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LEGISLATIVE RECOMMENDATIONS

RESPECTING

GAPS IN INTERNAL SECURITY LAWS

AND

GOVERNMENT PERSONNEL SECURITY

REPORT

OF THE

SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS

TO THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

A11600 677886

JANUARY 23, 1968

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

88-493 WASHINGTON : 1968

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RESOLUTION

Resolved, by the Internal Security Subcommittee of the Senate Committee on the Judiciary, That the attached report entitled "Legislative Recommendations" is hereby authorized to be reported favorably to the full committee, to be printed and made public.

Approved: January 23, 1968.

REPORT OF THE INTERNAL SECURITY SUBCOMMITTEE TO THE COMMITTEE ON THE JUDICIARY

During two sessions of the Congress[1] the Internal Security Subcommittee held open public hearings on the general subject of gaps in our internal security laws. In all, 10 separate hearing sessions were held[2] and testimony was received from 19 witnesses. In addition to this testimony, the committee received for the record a number of letters from law professors and law school deans, and various other communications with respect to the subject matter of the hearings. These hearing records have been previously published.[3]

This report recommends legislative action which the subcommittee considers desirable in the interest of national security. It is based on the hearings referred to above, on some 3 years of hearings respecting security in the Department of State, and on analysis of developments subsequent to the referenced hearings. Especially noteworthy in this category of recent developments is the ruling of the U.S. Supreme Court in *United States* v. *Eugene Frank Robel*, decided December 11, 1967, which invalidated subsection 5(d) of the Internal Security Act prohibiting members of Communist-action organizations from working in designated defense facilities.

Various other decisions construing, limiting, impairing, or invalidating provisions of internal security laws also have been studied by the subcommittee and its staff in view of the fact that "Whenever any law for the protection of our national security is stricken down by a court decision, Congress has the responsibility of deciding how to meet the problem that law was intended to deal with."[4]

It is not necessary for the purposes of this report to discuss in detail the long series of Supreme Court decisions affecting national security. Various listings of such decisions and discussions of the problems they present are available from authoritative sources.[5]

The recommendations in this report are not comprehensive of all the suggestions made to the subcommittee or considered by it, and do not even include all of the possible legislation which individual members of the subcommittee may favor, but have been limited to

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[1] 89th Cong., second sess.; 90th Cong., first sess.

[2] June 23, 24, 27, July 29, 30, 1966; May 2, 9, 10 (two sessions), 24, 1967.

[3] In 1966 and 1967.

[4] Quoted from statement by the chairman at the opening of referenced hearings on gaps in internal security laws.

[5] Inter alia: Annual Report of the National Association of State Attorneys General, June 1957; Report of the Conference of State Chief Justices, July 13, 1957; Reports of the American Bar Association Committee on Communist Tactics, Strategy and Objectives, 1956 and 1957, Aug. 21, 1958, and Feb. 24, 1959 (see Annual Report, vol. 84, at p. 607); Annual Report of the Internal Security Subcommittee for 1955 issued Jan. 15, 1956, sec. 12; Reports of the County Counsel of Los Angeles, "United States Supreme Court Decisions Favorable to Communists Have Harmed Management, Labor and the American People," August 1965; vide also, from the same office September 15, 1966: "The Bill of Rights, Rights for All—Not the Few;" ibid., Feb. 15, 1957: "United States Supreme Court Decisions Favorable to Communists." See also: "Is the Supreme Court Really Supreme?" July 1967 issue of Reader's Digest, Eugene H. Methvin; Congressman Edwin E. Willis (Louisiana), July 25, 1967: (reference to Subversive Activities Control Board)—"This Board was established by the Internal Security Act of 1950 to perform an important quasi-judicial function. * * * Through a variety of suits and motions, the Communists succeeded in having the effectiveness of various SACB proceedings nullified and, in other cases, tremendously delaying the Board's work.", Congressional Record, July 25, 1967, p. H–9314.

those proposals with respect to which the subcommittee is in general agreement as to the need for legislative action.

Though many of the recommendations here presented deal with matters which have been the subject of Supreme Court decisions, none of them is intended, or should be regarded, as a challenge to the Court. There is no attempt here to reverse any decision of the Court; nor, indeed, could Congress do this if it wished.

In all its deliberations underlying these recommendations, the subcommittee has sought to deal with various internal security problems as they exist. The fact that previous legislative efforts by the Congress to deal with some of these problems have been found by the Supreme Court to be ineffective or unenforceable, or have been construed or limited in such a way as to make them less than adequate solutions to the problems with which they sought to deal, does not change the fact that the problems did exist and do exist. It is the problems, and not the decisions, upon which the Congress must focus in order to discharge effectively its responsibility for the preservation and protection of the internal security of the United States.

During the first session of the 90th Congress, faced with an emergency situation as a result of invalidation of the Subversive Activities Control Act requirements for registration by Communist-action organizations and members thereof, the Internal Security Subcommittee on March 20, 1967, recommended meeting the emergency by eliminating these registration requirements from the act, and reported to the full committee the text of an original bill designed to accomplish this purpose. This led to enactment of Public Law 90–237, approved January 2, 1968.

Contrary to the procedure followed in that emergency situation, the legislative proposals in this report do not constitute recommendations for specific legislative language, and the subcommittee does not propose to report an original bill or bills to implement the proposals made here. It is contemplated that the chairman of the subcommittee, in collaboration with other Senators, will introduce a bill proposed for enactment as the Internal Security Act of 1968. Other Senators may well have proposals of their own to offer in this field. The subcommittee hopes to hold open public hearings on all such proposed legislation beginning before the end of February and will try to conclude these hearings and report a bill to the full committee before the end of March 1968.[6]

The subcommittee recommends enactment by the Congress of appropriate legislation to accomplish the following:[7]

I

Create a Central Security Office to handle all personnel security evaluations in the executive branch (except with respect to members of the Armed Forces and employees of the Defense Intelligence Agency, National Security Agency, Central Intelligence Agency, Federal Bureau of Investigation, Atomic Energy Commission, and the White House Staff), and all personnel security investigations (except such investigations as are now handled by the Federal Bureau of Investigation). Provide that this Central Security Office shall be

[6] These are to be considered as target dates rather than firm commitments.

[7] No attempt has been made to arrange these recommendations in any particular order; and the numbering of individual paragraphs is only for convenience of reference.

staffed with professional security officers under civil service, and headed by an official appointed by the President for a term of at least 10 years, subject to Senate confirmation. Continue authority in the FBI to handle all personnel security investigations involving subversive activity. Avoid giving the new Central Security Office authority to grant or deny security clearances, since such authority should remain, as at present, in the heads of the respective departments and agencies of the executive branch.

II

Make it a felony for any person owing allegiance to the United States to give aid or comfort to an adversary of the United States (defined as a foreign nation or force engaged in open hostilities against the United States or against Armed Forces of the United States).

III

Extend to 15 years the term of the statute of limitations with respect to prosecution under any criminal statute dealing with treason or espionage.

IV

Amend the first paragraph of the Smith Act so as to prohibit without regard to the immediate effect thereof, the willful and knowing teaching or advocacy of the duty, necessity, desirability, or propriety of overthrowing or destroying, by force or violence, or by assassination of any officer thereof, the Government of the United States or the Government of any State, territory, district, or possession thereof, or the government of any political subdivision therein.

V

Amend the Smith Act so as to redefine the word "organize," as used in subsection 2(a)(3) thereof, as including recruitment of members for, and formation or reorganization (at any level) of any unit of, an existing organization.

VI

Make it a crime for any person having the purpose of helping to bring about the overthrow of the Government of the United States or of any political subdivision thereof, to urge, advise, or solicit the use of force or violence by another or others for the advancement of such purpose.

VII

Provide statutory underpinning for the industrial security program of the Department of Defense.

VIII

Make a legislative declaration that it is per se a clear and present danger to the national security to have employed in a defense facility an individual who, after the expiration of 90 days following an order of the SACB designating an organization as Communist in nature, has elected to remain or become a member of such organization.

IX

Make it a criminal offense for any person who is employed by, or is a member of, an espionage organization or investigatory agency of any foreign country, to apply for, accept, or hold employment in any agency of the Government of the United States, or in any defense facility designated as such by the Secretary of Defense pursuant to section 5 of the Subversive Activities Control Act as amended.

X

Amend the Subversive Activities Control Act to (1) provide guidelines for the Secretary of Defense in connection with designation of defense facilities, and (2) expressly provide that such designations shall be subject to judicial review under the Administrative Procedure Act.

XI

Amend the Subversive Activities Control Act so as to provide that any person who, after expiration of 90 days following a final order of the Subversive Activities Control Board designating an organization as Communist in nature, becomes or elects to remain a member of such organization, shall be barred from Federal employment.

XII

Deny ordinary income tax exemption under subsection 501(a) of the Internal Revenue Code, and the right to receive charitable contributions as defined in subparagraph 170(c)(2)(B) of the Internal Revenue Code, to organizations which make donations to Communist organizations, or members thereof, designated as such by final order of the Subversive Activities Control Board.

XIII

Amend the Subversive Activities Control Act to provide that any appeal from an order of the Board designating an organization as Communist in nature shall be considered and decided solely on the basis of the evidence adduced before the Board, and that in any such appeal the sole question to be decided shall be the validity of the original Subversive Activities Control Board decision and order. (This would give statutory affirmation to the view taken by the U.S. Court of Appeals for the District of Columbia Circuit in *Attorney General* v. *National Council of American Soviet Friendship* (322 Fed. 2d 375), where the Court said:

"The question on this record and under the statute is whether this Council was a Communist-front organization at the time of the inquiry by the Board.")

XIV

Make the Subversive Activities Control Board a forum where anyone denied opportunity to work in defense industry because of adverse unevaluated security information can go for relief. Authorize

the Board to entertain petitions from persons who claim to be so disadvantaged; to get from Government agencies and contractors available security information concerning any such petitioner; to disclose to the petitioner, so far as possible consonant with security, the nature of any adverse statements; to permit the petitioner to testify or submit the testimony of others in his behalf; and to get a professional security evaluation report on the petitioner based on all material presented. Provide that the Board shall make available to the petitioner a summary of the evaluator's findings, and the conclusions of the evaluation report, and upon request of the petitioner, shall (1) make public such findings and conclusions, (2) send a copy thereof to each concerned Government agency, and (3) send a copy thereof to any Government contractor designated by the petitioner.

XV

Amend the civil service regulations so as to permit transfer of loyal security risks to nonsensitive positions, or their dismissal under normal civil service procedures, without public stigmatization of such individuals as security risks.

XVI

Authorize use of the subpena power by any agency of the United States engaged in hearing a loyalty or security case involving an employee thereof or applicant for employment therein, for the purpose of granting any reasonable request of such employee or applicant for the production of any witness or other evidence in his behalf.

XVII

Require monthly reports, by all departments and agencies in the executive branch, of statistics respecting separations of employees as security risks. (Disclosure by name or otherwise of the identities of employees so separated should not be required by this new statute.)

XVIII

Provide that no person who refuses to swear or affirm his allegiance to the United States shall be entitled to receive, hold, or use any creditential issued by the United States which identifies him as one bearing allegiance to the United States.

XIX

Provide for regulation of the classification of documents for security purposes, within the executive branch, so as to preclude (as nearly as possible) arbitrary or nonessential classification.

XX

Prohibit falsification of identity in applying for a social security account number card, or the possession or use of such a card bearing a false, assumed, or fictitious name.

XXI

Deny postal subsidies to any organization designated by final order of the Subversive Activities Control Board as Communist in nature, and to any person, group, or association, or any business or trade organization, financed preponderately by any organization or organizations designated by final order of the Subversive Activities Control Board as Communist in nature.

XXII

Prohibit importation into the United States, or shipment in interstate commerce, of goods produced by slave labor.

XXIII

Protect State antisubversive laws from invalidation based solely on implied Federal occupation of the field. Effectively disavow congressional intent to preempt the field of internal security legislation, or to invalidate provisions of State laws in this area which are not in direct conflict with congressional enactments. Avoid including in legislation any provisions which might be construed either as expressing value judgments with respect to existing or proposed State legislation, or as attempting to exercise the judicial function of determining the constitutionality of any State enactments.

XXIV

Put the International Organizations Employees Loyalty Board on a statutory basis, as the agency designated to pass upon security clearance of U.S. nationals employed by multination organizations, and prohibit any U.S. national who does not hold such a security clearance from taking such employment.

XXV

Require that any person seeking to enter the United States with the status of a member of a mission to, or as an employee of, a multinational organization, must bear on his passport and any other official credentials his true and lawful name and the place and date of his birth.

XXVI

Give the Secretary of State statutory authority, with the approval of the President, to prohibit travel by U.S. nationals to, within or through any designated foreign nation or area, on the basis of his formal finding, published in the Federal Register, that such travel is contrary to the security interests of the United States or will substantially impede the conduct of foreign affairs.

XXVII

Require any agency furnishing intelligence to the Department of State to designate specially any item thereof which it considers to be of the highest level of importance from the standpoint of national

security, and direct that any intelligence item so marked, or a copy thereof, shall be transmitted immediately, as directly as possible, to the Secretary of State.

XXVIII

Require that the Office of Security of the Department of State shall be staffed entirely by employees under civil service.

XXIX

Prohibit any reprisal by any Government agency, or by any employee thereof acting in his official capacity or within the scope of his official duties, against any witness who testifies or has testified before any congressional committee, for or on account of his testimony or the fact of his having testified.

XXX

Provide that a claim of the privilege against self-incrimination shall not excuse any person serving or who has served an espionage organization of a foreign nation, or who is or has been a member of an organization which advocates the overthrow by force or violence of the Government of the United States or any political subdivision thereof, from testifying about his activities in connection with such espionage or subversion; but that any such person required by order of a court of the United States, or by order of a committee of the Congress, with the approval of the Attorney General of the United States, to testify hereunder after so invoking a claim of privilege against self-incrimination shall be immune from prosecution thereafter with respect to any matter or thing disclosed by such testimony.

XXXI

Provide that a witness before a congressional committee may, subject to the approval of the Attorney General of the United States, be granted immunity from prosecution with respect to any matters or things disclosed by his testimony responsive to the committee's demand, following assertion by the witness of the privilege against self-incrimination as the basis for a refusal to answer. Provide that committee action to grant immunity to a witness shall require (1) a favorable record vote by a majority including at least one member of the minority party, and (2) inclusion, in the record of the hearing at which the witness is to testify, of both (*a*) a certified copy of the committee minutes evidencing the vote to grant immunity, and (*b*) a written statement signed by the Attorney General evidencing his approval of the grant of immunity.

XXXII

Amend the act of June 22, 1938 (2 U.S.C. 192) so as to provide that any question asked of a witness before a congressional committee shall be deemed pertinent if reasonably calculated to produce information within the scope of the committee's jurisdiction, including (but without limitation) questions designed to: establish the identity of a witness; qualify a witness as an expert; or provide information as to the good faith of a witness' claim of privilege against self-incrimination as a basis for refusing to answer.

XXXIII

Provide that any citizen of the United States residing in a foreign country may be subpenaed by Congress, and failure to respond to such a subpena, after having been tendered transportation expenses and witnesses fees, shall be a crime punishable in any Federal court district to which the person subpenaed shall return, or in which he may be found, within 5 years.

XXIV

Provide that, without regard to any other provision of law respecting immigration, any individual whose testimony as a witness is desired by a committee of the Congress may be granted temporary admission (or parole) into the United States when his entry is requested by a written resolution approved by at least two-thirds of the members of the committee desiring his testimony, including at least one member of the minority party.

XXXV

Provide that no court of the United States shall have jurisdiction to consider or decide whether a committee of the Congress is performing its duties satisfactorily, or in conformity with the mandate or will of its parent body. (Such a determination is the exclusive prerogative of the legislative body.)

XXXVI

Create a Communist Defectors Awards Board, to consist of the Secretary of State, the Attorney General, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, the chiefs of the intelligence branches of the Army, Navy, and Air Force, and other appropriate officials of the U.S. intelligence community, with power and responsibility to grant admission to the United States for permanent residence, and other benefits as justified in particular cases, to defectors from Communist or Communist-dominated countries.

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