

ident to issue appropriate regulations to deny employment in or access to any "defense facility" to anyone who, by virtue of his employment or access, has the opportunity to engage in sabotage, espionage, or other acts inimical to the security interests of the United States, and whose employment or access has been determined to be not clearly consistent with the national defense or security interests, or, to use our recommended phrase, "consistent with the national interest."

The significance of this subparagraph is that it adds important new civil administrative authority to the administrator of the program to deny employment, over and above the criminal sanctions proscribing employment, as provided by the existing law found unconstitutional in *Robel*.

This provision supplies a needed safeguard for defense facilities, with greater flexibility. In earlier testimony before Congress I have stated that under existing law there is no authority to remove such persons as referred to in subparagraph (a) from employment or access, or to deny such persons employment.

For example, although an individual was under indictment, employment could continue for several years while the criminal case proceeded through the courts. This provision may well supply needed administrative flexibility.

Although this provision may well supply administrative flexibility, I cannot overemphasize the fact that it impinges on an unexplored area that is very complex. I refer specifically to the fact that it may be characterized as an unwarranted invasion and obstruction of a person's right to gainful employment. In addition it may be subject to characterization as not within the province of the Department of Defense or directly related to its role. Any impingement on the general public's right to gainful employment raises serious legal and policy questions.

Subparagraph (b) of proposed section 5A would provide a statutory basis for the Industrial Security Program by authorizing the President to institute such regulations and measures as may be necessary for the protection of classified information in any facility, including procedures for determining eligibility for access to classified information.

As the committee is aware, the Industrial Security Program of the Department of Defense has never had a statutory basis, but operates pursuant to the terms of Executive Order 10865. It has in the past been the Department's position that it would not oppose legislation for the program, provided that it was given the same flexibility and discretion which has enabled it to operate successfully under Executive Order 10865.

As you know, the Department of Defense operates the Industrial Security Program for itself and, by agreement, with eleven other agencies in the executive branch of the Government, which brings most of the industrial security requirements of the Government under an effective, centralized administration.

The agencies in addition to the Department of Defense are:

- Department of Commerce
- Department of State
- Department of the Treasury
- Department of the Interior