

believed were lawful. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes". *Lanzetta v. New Jersey*, 306 U.S. 451 (1938) at 453.

CONCLUSION

The Internal Security Act of 1950, 50 U.S.C. § 781 et seq., as amended, has been dying for years. Although the United States Supreme Court, in *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961), gave the Act a temporary, but illusory, reprieve, the victory was pyrrhic indeed. Over strong dissents from Chief Justice Warren and Justices Black, Brennan and Douglas, the Court in that case upheld the provision of the act which required the Communist Party to register as a Communist-action organization. Strongly dissenting, Mr. Justice Black warned:

"I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish. The first banning of an association because it advocates hated ideas—whether that association be called a political party or not—marks a fateful moment in the history of a free country."

Mr. Justice Black's view soon gained the upper hand. In 1964, a unanimous Supreme Court in *Albertson v. Subversive Activities Control Board*, 382 U.S. 70, 1965), held that, although the Communist Party as an organization might still be required to register, individual members of that organization could not. In light of the many penalties imposed on Communist Party members, compulsory registration would subject those members to substantial risks of self-incrimination. The relevant portions of the act, therefore, were found to violate the fifth amendment.

The Subversive Activities Control Board then tried again. Pursuant to 50 U.S.C. § 785, it issued an order resulting in the revocation of the passports of top-ranking Communist Party leaders. In *Aptheker v. Secretary of State*, 378 U.S. 500 (1964), the Supreme Court struck down 50 U.S.C. § 785 as "unconstitutional on its face", for it "too broadly and indiscriminately restricts the right to travel." 378 U.S. at 514.

Finally, in *United States v. Robel*, 389 U.S. 258 (1967), the Supreme Court again found that the Internal Security Act of 1950 abused important constitutional freedoms. The Court held that 50 U.S.C. § 784(a) (1) (D), which declares it unlawful for members of Communist-action organizations "to engage in any employment in any defense facility" when the organization is subject to a final registration order of the Board, was an overly broad, "unconstitutional abridgment of the right of association protected by the First Amendment." At 258.

Although the Supreme Court has not specifically dealt with many sections of the Internal Security Act of 1950, its recent decisions leave little doubt that many, if not all of the unchallenged portions of the act are patently unconstitutional. Mr. Justice Black, concurring in *Aptheker v. Secretary of State*, 378 U.S. 500, 518 (1964), stated in no uncertain terms that the "whole Act, including [50 U.S.C. § 785] . . . sets up a comprehensive statutory plan which violates the Federal Constitution" in that it constitutes a "Bill of Attainder," denies petitioners trial by jury and other procedural protection, and abridges freedom of speech, press and association.

On January 2, 1968, the United States Congress declared (50 U.S.C. § 791(i)) that the Subversive Activities Control Board would cease to exist on June 30, 1969, unless it instituted, between January 1, 1968, and December 31, 1968, at least one proceeding and hearing pursuant to the 1950 Internal Security Act. Almost no agency of Congress has had such a miserable record as the Subversive Activities Control Board. Its inaction has caused Congress to provide for its abolition; its few actions have violated the most fundamental personal liberties protected by the United States Constitution.

The time has come for Congress to repudiate entirely the Internal Security Act of 1950, rather than reverse the trend of the past few years. The measures before this committee today, which would only add obviously unconstitutional provisions to that act, afford an opportunity for such a repudiation. Each of these measures is aimed at a specific limited ill—denying employment in defense facilities to those "disposed" to disrupting them. Only a myopic view of the national interest, however, could suggest that their impact would be limited to that ill. Clearly this is a case in which the cure is far more dread than the