

Ruling Ends Passport Ban Restricting Travel by Reds

Justices Find a Violation of Constitution in Restraints Under Security Act —Dissenters Call Curbs Legal

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WASHINGTON, June 22 —

The Supreme Court struck down today the provision of the Internal Security Act of 1950 denying passports to members of the Communist party and its fronts.

The vote was 6 to 3. Justice Arthur J. Goldberg was joined in the opinion of the Court by Chief Justice Earl Warren and Justices William O. Douglas, William J. Brennan Jr. and Potter Stewart.

Justice Hugo L. Black wrote a separate concurring opinion. Justice Douglas wrote one of his own as well as joining Justice Goldberg's.

The dissent was by Justice Tom C. Clark. It was joined by Justices John Marshall Harlan and Byron R. White.

The decision was one of the handful in recent years finding an act of Congress unconstitutional. And it was the first to hold that Congress had violated the Constitution in restraining Americans' freedom to travel.

The 1950 law requires "Communist-action" and "Communist-front" groups to register with the Government if found so by the Subversive Activities Control Board. It puts various penalties on members, including the passport ban and a prohibition on Government employment.

In 1961 the Supreme Court upheld a finding that the Communist party must register under the act. But the Court did not then pass on the validity of any penalty.

The party has not registered as yet, having won some intermediate court victories. But in any event the statute provides that the penalties apply to members of any group ordered to register, whether it does so or not.

Today's case was brought by Herbert Aptheker, editor of the party's theoretical journal, Political Affairs, and by Miss Elizabeth Gurley Flynn, chairman of the party. Both were denied passports after the registration order became effective.

A Protected Liberty

The passport ban effectively prevented them from traveling outside the Western Hemisphere. Other laws make it a crime to leave the hemisphere without a passport at this time.

In 1958 the Supreme Court held that the right to travel was within the "liberty" protected by the Fifth Amendment from deprivation without due process of law. But the Court did not then define the scope of that liberty.

Today Justice Goldberg said the 1950 act swept too broadly in preventing all travel outside the hemisphere by party members. He said Congress had not dealt specifically enough with the real danger that concerned it—Communist espionage or other criminal activity.

Congress does have ample power, the opinion said, to protect the national security. But it cannot condemn innocent activity along with evil, according to the ruling.

Activity Irrelevant

Justice Goldberg noted that the statute made irrelevant the degree of a member's activity in the party and commitment to it. The member's purpose in going abroad is also irrelevant, he wrote.

"Under the statute," Justice Goldberg found, "it is a crime—to apply for a passport to travel abroad to visit a sick relative, to receive medical treatment or for any other wholly innocent purpose."

The opinion also posited the example of a Communist's wanting to "read rare manuscripts in the Bodleian Library of Oxford."

The conclusion was that the national security could be and must constitutionally be—protected by means "more discriminately tailored to the constitutional liberties of individuals."

The three dissenters first objected to the majority's reading the statute on its face instead of applying it specifically to Miss Flynn and Dr. Aptheker. At least they are clearly active, leading party members, the dissenters said.

All three dissenters said Congress could validly find travel by such party leaders a threat and prohibit it.

"We have no 'innocent members' before us," Justice Clark said.

Justice White stopped there. Justices Clark and Harlan went further and said they would also sustain the broad language of the law on its face, applying to all members of the Communist party whether leaders or not.

Justice Black, in his concurrence, repeated his 1961 view that the whole 1950 Internal Security Act was unconstitutional. He termed it, including the travel restriction, a bill of attainder and an infringement on free speech.

The case was argued by John J. Abt of New York for Miss Flynn and Dr. Aptheker, and by Abram J. Chayes, then legal adviser of the State Department.