Michigan Law Review

Volume 49 | Issue 8

1951

CONSTITUTIONAL LAW-FIFTH AMENDMENT-PRIVILEGE AGAINST SELF-INCRIMINATION BY ADMISSION, OR KNOWLEDGE, OF COMMUNIST ACTIVITIES

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CONSTITUTIONAL LAW—FIFTH AMENDMENT—PRIVILEGE AGAINST SELF-INCRIMINATION BY ADMISSION, OR KNOWLEDGE, OF COMMUNIST ACTIVITIES—In response to a subpoena, petitioner appeared as a witness before a United States district court grand jury. Several questions concerning her knowledge and association with the Communist Party were put to her. In each case, she refused to answer the questions, claiming the constitutional privilege against self-incrimination.[1] For refusal to answer these same questions when brought before the district court, petitioner was adjudged to be in contempt of court. The court of appeals affirmed the holdings,[2] and certiorari was granted by the Supreme Court.[3] *Held,* judgment reversed. The Smith Act makes it unlawful to advocate knowingly the desirability of the overthrow of the government by force or violence, to organize or help to organize any society which teaches, advocates, or encourages such overthrow of the government, or to be or become a member of such a group with knowledge of its purposes.[4] In view of that act, answers to the questions propounded might have furnished a link in the chain of evidence needed in a prosecution of the petitioner for violation of, or conspiracy to violate, said act. Under these circumstances, the Constitution gave the petitioner the privilege of remaining silent. *Blau v. United States,* 340 U.S. 159, 71 S.Ct. 223 (1950).

It is settled that in a proceeding before a grand jury, a witness may refuse to answer any question or to disclose any circumstance from which evidence leading to the witness' conviction of a federal crime might be obtained.[5] This constitutional privilege extends not only to answers which directly admit any element of the crime, but also to those which logically, though mediately, tend to establish any of the elements of the crime.[6] The holding of the principal case indicates that the Supreme Court now considers mere membership, knowledge, or association with the Communist Party sufficient to furnish a link in the chain of evidence whereby a conviction under the Smith Act might be reasonably obtained. Whether the Communist Party actually advocates the violent overthrow of the government has long been the subject of investigation by the courts. The cases first arose after World War I, particularly in proceedings for the denaturalization or deportation of persons affiliated with the Communist Party. The holdings of these cases seems generally to have been that (1) the purposes of the Communist Party were not matters of judicial notice, but rather of evidence and proof,[7] and (2) such purposes of the Communist Party, even

[1] "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ." U.S. Const., Amend. V.

[2] Blau v. United States, (10th Cir. 1950) 180 F. (2d) 103.

[3] 339 U.S. 956, 70 S.Ct. 979 (1950).

[4] 62 Stat. L. 808 (1948), 18 U.S.C. (Supp. III, 1950) §2385.

[5] Counselman v. Hitchcock, 142 U.S. 547, 12 S.Ct. 195 (1892).

[6] United States v. St. Pierre, (2d Cir. 1942) 132 F. (2d) 837; United States v. Weisman, (2d Cir. 1940) 111 F. (2d) 260.

[7] Ex Parte Fierstein, (9th Cir. 1930) 41 F. (2d) 53. But see Murdoch v. Clark, (1st Cir. 1931) 53 F. (2d) 155 at 157, where the court after holding that the evidence sustained the proof made the following statement: "The Program of the Red International Labor Union and the Communists is now a matter of general knowledge."

when proved, must be shown to have been subscribed to by the individual member to sustain the suit.[8] In the famous *Schneiderman* case,[9] these conclusions were upheld by the Supreme Court. But the strong dissent of Justice Stone and the vigorous criticisms of the decision by various writers portended that the issue of the criminality of the Communist Party was far from settled.[10] With the termination of World War II, the question has re-emerged with increasing frequency. One line of decisions, adhering to the Schneiderman view, persists in its refusal to notice judicially that the purposes of the Communist Party call for the illegal overthrow of the government by force.[11] However, a growing tendency of the courts,[12] and that apparently now adopted by the executive[13] and legislative[14] branches of the government, seems to be contrary. The holding of the principal case lends emphasis to this view. It is true that the present decisions recognize that membership alone in a society which advocates the forceful overthrow of the government, without an actual personal knowledge of such purposes, will not sustain a conviction under the Smith Act.[15] But the growing recognition by the courts that the illegal purposes of the Communist Party are matters of common knowledge would certainly make it difficult for a person charged with membership in the party to refute personal knowledge of its beliefs. An admission of actual membership or association with the Communist Party, then, does furnish direct means whereby conviction under the Smith Act might be obtained. As such, the principal case is in accord with the accepted view that the privilege against self-incrimination may be asserted.[16]

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[8] United States v. Tapolcsanyi, (3d Cir. 1930) 40 F. (2d) 255 at 257.

[9] Schneiderman v. United States, 320 U.S. 118, 63 S.Ct. 1333 (1943).

[10] See 32 GEO. L.J. 405 (1944); 23 NOTRE DAME LAWYER 577 (1948). Despite these criticisms, it is interesting to note that no member of the Communist Party had ever been prosecuted under the Smith Act until the very recent case of United States v. Dennis, (2d Cir. 1950) 183 F. (2d) 201, cert. granted 339 U.S. 162, 71 S.Ct. 91 (1950), which was pending before the district court at the time of the principal case.

[11] Stasiukevich v. Nicolls, (1st Cir. 1948) 168 F. (2d) 474, note 5.

[12] In re MacKay, (D.C. Ind. 1947) 71 F. Supp. 397; United States v. Dennis, supra note 10, at p. 212.

[13] See testimony of the spokesman for the Department of Justice in Hearings before the Subcommittee of the House Committee on Appropriations, 81st Cong., 2d sess., at 85 (1950).

[14] See Necessity for Legislation, Internal Security Act of 1950, 64 Stat. L. 987.

[15] Dunne v. United States, (8th Cir. 1943) 138 F. (2d) 137 at 144; United States v. Foster, (D.C. N.Y. 1949) 9 F.R.D. 367 at 392. That membership alone in the Communist Party is not per se a violation of any criminal statute has been expressly provided for in the Internal Security Act, supra note 14, section 4(f).

[16] Since the decision in the principal case, the Supreme Court decided that once membership in the Communist Party has been freely admitted, then the privilege of self-incrimination is waived as to further answers which merely disclose additional details about that membership and which could not possibly incriminate the petitioner further. The Court also noted the newly enacted provisions of the Internal Security Act, supra note 15, but "express[ed] no opinion as to the implications of this legislation upon the issues presented by these cases." The dissent felt that the holdings were in conflict with the principal case. Rogers v. United States, 340 U.S. 367 at 372, note 12, 71 S.Ct. 438 (1951).