

UNITED STATES *v.* ROBEL.

dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement . . . and (ii) operated primarily to advance the objectives of such world Communist movement"

in any defense facility." In *Communist Party v. Subversive Activities Control Board*, 367 U. S. 1, this Court sustained an order of the SACB requiring the Communist Party of the United States to register as a Communist-action organization under the Act. The Board's order became final on October 20, 1961. At that time appellee, a member of the Communist Party, was employed as a machinist at the Seattle, Washington, shipyard of Todd Shipyards Corporation. On August 20, 1962, the Secretary of Defense, acting under authority delegated by § 5 (b) of the Act, designated that shipyard a "defense facility." Appellee's continued employment at the shipyard after that date subjected him to prosecution under § 5 (a)(1)(D), and on May 21, 1963, an indictment was filed charging him with a violation of that section. The indictment alleged in substance that appellee had "unlawfully and willfully engage[d] in employment" at the shipyard with knowledge of the outstanding order against the Party and with knowledge and notice of the shipyard's designation as a defense facility by the Secretary of Defense. The United States District Court for the Western District of Washington granted appellee's motion to dismiss the indictment on October 5, 1965. To overcome what it viewed as a "likely constitutional infirmity" in § 5 (a)(1)(D), the District Court read into that section "the requirement of active membership and specific intent." Because the indictment failed to allege that appellee's Communist Party membership was of that quality, the indictment was dismissed. The Government, unwilling to accept that narrow construction of § 5 (a)(1)(D) and insisting on the broadest possible application of the statute, initially took its appeal to the Court of Appeals for the Ninth Circuit.³ On the Government's motion, the case

³ The Government has persisted in this view in its arguments to this Court. Brief of the Government, pp. 48-56.