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CURRENT STATUS OF COMMUNIST PARTY, USA

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Legality

The Communist Party is not an illegal entity, although congressional consideration has been given to outlawing the Party from time to time. The FBI, as principal spokesman for law enforcement in subversive matters on a national level, has opposed outlawing the Communist Party on the basis it would make martyrs of the Communists and that it is easier to follow an aboveground apparatus. Less investigative manpower is necessary, better informant coverage is possible, and Party records and directives are more readily available. Admittedly, this is a luxurious form of treatment indulged in by a prosperous and contented nation where revolution is not imminent.

In the event of an "Internal Security Emergency", statutory authority exists for a round-up of subversives. The Federal statutes which come closest to outlawing the Communist Party are the membership provision of the Smith Act and the Subversive Activities Control Act of 1950 as amended, better known as the McCarran Act, or Internal Security Act of 1950. Both have been challenged before the United States Supreme Court by the Communists as injured parties. Although convictions have been sustained in local courts, it is debatable even in non-Communist legal circles whether they will survive the scrutiny of the nation's highest court. Up to now, the Government has relied primarily on that section of the Smith Act dealing with advocating, abetting, advising or teaching the duty, necessity, or desirability, or propriety of overthrowing the Government of the United States by force and violence.

This was first used successfully in 1941 against leaders of the Socialist Workers Party, a Trotskyite organization, and then against Communist Party leaders beginning in 1948. Prosecution under this section has been on a selective basis. During the period 1948-1956 many of the top Communist Party leaders were arrested, convicted, served time, and returned to their infamous tasks. This was true earlier of the Trotskyites, who following imprisonment, resumed their Party activities. Since 1950, four states have outlawed the Communist Party, namely Indiana, Massachusetts, Pennsylvania, and Texas.

Elections

Both the Trotskyites and the Communists have run candidates for President of the United States and other elected offices. There is no

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Federal statute prohibiting them from doing so. The last Communist Party candidate for President was Earl Browder in 1940 who received 48,579 votes out of 49,820,312 votes. Since that time the Communists have either supported candidates of other parties or run for public office under non-Communist auspices. This has been done as a matter of expediency in order to counteract public antipathy against Communism. The Trotskyites as late as 1956 continued to run candidates for President, Vice-President, and other positions under the Socialist Workers Party banner, receiving an infinitesimal amount of votes in each instance. Twenty-six states have statutory provisions aimed at excluding Communists and other subversives from candidacy for public office. Some of them require non-Communist affidavits of all candidates (upheld by the United States Supreme Court in 1951), and others deny the privilege of running for office to individuals advocating the overthrow of the Government by force and violence.

Current Status

Had we been asked a few years ago, we could have pointed with considerable satisfaction to the vigorous prosecution and/or harassment of subversives by law enforcement, the courts, congressional committees, and other legally constituted bodies.

Communist Party membership dropped drastically until only an estimated "hard core" of about 9,000 members remained. Since the Party stopped issuing membership cards in 1948, it makes the compilation of accurate membership figures most difficult. Many of the most dangerous Communist front organizations were disbanded voluntarily or under Governmental pressure. Today, as a result of a succession of court decisions beginning in 1956 and spearheaded by the United States Supreme Court, the prosecution of Communists has slowed down to a virtual halt. Without going into the merits of these decisions, which have created mixed reactions all over the land, the following restrictions have been imposed upon law enforcement forces, both in the fight against subversives and criminal elements.

1. Throughout the history of Smith Act trials, Government investigators, prosecutors, and witnesses have endeavored to establish the "clear and present danger" of the Communist movement. This was first accomplished successfully against the Communists in 1949 when eleven of their top national leaders were convicted in New York City. The verdict subsequently was sustained by the United States Supreme Court in 1951. It has been the

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practice of the Government to use key witnesses to attest to the Marxist-Leninist character of the Communist Party, largely through the introduction into court of so-called Marxist classics, and to establish their use at Party meetings and training schools. This has been augmented by additional testimony on current activities which usually has been wanting from the standpoint of proving actual incitement to violence. While the Government has been able to describe clandestine operations minutely, ~~##~~ these are a far cry from a call to revolt. To make matters more difficult, the Communists deliberately have been soft-peddling their force and violence doctrines for years, using such sweet terminology as, "peaceful coexistence" instead. Reliance, for the most part, upon the Marxist classics and directives relating thereto has permitted prosecutors to use many of the same expert witnesses at different trials. This has enabled the Government to expend a minimum of informants, thereby protecting its over-all informant coverage of the subversive movement. Penetration of subversive organizations is a tedious process, and the Government obviously can ill afford to sacrifice some of its vital sources by exposing them in open court.

While the aforementioned method of attack has succeeded in the past, the Government, since 1957, has been confronted with a new line of interpretation by the United States Supreme Court, to wit, it is no crime to advocate and teach forcible overthrow of the U. S. Government "as an abstract principle" so long as there is not "any effort to instigate action" for the actual overthrow of the Government. This decision has resulted in the freeing of many Communists convicted and/or facing trial.

Lower case

2. As a result of another United States Supreme Court ruling in 1957, defendants now have a right to see pretrial reports made to the FBI regarding them by prosecution witnesses. This privilege was previously denied to them in the interest of national defense. While this sounds innocuous, it could seriously jeopardize security unless a Judge retains firm control of the trial and prohibits fishing expeditions. Because of the clandestine nature of meetings with informants, it is not always possible to obtain coverage on specific individuals in one consolidated report with a view that some years hence it may be necessary as evidence. As a matter of efficiency, the FBI always has endeavored to make individual case files as complete as possible but it is difficult to avoid overlapping reports and cross-references in some instances.

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3. The United States Supreme Court also ruled in 1957 that witnesses before congressional committees cannot be compelled to answer questions about Communist affiliations unless the questions are shown clearly to be pertinent to the subject matter under investigation.

4. In April 1956, the United States Supreme Court declared that the Smith Act superseded a Pennsylvania sedition law and apparently all state sedition laws even though nothing in the Federal statute so stipulated. This decision grew out of a most interesting case. Steve Nelson, a top Communist leader identified with Soviet espionage activities in the past, was convicted in July 1952 and sentenced to a twenty-year prison term under a Pennsylvania state sedition law for his Communist activities. One year later he was convicted under the Smith Act following federal prosecution and received a five-year sentence. Both cases ultimately reached the United States Supreme Court. The Supreme Court ruled that the Smith Act superseded the state law. This decision was a crippling blow to state prosecutions of subversives. Although state and local authorities generally have been content to allow the FBI and other Government agencies to handle subversive matters, there have been some exceptions. This verdict undoubtedly will impede their future antisubversive activities. In October 1956, the United States Supreme Court ordered a new trial for Steve Nelson following a review of his Smith Act conviction. Nelson is a free man today, active once again in the upper echelons of the Communist Party.

5. In June 1956 the United States Supreme Court declared that the State Department has no legal authority to withhold passports from Communists and other subversives, a time-honored practice engaged in by that ~~Agency~~ ^{Department} over the years in close cooperation with the FBI and other agencies. ~~Only a few days ago,~~ ^{Recently,} the State Department Security Chief asserted in a public speech that a "real danger to the security of the United States" exists because the Government is "powerless" today to bar travel overseas by American Communists. He pointed out that since last June, 596 applications for passports have been received from "persons who have records of activity in support of the international Communist movement."

6. Persons under arrest must be arraigned forthwith. This always has posed a problem to law enforcement officers and the courts. Prior to 1940 it was not uncommon to hold suspects incognito for extended periods of time. Gradually and properly so, the courts have forced a

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reduction of the time between arrest and arraignment. However, the pendulum has swung so far in favor of the arrested party today, that the courts and police authorities are in a quandry as to what constitutes an "unnecessary delay." Holding of suspects for a few hours or less has been deemed insufficient and dangerous criminals set free. This is a tremendous problem to the law enforcement world both in the criminal and subversive fields.

7. Signed statements are being scrutinized more carefully than ever and must clearly specify that the individual executing the statement has been assured of his constitutional rights of an attorney, etc.; and that the statement can be used against him in court. The securing of signed statements has always been a challenge to the ingenuity of interrogators and is becoming increasingly so.

8. The Loyalty Program used to cover all Government employees. Since a 1956 verdict of the United States Supreme Court, a Federal employee cannot be fired from a nonsensitive job merely for "sympathetic association with Communists."

9. The use of wire-tapping evidence has always been prohibited in the federal courts. Introduction of evidence from wire tapping is permitted in certain state courts when approved by appropriate state legislation. The United States Supreme Court has allowed the wire tap evidence in state courts when the interception was by a state officer duly authorized. However, it has declared such evidence inadmissible in federal courts even though the tapping was done by state officers without collusion on the part of federal authorities. The introduction of evidence secured from microphones has been and continues to be a vexing problem. The test is whether or not the installation involves a trespass. If so, the evidence is tainted. How to install a productive microphone under some conditions without a trespass has been a problem to the most skilled investigators and technicians. Oftentimes it is essential to make illegal installations in the interest of national defense. Should a valid court case arise at a later date without involving the use of the microphone take, the case still would be in jeopardy should the installation become known.

10. The matter of seizures and searches is becoming increasingly complicated. Suffice it to say that search warrants must specify what one expects to find in the search based upon reasonably firm information. A law enforcement officer trying to protect his source can find

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himself in a difficult situation. If he gives out too much detail, a life may be in jeopardy. In cases involving espionage, it is most difficult to set forth what you expect to find, since the evidence is often complex, clandestine, and almost intangible in nature. It is not like observing a man enter a building with a stolen radio and then securing a search warrant. Searches incidental to lawful arrest also have been narrowed in scope over the years. The current trend of the United States Supreme Court is to maintain strict standards for the admissibility of evidence and therefore it is increasingly incumbent upon law enforcement officers to observe the rules of the game. This tightening up on the part of the courts with regard to evidence has spread over to the military establishment where, for example, the United States Court of Military Appeals recently ruled that evidence uncovered by military prosecutors as a result of an inadmissible confession can not be used against the person who made the confession.

11. It used to be the view that evidence secured illegally by state authorities without the participation of federal officers could be admitted in federal court proceedings. This no longer can be accepted as a universal rule.

Conclusions

Whether the prosecution of the Communists and other subversives will regain the impetus of the immediate past is a matter of conjecture and highly dubious unless there is a drastic change for the worse in the international situation. Already the Communists and their fellow Marxists are beginning to breathe easier. One nationally known Communist Party leader, ^{who} accepted voluntary deportation a few years ago, re-entered this country illegally, and is back in a leadership post. At this point, law enforcement authorities are seeking congressional remedies to ease their burdens, while the Communists are attempting to regroup their forces battered by prosecutions and thoroughly shaken by the Khrushchev revelations, Soviet anti-Semitism, the Hungarian uprising, and "revisionism" over the issue of national Communism. The Communist Party, USA is still controlled by die-hard Stalinists who are working incessantly to unite the membership. Since memories often are short-lived, and diversionary issues abound, they may well succeed in rebuilding a formidable apparatus.

The prosecution of Communists in a democracy is not an easy one since they are well aware of their legal rights and use them as an effective cloak for their insidious operations. Some new laws have been enacted which are helpful in combatting subversion; the death penalty has been added for

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peacetime espionage; and the statute of limitations has been extended, thereby exposing subversive elements to prosecution for greater lengths of time than ever before. However, the main task of law enforcement remains -- to balance its over-all responsibility to protect the national security with its continuing obligation to enforce the laws, meeting, at the same time, the most stringent requirements of the courts.

A successful fight against Communism demands constant vigilance on the part of law enforcement forces; the closest cooperation and coordination among agencies concerned with intelligence and security; implementation of harassment programs; and continued spotlighting of Communist perfidy through public hearings, the press, the pulpit, and the schoolroom.

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