(It is to be noted that following this decision the President on February 20, 1960, issued Executive Order 10865, giving authority to certain departments, including the Department of Defense, to issue regulations for the safeguarding of classified information released to United States industry, with express provisions regulating the exercise of the privileges of confrontation and cross-examination. However, no case has reached the courts in which the new regulations relating to cross-examination and confrontation have been called into question.)

Relevant provisions in H.R. 15626

The bill (see particularly subsection (k), at page 15) gives express congressional sanction for the application of personnel screening procedures, including the regulation of the privileges of confrontation and cross-examination, in substantially the same form as now prescribed by Executive Order 10865 and Department of Defense directives. It is believed that the provisions of the bill accord maximum benefits to the individual consistently with the imperative and overriding demands of the national security.

DEXTER C. SHOULTZ v. *SECRETARY OF DEFENSE*
U.S. DISTRICT COURT, N. D. CAL., DECIDED FEBRUARY 9, 1968

The decision

The court in this case temporarily and, after hearing, permanently enjoined the Secretary of Defense from suspending Shoultz's security clearance for access to information classified as secret, on the ground that the particular procedure under which the suspension was applied was not specifically authorized by the President or Congress.

Shoultz, a holder of a security clearance for access to information classified as secret, was employed by Lockheed Missiles and Space Company, of Sunnyvale, California. While thus employed he was notified that the Screening Board of the Department of Defense had some new information affecting his continued eligibility for clearance and that his status was to be reexamined on the basis of this information. He was requested to attend an interview at which he would be questioned on matters germane to his continuing eligibility. He was advised that he could be represented by counsel at the interview and that he would be afforded an opportunity to make a statement on his behalf. He was also advised that his refusal to answer questions relevant to his continued eligibility would result in a suspension of his existing clearance and that further processing of his case would be discontinued.

Shoultz appeared, stated his name, address, and employment, in response to questions propounded by the Department counsel who was conducting the interview, but declined to answer all other questions on the ground that they were irrelevant, incompetent, and immaterial. Thereafter, he was informed by the Department of Defense by letter that his refusals denied to the Screening Board information which was essential to a determination of his continued eligibility for security clearance and that without such information the Board was unable to reach the affirmative finding that his continued clearance would be clearly consistent with the national interest, as required by section 2 of Executive Order 10865.

Shortly thereafter Shoultz was notified by his employer that he would be placed on "prolonged leave of absence" without pay until such time as his clearance status was settled. He then brought his action to enjoin the Secretary of Defense from suspending his secret security clearance.

The court granted a temporary restraining order and, after hearing, permanently enjoined the Secretary of Defense from suspending Shoultz's security clearance.[1] It did so on the ground that the procedure adopted in this case had not been specifically authorized by the President or the Congress, citing *Greene* v. *McElroy*, supra. Pointing out that the "suspension" which entailed a discon-

[1] The order, however, was subject to the qualification that it "does not prevent defendants from taking appropriate action to safeguard the national security under section 9 of the Executive Order 10865 or any other provisions of Directive 5220.6, if they be so advised." (Sec. 9 of E.O. 10865 authorizes the head of the department to exercise a nondelegable power personally to deny or revoke access authorization when he determines that the hearing procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security. Department of Defense Directive 5220.6, which regulates industrial personnel access authorization, contains hearing procedures similar to those set forth in subsection (k) at page 15 of the bill, to be employed prior to final denial or revocation of access authorization.)