

"In the course of any inquiry, investigation, proceeding, or hearing to determine the fitness and qualifications of any individual for employment in or access to any defense facility or for access to classified information . . . the willful refusal of any individual to answer relevant inquiries required of him . . . may be considered sufficient, in the absence of satisfactory explanation . . . to justify denying, suspending, or revoking any such employment or access authorization."

This provision is patently unconstitutional in that it forces an employee to choose "between self-incrimination or job forfeiture . . ." *Garrity v. New Jersey*, 385 U.S. 493, 496 (1967). The Government cannot "use the threat of discharge to secure incriminatory evidence against an employee." *Id.* at 499. See also, *Spevack v. Klein*, 385 U.S. 511 (1967). If the price for obtaining the protection of the self-incrimination clause of the fifth amendment is the loss of one's job and livelihood, then that invaluable right is effectively destroyed.

Secondly, subsection (k) of § (4) attempts to afford an individual procedural due process by allowing him a hearing, at which he may be represented by counsel, and an opportunity to inspect documentary evidence or cross-examine witnesses providing adverse information. These rights are, as a practical matter, severely limited by the discretion of the government to withhold information in the interest of national security or conceal an informant who cannot "for reasons determined . . . to be good and sufficient" be identified or cross-examined. This is contrary to the spirit of our constitutional system which in the sixth amendment recognized the right to confront one's accusers and to cross-examine witnesses against one. *Greene v. McElroy*, 360 U.S. 474; *Barber v. Page*, 36 L.W. 4329 (April, 1968). While this is not a criminal case in which the sixth amendment guarantee would be mandatory, the implications of this proceeding are sufficiently analogous to suggest that the same sixth amendment guarantees should here apply.

Finally, subsection (n) of § (4) deals with the issuance of process to compel witnesses to appear and testify or produce evidence in proceedings authorized by the section. Therein it provides that—

"No person, on the ground or for the reasons that testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, shall be excused from testifying or producing documentary evidence, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he, under compulsion as herein provided, may testify, or produce evidence. . . ."

This provision grants immunity to witnesses in order to facilitate the gathering of evidence. In doing so, it undermines the fifth amendment privilege against self-incrimination. The constitutionality of this kind of legislative grant of immunity is not free from doubt. Even if it would be constitutionally permissible, however, we question its wisdom and propriety.

As Mr. Justice Frankfurter said in the Court's opinion in *Ullman v. United States*, 350 U.S. 422:

"This command of the Fifth Amendment ('nor shall any person . . . be compelled in any criminal case to be a witness against himself . . .') registers an important advance in the development of our liberty—one of the great landmarks in man's struggle to make himself civilized.' Time has not shown that protection from the evils against which the safeguard was directed is needless or unwarranted." At 426.

The privilege against self-incrimination should also include protection against self-degradation. Our democratic system is based on the concept of fairness and decent treatment of the individual, and the full power of Government should not be brought to bear to force a person to condemn himself by his own words. Slowly but surely the privilege against self-incrimination is being whittled away by legislative action. In such disparate areas, for example, as narcotics offenses (18 U.S.C. § 1406) and hearings before the Federal Deposit Insurance Corporation (12 U.S.C. § 1820), among many others, Congress has provided for grants of immunity in derogation of the privilege. Now again it is proposed further to extend the cloak of immunity in the name of national security. This proposal, like the rest of H.R. 15626 is ill-advised.