want to be understood as offering these suggestions as a complete solution to the problem.

What is needed is first of all constant vigilance by all of us, in all branches of the government. I can assure you that the intelligence agencies of your government are very much on the job. The FBI, being charged with the responsibility of internal security, takes the most

active interest in this field. It is conducting continuous investigations

of subversive activities. Second, this Department will continue vigorous

prosecution under every applicable Federal Statute. Third, we must

strengthen our own system of government in every way that we can. That

is my constant effort. I know that it is yours. A strong America need

not have no fear of Communism -- nor of any other alien way of life.