

1370 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

tinuance of the processing of Shoultz's clearance had the same final effect on his livelihood as gave the Supreme Court concern in *Greene*, the district judge said:

"This Court believes that the teaching of *Greene* is that an agency of the federal government cannot, without affording the traditional forms of fair procedure, take administrative action which effectively deprives an individual of his means of livelihood on loyalty or security grounds unless, at the least, Congress (or the President, if he is the source of the power) has expressly authorized the lesser procedure."

(The application of the equitable remedy of injunction, rather than a remedy at law, seems particularly objectionable in this case. The exercise of judicial power to order continuing access to classified information, on procedural grounds, prior to a final determination of the access privilege on the merits by agencies responsible for the safeguarding of such information, poses the gravest dangers to the national security, and would seem to constitute a premature intrusion by the judiciary upon executive responsibilities and a judicial usurpation of executive discretion.)

Relevant provisions of H.R. 15626

The bill contains provisions authorizing the President (1) to discontinue processing an application for clearance or review thereof, and to deny, suspend, or revoke access authorization, when an applicant refuses to answer relevant inquiries in the course of any investigation, inquiry, or proceeding for determination of the individual's fitness or eligibility, and (2) summarily to deny, suspend, or revoke any individual's access to classified information or employment in or access to a defense facility. The individual is entitled, however, in either case to a prompt hearing upon any such denial, suspension, or revocation under the provisions of subsection (k) (at page 15) of the bill. (See *Borrow v. Federal Communications Commission*, 285 F. 2d 666 (1960), cert. denied 364 U.S. 892.)

The bill also contains provisions limiting the jurisdiction of courts to grant any restraining order or temporary or permanent injunction having the effect of granting or continuing access to classified information or employment in or access to a defense facility. As to other relief, the jurisdiction of the courts is not limited except that a person adversely affected by the enforcement, execution, or application of the personnel screening programs may not resort to the courts until he has exhausted the administrative remedies provided in the provisions of the bill.

HERBERT SCHNEIDER V. WILLARD SMITH, COMMANDANT, UNITED STATES COAST
GUARD

U.S. SUPREME COURT, DECIDED JANUARY 16, 1968

The decision

The opinion for the Court was delivered by Justice Douglas. Justice Black expressed concurrence with the opinion, and with a statement of Justice Fortas. Justice Fortas concurred in a separate opinion with which Justice Stewart agreed. Justice White, with whom Justice Harlan joined, concurred in the result. Justice Marshall took no part in the consideration or decision of the case.

In this case the court held that the Magnuson Act gave the President no authority to set up a personnel security screening program with respect to merchant vessels of the United States.

Under the Magnuson Act, 50 U.S.C. 191(b), the President is authorized, if he finds that "the security of the United States is endangered by * * * subversive activity," to issue rules and regulations "to safeguard against destruction, loss, or injury from sabotage or other subversive acts * * * vessels, harbors, ports, and waterfront facilities in the United States * * *."

Pursuant to this authority, the President promulgated regulations giving the Commandant of the Coast Guard authority to grant or withhold validation of any permit or license affecting the right of a seaman to serve on a merchant vessel of the United States. The Commandant is directed not to issue such validation unless he is satisfied that "the character and habits of life of such person are such as to authorize the belief that the presence of the individual on board would not be inimical to the security of the United States."