

Lincoln Brigade Is Finally Cleared

10/25/72
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The U.S. Court of Appeals ordered the Attorney General yesterday to remove from his list of subversive organizations the Abraham Lincoln Brigade, a group of Americans who fought with the Loyalists against Franco in the Spanish Civil War.

The unanimous decision found that continued listing of the brigade and the Veterans of the Abraham Lincoln Brigade "cannot be tolerated" in view of the Attorney General's failure to comply with earlier court rulings concerning the groups' listing.

The court's decision, unless appealed, appears to bring to an end the 24-year battle by the groups to resist government attempts to have them register as Communist-front organizations.

A spokesman for the Justice Department said the court's opinion would have to be reviewed before a decision on an appeal can be made.

The court declined, however, the brigade's attempt to have the constitutionality of the list—a catalogue of purportedly communist, fascist and subversive groups—declared unconstitutional.

Leonard Boudin, one of the lawyers for the brigade, said the decision was an "advance" but did not reach the "ultimate objective, which is to get these lists declared unconstitutional." He said that would have to be done through another case.

Boudin said the decision represented the first time that any court had ordered the Attorney General to remove an organization from the list.

The decision followed years of litigation by the brigade and the Veterans of the Abraham Lincoln Brigade to have themselves "delisted."

In February, 1969, the Court of Appeals ordered the case back to the U.S. District Court for further consideration. The

District Court, in turn, ordered then Attorney General John N. Mitchell to conduct a hearing on the continued listing of the brigade and the veterans.

Rather than conducting a hearing and without notifying the brigade first, the Attorney General amended his listing of the brigade and the veterans to read "prior to April 20, 1966." That was the date the Subversives Activities Control Board vacated its 1955 decision to require the brigade and the veterans to register as subversive groups.

"The burdens of unjustified listing . . . are not lessened by the inclusion of those words," the court said of the amended listing. "To the contrary, those words violate the spirit of, and effectively drive a horse and wagon through," the court's February, 1969, order.

The majority opinion was written by U.S. District Judge Frank A. Kaufman of the Maryland District, sitting with the Court of Appeals under special procedures. Chief Circuit Judge David L. Bazelon and senior Circuit John A. Danaher joined in the opinion.

Kaufman said the 600 original members of the brigade and veterans "were entitled as a matter of their constitutional rights to have the Attorney General, the chief law enforcement officer of this country, fully and expeditiously comply with an order of this court from which the government sought no review in the Supreme Court."

"In view of the Attorney General's failure so to do, the continued listing of the brigade and the veterans cannot

be tolerated," Kaufman said. The Court of Appeals directed the District Court "forthwith" to issue an order requiring the Attorney General to "delist" the two groups.

In a concurring opinion, Danaher, who had opposed the brigade and veterans position in the 1969 decision, said that "Under the circumstances, I believe this business has gone far enough and this is the time to end it."