

AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950 1401

perhaps inadvertently. This occurs because of the addition of a new phrase, "or other military or naval stations of the United States." This change is susceptible to an interpretation which would exclude a few military entities, such as naval activities which are neither navy yards nor navy stations. To preclude a technical narrowing of the two definitions, it is recommended that both be changed to reflect the broader coverage now provided by 18 United States Code 2151 wherein it provides "other installations of the Armed Forces of the United States or any associate nation."

Section 204 of the bill would make it a crime for an active member of a Communist-action organization who knows and subscribes to its unlawful objectives to be employed in a position which may affect the national security in a defense facility designated by the Secretary of Defense. On the question of the constitutionality of this provision, we yield, of course, to the views of the Attorney General. However, if constitutional, this provision would be of assistance to the Department of Defense by providing new statutory authority to replace that found unconstitutional by the Supreme Court in the case of United States v. Robel. We note that the proposed amendment is designed to meet the objections which the Supreme Court observed with respect to Section 5(a)(1)(D) in the Robel case in that it expressly requires three elements indicated by the court to be essential in new, more narrowly drawn legislation. These are: active membership, the subscribing or assenting to some unlawful objective, and employment in a position where the incumbent could affect the national security.

With specific reference to that part of Section 204 which would add a new subsection (b)(1)(C) to Section 5 of the Subversive Activities Control Act, making it unlawful for any officer or employee of a defense facility to contribute services to a Communist organization, it is recommended that a proviso be added which would exclude lawful commercial service performed at ports and airports for Communist countries or any of their agencies pursuant to treaties or international agreements.

Section 301 would make it a felony for any officer of the United States to discipline an officer or employee of the United States because of