file
"Internal Security"
FROM: Mr. Spingarn                Date 8/19/50

TO:        Col. Maylon
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For your information
For your files

Comments:
For your reference files. Several people have asked for copies of this lately so I had run made.
April 6, 1949

MEMORANDUM FOR MR. CLIFFORD:

Here is a summarized account of the Alien and Sedition Acts of 1798, their background, provisions, enforcement, and political repercussions, which you requested Monday night.

I should like to add a postscript. Since the end of World War II there has been an ominous trend in the United States toward the increasing curtailment of freedom of expression and opinion through economic and social intimidation of one sort or another. It is one thing for a nation to take basic counter-espionage and security measures necessary to protect its existence. That it must do. It is another thing to urge or tolerate heresy hunts at every stump and crossroads to smoke out and punish non-conformists of every shade and stripe of opinion different than that of the majority. I'm afraid we are moving increasingly in that direction. States and cities are amending loyalty and antisubversion measures with more and more frequency (Maryland, New Jersey and New York within the past weeks). Some of these may be justified but the tendency is always to go further than is needed -- to riddle the barn door in order to hit the knothole.

Citizens organizations (in the District of Columbia for example) and patriotic and other organizations (The American Legion, the DAR, even the American Bar Association) are passing resolutions daily in this field urging greater and greater measures of suppression or adopting them within their own ranks. The consuming fear of communism has lead many sincere persons into the belief that loyalty and orthodoxy are synonymous -- that change (be it civil rights or a compulsory national health program) is subversive and those who urge it are either Communists or fellow travellers. Others not so sincere play on this fear for their own purposes.

With the possible exception of the days of John Adams and those of A. Mitchell Palmer, it is more dangerous to be a liberal today than at any other period in American history. ("A liberal is only a hop, skip, and a jump from a communist.")

This situation of course plays into Soviet and Communist hands in several ways (aside from the obvious one of moving us in the direction of the very totalitarianism we oppose.) It furnishes effective weapons to the opponents of the President's liberal programs. It identifies Russia
in the minds of the people of the world as the leading exponent of the liberal causes to which the Soviets give such vehement lip service -- for other countries. It glorifies the status quo as the true concept of Americanism and democracy, when in fact they represent a dynamic and continually evolving adjustment between the rights and freedoms of the individual and the requirements of the society for order and security.

All this adds up to the fact that it seems to me this would be a very timely point for the President to find an appropriate occasion at which to utter some wise and temperate words on this subject, cautioning the country against excesses of suppression in the name of patriotism and Americanism.

There are quite a few people around today who could take counsel from Dr. Sam Johnson's famous sermon, "Patriotism, sir, is the last refuge of a scoundrel." As Boswell observed, this was a startling statement, but Johnson did not mean a real and generous love of our country. Rather, he meant that pretended patriotism which so many in all ages and countries have made a cloak for self-interest.

STEPHEN J. SPINGARN

Attachment - 1
April 6, 1949

MEMORANDUM FOR MR. CLIFFORD:


I. BACKGROUND OF THE ACTS

The four statutes which have become known as the Alien and Sedition Acts were passed by Congress in June and July, 1798. Their enactment resulted from the struggle between the Federalist Party (the precursor of the present Republican Party) and the Republican Party (the original name of the present Democratic Party), as well as from the conflict between French and British sympathizers.

The French Government had been irritated by the Jay treaty between the United States and Great Britain. For that and other reasons we were rapidly drifting toward a state of war with France. The publication by this government of the insulting treatment American representatives had received in Paris and the high-handed attitude of French diplomats toward the United States served to unify the American people and give support to war preparations.

The Federalist leaders, moreover, for many years had smelted under the bitter criticism of the Republican minority in Congress and the denunciations of the Republican press, which was largely edited by foreigners, and had resented the efforts of French propagandists to embroil the United States with England. Some of the Federalists had been opposed to the heavy influx of Irish immigrants, hostile to England, who were aligning themselves with the Republican Party. The crisis in the form of a probable war with France (which, of course, never took place) seemed to the Federalists to provide both excuse and occasion for rough treatment of their various enemies.

To meet this apparent crisis, the four laws here under consideration were passed in spite of strenuous Republican opposition.

II. THE ACTS THEMSELVES

The four statutes in the order enacted were as follows:

(a) The Naturalization Act. — This Act extended the minimum period which must be spent in the United States before citizenship could be conferred from five to fourteen years. It also provided for the registration both of aliens already in the United States and of those who might subsequently arrive. The temper of the times can be judged from the fact that amendments were offered,
although not adopted, to provide that birth in this country alone should entitle persons to citizenship and to her aliens who had not yet acquired citizenship from ever holding any U.S. office. This Act was repealed in 1802.

(b) The Alien Act. — This Act authorized the President to order the departure of all aliens whom in his discretion he should judge dangerous to the peace and safety of the U.S. Aliens convicted of disobeying such orders were to be imprisoned for not to exceed three years and thereafter barred from acquiring citizenship. The only recourse of an alien ordered out of the country was to attempt to prove to the President's satisfaction that no injury or damage to the U.S. would result from his continued residence here. If convinced, the President might then grant him a license to remain, and as a condition prerequisite to such license might require him to give bond for good behavior. The Act, by its terms, was limited to two years duration and was not renewed when it expired in 1800.

(c) The Enemy Alien Act. — This Act provided that when the President issued a proclamation of the existence of war with any foreign nation, all the male subjects of that nation over fourteen years of age who were in the U.S. and had not been naturalized should be liable to arrest and imprisonment, or deportation, as enemy aliens. The President was authorized to issue rules and regulations governing the disposition of such aliens. This Act was generally regarded as less drastic than the others. It contained no time limitation for expiration and was not repealed. It remains in effect today (amended to cover females as well as males), and constituted the basis for regulations concerning enemy aliens which were issued during World Wars I and II.

(d) The Sedition Act. — This was the most drastic of the four statutes.

The principal provision of the act penalized the publication of any false, scandalous or malicious writing against the Government of the United States, the Congress, or the President, with intent to defame or bring them into disrepute, or to stir up hatred against them, or to incite sedition, or to aid any hostile designs of any foreign government against the United States. The penalty was a fine up to $1000 and imprisonment up to two years.

The Act also penalized conspiracies to oppose any government measure directed by proper authority or to impede the operation of any U.S. law, or to prevent any Federal official from performing his duty. The penalty for these offenses was a fine up to $5000 and imprisonment for not less than 6 months nor more than five years. A person accused under the act was allowed as a defense to prove the truth of writings alleged to be seditious and the jury was made the judge of both the law and the facts. The Act provided for its own expiration in 1801, and it was not extended.

Even more drastic provisions were contained in the original bill which became the Sedition Act, but these were eliminated during its passage through Congress. One such provision declared that every Frenchman was an enemy to the U.S. and to give him aid or comfort was treason punishable by death. Another provided that any person who justified France or defied the Government of the U.S. should suffer punishment by imprisonment or fine. These provisions,
however, were too drastic for the more far-sighted Federalist leaders, including Alexander Hamilton, who feared that same of them might result in civil war.

III. ENFORCMENT OF THE ACTS

The Sedition Act was the only one of the four measures which was immediately actively enforced.

The Naturalization Act was repealed in 1802. Hence, it never really became operative. Little attempt was made to enforce the Alien Act, and it expired in two years and was not renewed. The Enemy Alien Act by its terms was not operative except in time of war, and (despite the foreboding signs) we did not go to war with France. As indicated above, however, the Act remained in effect as a not unreasonable war-time measure and became the basis of enemy alien regulation in World Wars I and II.

The Sedition Act was another matter. The indignation and alarm of the Republicans about this measure was fully justified. The first prosecution under this Act was against a Republican member of Congress, running for re-election, and all subsequent victims convicted were Republicans. The cases were tried before unsympathetic Federalist judges and juries. In the minds of some of the judges, it appears, loyalty to the Federal Government and to the Federalist Party tended to merge and become identical. Their charges to juries consisted not merely of exposition of the law, but of the principles of the Federalist Party as well. In many instances, the method of selecting jurors was such that Federalists exclusively were called to serve in the trials of Republican offenders. About 25 persons were arrested for sedition under the Act, at least 15 of them indicted, and 10 convicted.

Perhaps the most interesting case was that of Matthew Lyon, a member of Congress who had charged President Adams with continually grasping for power and having an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice. He published a letter from another man which referred to "the bullying speech of your President, and stupid answer of your Senate." He wondered that the answer of both houses had not been an order to send him to a madhouse. Instead of this the Senate have echoed the speech with more severity than ever George III experienced from either house of Parliament." Lyon was indicted for sedition and convicted. Imprisoned for four months and fined $1000, he was handled in a contemptuous and brutal manner and thrown into a filthy jail. The experience made him a Republican martyr. He was re-elected to Congress while in jail and returned in triumph to resume his seat in the House, where a resolution to unseat him was carried by a majority but not the necessary two-thirds.

Another case was that of James Callender, a Richmond editor who had violently attacked President Adams and his administration. He was brought to trial in the Federal Circuit Court in Virginia under Supreme Court Justice Samuel Chase. According to Beveridge in his life of John Marshall, Justice Chase abused Callender's counsel and intimidated witnesses in a scandalous manner. Callender was convicted.
IV. POLITICAL REPERCUSSIONS

The Alien and Sedition Acts enraged Republicans all over the country, which was natural, since they were directed primarily against Republicans and French sympathizers.

Republican leaders, however, saw in them not merely a menace to their freedom to criticize the Federalist administration, but also a vulnerable chink in the Federalist armor. They rightly believed that the Federalists had gone too far and they took full advantage of their opportunity.

Jefferson and Madison attacked these laws in the famous Kentucky and Virginia resolutions adopted by the legislatures of those two states, which declared the Acts invalid and asserted the right of the states to check such encroachment on their powers by the Federal Government. Jefferson was handicapped in his campaign against the Acts by the fact that he was then Vice President and thus felt himself restrained from openly campaigning against Federalist policies. Secretly, however, he led the campaign.

The Republican propaganda against these measures was a major factor in the defeat of the Federalists in the 1800 election, when Jefferson was elected President. The Republican Party was to remain in power uninterruptedly for 40 years. Concerted efforts were made in Congress to repeal these Acts but two of them remained in force until they expired by their own terms, the Alien Act in 1820 and the Sedition Act in 1801. The Naturalization Act was repealed in 1802. The unobjectionable Enemy Alien Act is still in effect, although applicable only in time of war.

Jefferson promptly released everyone convicted under the Sedition Act because "I considered, and now consider, that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image."

Many years later — in some cases as much as fifty years after the event — Congress remitted the fines which had been imposed.

The whole episode of the Alien and Sedition Acts burned itself indelibly into the American mind and tradition. In stirring up hostility against the enforcement of such measures, they probably helped to preserve civil liberties during the years ahead.

It became accepted doctrine that freedom of speech and of the press is beyond the reach of peacetime regulation by Congress, and that it includes the right to full and free political criticism. The sharp punishment meted out to the Party which enacted these unpopular measures was not forgotten by responsible party leaders, for it was not until the first World War that Congress again imposed restrictions upon freedom of speech and publication.
A 1918 amendment to the sedition provisions of the Espionage Act of 1917 was as far-reaching as the 1798 Sedition Act. The 1918 Act even contained a provision providing for the dismissal of any Federal employee who "commits any disloyal act or utters any unpatriotic or disloyal language, or who in an abusive and violent manner criticizes the Army, the Navy or the flag." These provisions of course were applicable only in wartime. The 1918 amendment was repealed in 1921, but the more moderate sedition provisions of the 1917 espionage act are still in effect, although operative only in war. The 1918 sedition act was enforced with more decorum than the 1798 act but nonetheless with a considerable degree of ruthlessness.

Twenty-two years later, facing another World War, Congress enacted the Alien Registration Act of 1940, which in addition to its alien registration features contained general sedition provisions applicable in peace as well as in war. These are directed against persons (citizens or aliens) teaching or advocating the overthrow of our government by force or violence. This is by its terms not nearly as drastic as the 1798 statute, although as eminent an authority as Zbigniew Brzezinski of Harvard finds little to choose between the 1940 statute and its 18th century predecessor. The enactment of the 1940 Act however, attracted no attention comparable to that received by the Sedition Act of 1798.

STEPHEN J. SPIEGELHART