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TO: ~~C/EE~~ PP/G
FROM: C/EE/RA
SUBJECT: BDJ

28 January 1953

file BJS file

1. According to the cable (SFRAN 0940, IN 32130), the BDJ leaders are charged probably under the following provisions of the German Criminal Code:

Sec. 90a. Whoever forms an association the object or activity of which is directed against the constitutional order or against the principles of international understanding, or whoever promotes the efforts of such an association, either as leader or supporter, shall be punished by imprisonment.

In especially serious cases the sentence may be up to five years in the penitentiary. In addition, police surveillance may be permitted.

If the association is a political Party within the territorial jurisdiction of this law, the act may be prosecuted only after the Federal Constitutional court has established that the Party is unconstitutional.

Sec. 129. Whoever founds an association the object or activity of which is directed to the commission of punishable acts, or whoever belongs to such an association as a member, or otherwise supports it or contributes to its formation, shall be punished by imprisonment.

If the offender is one of the leaders or promoters, or if the case is for some other reason more serious, the punishment may be up to five years in the penitentiary. In addition, police surveillance may be permitted.

In the case of participants whose guilt is slight or whose cooperation is of lesser importance, punishment may be dispensed with.

Whoever prevents the continued existence of the association, or makes such timely report of its existence to an official agency that a crime envisaged by the aims of the association may still be prevented, shall not be punished under these provisions. This applies also to whoever voluntarily and sincerely tries to prevent the continued existence of the association or the commission of a

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crime envisaged by its aims, where some circumstance other than his efforts accomplish this result.

Sec. 49a. " . . . Whoever enters into an agreement to commit a major crime or enters into serious negotiation concerning the same shall be punished" as an instigator. (Under Sec. 48 the penalty of the instigator is determined by the law applicable to the offense which he knowingly instigated.)

2. Allied High Commission Law No. 62, "Concerning Relations with the Occupying Powers," provides as follows:

"Article 1. Neither the German Criminal Code nor any other criminal legislation of the Federal Republic or of any Land shall have application in respect to:

"(a) information of any kind which is supplied, or to be supplied, to the Governments of the United States, the French Republic or the United Kingdom, their Occupation Authorities, or their Occupation Forces;

"(b) the establishment or maintenance of relations with the Governments of the United States, the French Republic or the United Kingdom, their Occupation Authorities, or their Occupation Forces."

It seems quite clear, therefore, that Zinn will take the view that the contemplated prosecution has nothing whatever to do with any information supplied to U. S. authorities or with any relations established or maintained with those authorities. Whether or not that position is supported by the charges actually preferred following the preliminary investigation, we can determine only after the charges are, in fact, served. If the charges do not indicate U. S. connection, such connection could be raised by way of defensive pleading, with the possible effect of invoking Allied High Commission Law No. 62.

3. Allied High Commission Law No. 15, "Judicial Powers in the Reserve Fields," excludes from the criminal jurisdiction of German courts any

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offense "alleged to have arisen out of or in the course of performance of duties or services with the Allied Forces." This provision is subject to the same comment as that made regarding Allied High Commission Law No. 62 above. In addition, Article 7 of Law No. 13 permits the occupation authorities to "withdraw from a German court any proceeding directly affecting any of the persons or matters within the purview of paragraph 2 of the occupation statute." Paragraph 2(e) of the occupation statute includes the "protection, prestige, and security of the Allied Forces."

4. It is my opinion that Zinn has deliberately set the stage for another "Kemritz case," with the intention of not missing a second time an opportunity to defy the U. S. occupation authorities. I feel quite certain, therefore, that he would resist fully even competent orders withdrawing the case from the German court under Article 7 of Law No. 13. Not only would he probably not resist a ruling that the matter is excluded from the German court because the accused were in the employ of the occupation authorities, but he would rather welcome it as a triumph of his propaganda. On the other hand, to leave the case with the German authorities would be to invite the exploitation for propaganda purposes of the unsympathetic aspects of the BDJ as alleged by Zinn, whether true or not.

5. It is my recommendation that the U. S. High Commissioner be persuaded publicly to acknowledge support of the BDJ, including direct employment by the U. S. occupation forces of its leaders. The statement should stress the fact that support of the BDJ and the Apparatus was given because these organizations evidenced an enthusiastic desire to combat Communism

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and that, as far as the U. S. High Commission is aware, even after investigation of the activities of the organizations subsequent to their dissolution, combatting Communism was their sole purpose. The public statement should also say, although I doubt that this can be sold to Reber, that the High Commission regrets the public harrassment of EDJ and Apparat members, which has worked to the exclusive advantage of the Communists, and does not propose to permit this advantage to continue. Predicated upon this statement, and incorporating appropriate parts of it, a ruling should be issued by the High Commissioner to the Minister-President of Hesse that the matter of the EDJ leaders is within the exclusionary provisions of Law No. 13 (Article 1(b)(iii)). The ruling should also draw attention to Article 8 of Law No. 13 which provides:

"In cases outside the jurisdiction of German Courts under this Law, no German Authority may, except when expressly authorized either generally or in specific cases by the Occupation Authorities, impose any penalty or coercive measure of any description."

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