

1420 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Like the previous category, this one would seem also to have a specific group in mind. This is an apparent attempt to include groups urging resistance to the draft. Note that its reach is broad enough to include the 4,000 college and university professors who last week signed an advertisement in the *N.Y. Times* expressing their support of Dr. Spock, Reverend Coffin and the other defendants now being tried for conspiracy to violate the Selective Service law.

Whatever one may think of the legality or illegality of the objects of organizations of this kind, and the consequent ability of the Government to regulate their activities, we would suggest that fundamental fairness requires a full airing and individual consideration of those issues, before membership in such organization is made the basis for a finding of fact which can result in a substantial disability.

Other suggested categories for official inquiry, which at best offer only the most tenuous basis for a finding that an individual's employment in a defense facility is inconsistent with the national security include,

"(5) establishing or continuing sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, revolutionist, members of an organization referred to in paragraph (1) of this subsection² . . . under circumstances and of such a nature as to raise a reasonable doubt that the association is . . . clearly consistent with the national defense or security interests;"

The inhibiting effect on freedom of associations which could result from utilizing membership in groups which come within this kind of category as a basis for denial of employment is obvious. Not only would the heavy hand of the government fall upon those counseling draft resistance, for example, but those in "sympathetic" association with them, whatever that may be.

Another particularly objectionable category is,

"(9) refusal to testify, upon the ground of self-incrimination, in any authorized inquiry . . . conducted by any congressional committee, Federal court, Federal grand jury, or any other duly authorized Federal agency, as to any question relating to subversive activities of the individual involved or others;"

To impose an employment disability on an individual on the basis of such refusal is clearly unconstitutional. To do so would be to in effect penalize the exercise of one's fifth amendment constitutional privilege against self-incrimination. This Congress may not do. See *Garrity v. New Jersey*, 385 U.S. 493 (1967) and *Slochower v. Board of Higher Education*, 350 U.S. 551.

Finally, there is the category of,

"(16) any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion;"

Across the board inquiry into the above matters is totally unjustified here. While possibly permissible with regard to an individual who applies for a security clearance for access to classified material, or an individual in a particularly sensitive position, it must be remembered that we are dealing here with any employee of a defense facility and that the definition of such facility is a very broad one. Such provision thus evidences a total disregard for the right of privacy. See, e.g., *United States v. Rubia*, 110 F.2d 92; *Schmidt v. United States*, 177 F.2d 450. See also, *Griswold v. Connecticut*, 381 U.S. 479.

After authorizing these wide-ranging inquiries, in complete disregard of the constitutionally protected freedom of association and right to privacy, the proposed new section of the Internal Security Act belatedly manifests an awareness, although, regrettably, no understanding, of constitutional limits on interference with such freedoms. Section (f) thereof attempts to bring the section's impact on first amendment freedoms within the range of permissible restrictions by delineating what shall be considered "in determining the significance to be given for the purposes of this section to the organizational membership or associations" of an individual. Included among the factors to be considered are the persons knowledge of the nature and purposes of the organization, his commitment to those purposes, his intent to advance those purposes, and so forth. These are, of course, elements which, as I mentioned earlier, the Supreme Court requires in congressional enactments which impose disabilities upon individuals for mem-

² Those organizations are the ones discussed in the previous paragraph, which include, among others, Vietnam dissenters and those urging resistance to the draft.