

UNITED STATES *v.* ROBEL.

advance certain objectives. This finding must be made after full administrative hearing, subject to judicial review which opens the record for the reviewing court's determination whether the administrative findings as to fact are supported by the preponderance of the evidence." *Communist Party v. SACB, supra*, 367 U. S., at 86-87. In contrast, the Act nowhere provides for an administrative hearing on the Secretary's designation, either public or private, nor is his finding subject to review. A Party member charged with notice of the designation must quit the Party or his job; he cannot contest the Secretary's action on trial if he retains both and is prosecuted.⁶

This is persuasive evidence that the matter of the designation of "defense facilities" was purposely committed by Congress entirely to the discretionary judgment of the Secretary. Unlike the opportunities for hearing and judicial review afforded the Party itself, the Party member was not to be heard by the Secretary to protest the designation of his place of employment as a "defense facility," nor was the member to have recourse to the courts. This pointed distinction, as in the case of the statute before the Court in *Schilling v. Rogers*,

⁶ The statute contemplates only four significant findings before criminal liability attaches: (1) that the Communist Party is a "Communist-action organization"; (2) that defendant is a member of the Communist Party; (3) that defendant engaged in employment at a "defense facility"; and (4) that he had notice that his place of employment was a "defense facility." The first finding was made by the Subversive Activities Control Board. The third finding—that the shipyard is a "defense facility"—was made by the Secretary of Defense. The fourth finding refers to the notice requirement which is no more than a presumption from the posting required of the employer by § 5 (b). Thus the only issue which a defendant can effectively contest is whether he is a Communist Party member. In view of the result which I would reach, however, I need not consider appellee's argument that this affords defendants only the shadow of a trial, and violates due process.