

C. SECURITY OF VESSELS AND WATERFRONT FACILITIES

Finally, §(6) of H.R. 15626, its third major provision, would amend 50 U.S.C. 191, to deny any person access to vessels, harbors, ports and waterfront facilities under the same procedures and on the same bases as §(4) provides for denying access to defense facilities. This, apparently is an attempt to overturn the recent Supreme Court decision in *Schneider v. Smith*, 36 U.S. L.W. 4131 (Jan. 16, 1968). In that case, the U.S. Supreme Court held that the Magnuson Act, 50 U.S.C. §191, did not give the President express authority to set up a screening program for personnel on merchant vessels of the United States. The Court also held that the Government could not constitutionally probe the reading habits, political philosophy, beliefs and attitudes on social and economic issues of prospective seamen on our merchant vessels.

As this provision merely adopts all the criteria and procedures previously discussed with regard to defense facilities in general, it also adopts the defects of those and in doing so is itself constitutionally unsound. Moreover, since it will likely permit the kind of probe of "habits" and "associations" which were conducted under the Magnuson Act before the *Schneider* case, it, too, must fail.

II. OTHER MEASURES

A. H.R. 15018³

H.R. 15018, like section (4) of H.R. 15626, proposes a new section to the Internal Security Act of 1950. It would authorize the President to institute measures to bar from employment in a defense facility *any* person "as to whom there is reasonable grounds to believe he is *disposed* and has the opportunity by reason of his employment to engage in sabotage, espionage, or other subversive acts against his employer." [Emphasis added.] Thus it would authorize the placing of a disability on an individual for his "disposition" to commit an unlawful act, rather than for any actual conduct. This is at least as tenuous a standard as that in H.R. 15626, which would place the disability on a person "on the basis of findings that such person's employment . . . is not consistent with the national defense." Also, like H.R. 15626, H.R. 15018 then authorizes inquiries into affiliations, memberships, beliefs or activities, past or present, which are relevant to a determination whether there are reasonable grounds to believe he will engage in the unlawful acts which the Government seeks to prevent. Refusal to answer an inquiry is sufficient grounds for barring the employee.

This Bill suffers not only from all the defects evident in H.R. 15626, but adds to the list some serious defects of its own. At least in H.R. 15626 an attempt is made to provide some guidelines for making the crucial determination. At least in H.R. 15626 there is some recognition of the necessity of considering in this context an organization's illegal goals, the individuals knowledge and adherence thereto, and whether or not his membership can provide a basis for an adverse finding. Under H.R. 15018 the administrator's discretion is unlimited. Accordingly, H.R. 15018 suffers from the "fatal defect of overbreadth"; it "sweeps indiscriminately across all types of associations . . . without regard to the quality and degree of membership," and for this reason alone it clearly "runs afoul of the First Amendment", *United States v. Robel*. Compounding this, its entire lack of guidelines for determining when the disability should be placed upon an individual, results in an unlawful delegation of legislative power. Thus, it also runs afoul of Article I of the Constitution. See *Panama Refining Company v. Ryan*, 293 U.S. 388.

B. SECTIONS 203 AND 204 OF H.R. 15828

1. Section 203—Findings of Fact

Section 203 of H.R. 15828 would add the following new provision to the Internal Security Act of 1950:

"The Congress finds and declares that because of the totalitarian nature of the world Communist conspiracy, the fact that a major objective of such conspiracy is the overthrow of the Government of the United States by force and violence, the obligation imposed in Communist discipline upon members of Communist organizations to take advantage of opportunities to act in further-

³H.R. 15092, H.R. 15229, H.R. 15272 are identical.