

Court Restores Citizenship of Ex-Communist

Dis
Curfew for West
Coast Japanese
Declared Valid
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By Edward H. Higgs
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A naturalized alien's citizenship cannot be canceled simply because he belonged to the Communist Party and supported in theory the use of force—at some indefinite time—to overthrow the Government, the Supreme Court ruled yesterday.

Specifically, the 5-3 decision revoked cancellation of the citizenship of William Schneiderman, Russian-born State secretary of the Communist Party for California who became an American citizen in 1927. The ruling was a victory for Wendell Willkie, Republican presidential candidate in 1940, who represented Schneiderman before the high court.

In another opinion, winding up the court term, the tribunal unanimously upheld as a valid exercise of war powers the curfew imposed last year on persons of Japanese ancestry on the West Coast.

Where the threat of an invasion is imminent, the court ruled, a military commander can take such measure to guard against possible sabotage in an area where an attack might occur.

Tenable Conclusion

While noting that the curfew applied to 70,000 American citizens of Japanese extraction, Chief Justice Stone's opinion declared that the fact that an attack on this country was threatened by Japan "rather than another enemy power set these citizens apart from others who have no particular associations with Japan."

Schneiderman's citizenship was ordered canceled in 1940 by the Federal District Court at San Francisco on the grounds that he concealed his affiliation with the Communist Party, which the Justice Department contended advocated at

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that time the overthrow of the Government by force and violence.

The majority opinion by Justice Murphy, which did not take up the merits of communism or relation with Russia, declared it was a "tenable conclusion that the party in 1927 desired to achieve its purpose by peaceful and democratic means and justified the use of and violence merely as a theoretical matter.

"Here is a material difference," Justice Murphy said, "between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time—prediction that is not calculated or tended to be presently acted upon, thus leaving opportunity for general discussion and the calm processes of thought and reason. Because of this difference we may assume that Congress intended, by the general test of 'attachment' (to the Constitution) in the 1906 (Naturalization) Act to deny naturalization to persons falling into the first category but not into the second."

The court concluded, the opinion said, that the Government had not proven by "clear, unequivocal and convincing evidence" that Schneiderman obtained his citizenship illegally.

"In so holding we do not decide what interpretation of the party's attitude toward force and violence is the most probable on the basis of the present record . . .," the opinion said, "we hold only that where two interpretations of an organization's program are possible, the one reprehensible and a bar to naturalization and the other permissible, a court in a denaturalization proceeding . . . is not justified in canceling a certificate of citizenship by imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating such was his interpretation."

By Ideas and Associates

Chief Justice Stone, in a sharply worded dissent, declared the record "abundantly supported" the lower court's finding that the party and Schneiderman believed in the overthrow of the Government by violence.

"A man can be known by the

ideas he spreads as well as by the company he keeps," the Chief Justice said, "and when one does not challenge the proof that he has given his life to spreading a particular class of well-defined ideas, it is convincing evidence that his attachment is to them rather than their opposite. In this case it is convincing evidence that petitioner, at the time of his naturalization, was not entitled to the citizenship he procured because he was not attached to the principles of the Constitution and because he was not well disposed to the good order and happiness of the same."

In another case the Justice Department was granted a Supreme

Court review of a decision dismissing an indictment charging violation of an OPA maximum price regulation which had been revoked and supplanted by another price ceiling before the indictment was returned.

Government attorneys contested the action of the Federal District Court at Boston in quashing an indictment against the Liberty Beef Co., accused of selling wholesale cuts of beef at prices higher than those prescribed for the period between September 29, 1942, and November 13, 1942.

The court agreed to review a National Labor Relations Board order directing the J. I. Case Co. of Rock Island, Ill., to bargain collectively with a union, despite contracts which had been entered into with individual employees.

The court refused to review a decision that Massachusetts was entitled to collect \$725,000 for 1926 income taxes from Edgar B. Davis, Luling, Tex., oil man.

The court dismissed "for want of substantial Federal question appeal from" a decision holding constitutional Oklahoma legislation regulating the cleaning, dyeing and pressing business.

Bank Robber Denied Review

Raffael Greco, sentenced to 25 years' imprisonment and fined \$10,000 in connection with the \$76,000 robbery of two messengers of the First-Stroudsburg (Pennsylvania) National Bank, failed to obtain a Supreme Court review.

Charles H. Guyton, convicted in the Federal District Court at Dallas (Tex.) of selling narcotics and sentenced to three years' imprisonment, also failed to obtain a Supreme Court review.

A member of "Jehovah's Witnesses," Nick Falbo of Westmoreland, Pa., was granted a review of

his conviction on a charge of failing to report for nonmilitary work after being classified by his draft board as a conscientious objector. He contended he was an ordained minister completely exempt from training and service.

The Supreme Court denied an application by two persons who contended they were Austrians and should be released from internment at Bismark, N. Dak. Wolfgang Achtner and Franz Moedhammer said Austrians had been classified as friendly aliens and asserted that their internment was improper.