

THE PEOPLE vs. THE SUPREME COURT

The further deterioration of civil liberties since the Supreme Court upheld the Smith Act made even more urgent a rehearing of the case

Following are excerpts from the "Supplementary Petition for Rehearing" before the Supreme Court of the case of the 11 Communist leaders. The petition was dated August 26 and submitted by the five lawyers who originally argued the case for the defendants. Even though the petition for a rehearing has been denied, the arguments presented here are still enlightening.—Eds.

I. Subsequent events show that the Court's decision of June 4, 1951 has inevitably had consequences radically different from those which the majority of the Court said would flow therefrom. . . .

The opinion of the Court expressed the belief that the decision "well serves to indicate to those who would advocate constitutionally prohibited conduct that there is a line beyond which they may not go—a line which they, in full knowledge of what they intend and the circumstances in which their activity takes place, will well appreciate and understand."

Yet, on July 28, 1951, the President of the United States found the line of prohibited advocacy so vague in the public mind that American citizens now fear to sign their names to a petition re-affirming the doctrines set forth in the Declaration of Independence and the Bill of Rights, lest by so doing they bring upon themselves the penalties which the June 4 decision has licensed for Communists and alleged Communists. . . .

From the very beginning of this case, these petitioners have maintained what Justices Frankfurter and Jackson thus in effect concede—that the issues herein—and indeed the issues inevitably posed by the "teaching and advocacy" sections of the Smith Act—are beyond the power and competency of any Court to pass upon, and can only be adjudicated through acceptance or rejection by the people themselves.

Yet it is precisely these untriable issues which were to all intents and purposes "adjudicated" by the decision of June 4. The "political predilections" of judges of this Court and of the lower Courts have by this decision been garbed with the authority of law. . . .

II. The decision outlaws a political party, the Communist Party, and thereby denies the inalienable and constitutional right to organize a political party which advocates a working class political program and teaches the doctrine of Scientific Socialism.

Shortly following this Court's decision in this case, the

Attorney General stated publicly that the decision did not outlaw the Communist Party. The logical inference from this was that membership in the Communist Party remains legal—notwithstanding the membership provisions of the Smith Act and the fact that the indictment charging petitioners with membership in that Party has never been dismissed.

The Attorney General's statement may have been prompted in part by a reluctance to have our country appear less democratic than Great Britain, France, Italy, Australia and other nations which recognize as legal entities Communist Parties founded upon the same theories and utilizing the same books as those for which petitioners stand convicted, and their Party condemned. Perhaps the Attorney General was motivated by a desire to avoid precipitating an issue as to the constitutionality of the Internal Security Act of 1951 (McCarran Act) which, in requiring all Communist Party members to register with the government, might be held to be a bill of attainder. Or, the Attorney General might have been mindful that both Democratic and Republican presidential candidates in the 1948 elections publicly declared themselves opposed to the outlawing of the Communist Party.

Whatever Mr. McGrath's reasons for issuing this statement, the course of conduct followed by the Department of Justice since the decision in this case negates his words. This course of conduct demonstrates that the decision of June 4 provides the legal framework for, and sanctions, the piece-meal outlawing of the Communist Party through prosecution and imprisonment of anyone shown to be a member, or to have any organizational association of any kind with petitioners or their associates. . . .

What was initially presented to this Court in this case as a charge against the top leaders of an alleged nationwide conspiracy is now revealed as a broad legal framework within which all the tens of thousands of members and alleged sympathizers of a political party may be put behind bars. No more effective means of by-passing the legislature and the electorate to achieve the outlawing of a political party could be devised—and this instrument is made available through, and only through, this Court's June 4 decision. . . .

Thus the historical pattern of all sedition laws repeats itself. An indictment founded upon inferences drawn from public writings and utterances, and relying on a similarity of views, results in a conviction by a jury previously intimidated by hysteria and therefore afraid to reject the

testimony of paid stool-pigeons, or to return a verdict of acquittal. The pattern is thus completed and thereafter all who speak or write against the *status quo* are suspect. We submit that this Court's June 4 decision serves as the keystone of such police state repression and gives "legal" license to these nation-wide attempts to suppress all political criticism and dissent.

III. The decision gives dangerous impetus to that pernicious political phenomenon known as "McCarthyism."

All of the facts to which we herein call this Court's attention are manifestations of what is popularly known as "McCarthyism." With deference we submit that every stage of this proceeding—from the indictment to this Court's decision affirming the Smith Act and the conviction of these petitioners—marked a surrender to "McCarthyism"—to the reactionary forces driving toward American fascism and a third world war. And we also submit that each such surrender has in turn greatly emboldened these forces and facilitated their achievement of a dangerous ascendancy in the life of the nation. . . .

In essence, "McCarthyism" is an American form of what the Nazis called "*Gleichschaltung*"—the enforced conformity of all individuals, organizations, and media of communication to the views dictated by pro-fascist reaction.

The basic premise on which McCarthyism rests is that Communism is a menace to world peace, to America's national security, and to the domestic welfare of the American people. It thus provides the ideological "justification" both for the Administration's bipartisan foreign policy and for government attacks on the democratic rights of our people. In outlawing the Communist Party and affirming the Smith Act and the resultant conviction of these petitioners, this Court also in effect "affirmed" this basic premise, adoption of which renders resistance to McCarthyism ineffective and indeed impotent.

Popular opposition to McCarthyism has not diminished but increased since this Court's June 4 decision, and is reflected in the President's frequent references to this issue in his post-June 4 and pre-election speeches. Certainly the American people's alarm at this growing menace to rights guaranteed in the Bill of Rights provides this Court with compelling reason to grant a rehearing in this case. . . .

IV. The decision licenses and encourages denial of the constitutional right to bail, to a presumption of innocence, to council of one's own choosing and to a fair trial before judges and juries free from bias or intimidation.

The new construction put upon the First Amendment by this Court's decision in this case has opened the way to drastic revisions in our traditional interpretation of the Fifth, Sixth and Eighth Amendments as well. All the component parts of due process are being subverted, and a fair trial in political cases—particularly under the Smith Act—has become impossible. . . .

V. The decision drastically restricts the right of the American people to listen and read and to act in concert for the advancement of policies of whose wisdom they are convinced or for the reversal of policies they believe harmful to their own welfare and the security of the nation.

In his concurring opinion, Mr. Justice Frankfurter wrote: ". . . In sustaining the power of Congress in a case like this, nothing irrevocable is done. The democratic process at all events is not impaired or restricted."

But the facts herein cited show that the democratic process *has* been seriously impaired and restricted. The right of the American people to listen and read and to act on the basis of an informed opinion has been seriously infringed upon and the pursuit of truth is today accompanied by "dangers which are hazarded only by heroes." . . .

Despite the dangers that exist, and indeed because those dangers are daily being more clearly recognized, the voices of protest are multiplying—as the President (and this Court) no doubt realize.

Since our initial petition was filed with this Court, many who in the past believed that the trial and conviction of these petitioners are of concern only to Communists have had some sober second thoughts. . . .

Though thousands are frightened into silence, more and more Americans are engaging in the pursuit of truth. They seek to learn the truth about the causes of the break-downs in the Korean cease-fire negotiations, the truth about the real reasons behind the policies which lead to the re-arming of Germany, the remilitarization of Japan, and the acceptance of Franco Spain as a "free nation" and worthy ally. . . .

The democratic process cannot operate effectively where those seeking truth are free to hear only one set of answers to the questions they ask. Thus it is not only the right of Communists to advocate and teach which this Court's decision forecloses, but also the right of the American people to have access to the views expressed by the Communist Party, and by other groups now silenced or stigmatized because they are allegedly tainted by even partial agreement with, or similarity to, Communist policies.

These considerations, among others, have moved prominent Americans in all walks of life and of varied political opinion to question the June 4 decision. . . .

For the outlawing of the Communist Parties in fascist Italy, Nazi Germany, and Franco Spain marked a point of no return. As Mr. Justice Jackson pointed out in his opening address to the International War Crimes Tribunal, the decision in the Reichstag Fire Trial which acquitted the accused Communists came "too late to influence the tragic course of events which the Nazi conspirators had set rushing forward." . . .

But it is imperative that now—today—the men and women of America be and feel free to write and read, to speak and assemble without fear of reprisal, and through the exercise of their inalienable rights pass their own judgment on all the great issues of our time—and above all on the supreme issue of how the world is to be saved from atomic war and our country from fascist tyranny. . . .