

1368 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

GREENE V. M'ELROY

360 U.S. 474

The decision

The opinion for the Court was delivered by Chief Justice Warren. Concurring views were expressed by Justices Frankfurter, Harlan, and Whittaker. Justice Clark filed a dissenting opinion.

In this case the Court struck down that portion of the industrial security program established by the Department of Defense under which a person's fitness for clearance was determined on the basis of fact determinations in which individuals were denied "traditional procedural safeguards of confrontation and cross-examination." The Court did so on the ground that the regulations were not specifically authorized by the President or the Congress, without deciding whether the President or the Congress has inherent authority to create such a program.

Greene, who began his employment in 1937 with the Engineer and Research Corp., a business devoted mainly to the development and manufacture of mechanical and electronic products, was first employed by that corporation as a junior engineer and at the time of his discharge in 1953 was vice president and general manager. He had been credited with the development of a complicated electronic flight simulator and with the design of a rocket launcher, produced by this corporation and long used by the Navy. The corporation was engaged in classified contract work for the various armed services and had entered into a security agreement or contract by which the corporation agreed, in the performance of this work, to provide and maintain a system of security control, and that it would not permit any individual to have access to classified matter unless cleared by the Government. During the World War II period, Greene had received security clearance, but in 1951 information came to the attention of the Government, including evidence of his maintenance of a close and sympathetic association with various officials of the Soviet Embassy, which showed clearly that Greene was a security risk, if not actually disloyal to the United States.

A letter of charges was delivered to Greene, and he was informed that he could seek a hearing before the Review Board. He appeared with counsel, was questioned, and in a series of hearings was given an opportunity to present his witnesses and his case. Greene's own admissions would seem to establish what the Government had reasonably concluded, namely, that he was a security risk, although the Government presented no witnesses and, relying largely on confidential reports, did not give Greene the opportunity to confront and cross-examine confidential informants whose statements reflected on him. Greene's security clearance was finally withdrawn and, as a result, his services were no longer useful to his corporation. He was forced to resign from his offices in the corporation and was discharged.

Greene appealed to the district court asking for a declaration that the revocation of his security clearance was unlawful and void on the ground that he was denied liberty and property without due process of law in contravention of the fifth amendment. The district court and the court of appeals upheld the revocation. The Supreme Court reversed.

Conceding that the President in general terms had authorized the Department of Defense to create procedures to restrict the dissemination of classified information and that even in the absence of a specific delegation the Department was authorized to fashion and apply a clearance program which would afford affected persons the safeguards of confrontation and cross-examination, the Court held, however, that in the absence of explicit delegation by either the President or the Congress the Department could not fashion and apply the program which it did in revoking Greene's security clearance.

The decision left several basic questions unanswered, which is evident in the opinion of the Chief Justice who said:

"Whether those procedures under the circumstances comport with the Constitution we do not decide. Nor do we decide whether the President has inherent authority to create such a program, whether congressional action is necessary, or what the limits on executive or legislative authority may be. We decide only that in the absence of explicit authorization from either the President or Congress the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination."