

Government the right to deny employment even though it be in private industry. I would prefer language authorizing a denial of access to particular sensitive positions in defense facilities.

In view of the decision of the Supreme Court in *Robel*, it is clear that a statute designed to make employment of Communists in defense facilities unlawful must require more than a showing that an employed member of that class knew the facility had been designated under the act and that the organization had been found to be a Communist organization. Court decisions indicate that an individual cannot be held criminally liable for engaging in such employment without also some showing at least that he is a current active member who participates with knowledge of the organization's illegal purposes. Section 1 (2), page 2, of the bill would be subject to the same objections the Court found to section 5 of the Internal Security Act in the *Robel* case.

The Supreme Court has indicated that legislation which has an impact on first amendment rights must be as narrowly drawn as possible to achieve the legitimate governmental function desired by the Congress. In this instance the governmental interest is to deny access to classified defense information and to sensitive areas of defense facilities to potential spies and saboteurs or to persons who are otherwise untrustworthy. This purpose, we believe, can be accomplished best through a personnel security screening program related to sensitive positions instead of by means of a statute such as that involved in *Robel*, which made a criminal offense of the status of holding a job in a defense facility while concurrently being a member of a Communist organization. Although a screening program places a much heavier administrative burden on the Government than the *Robel*-type criminal statute, it can be more "narrowly drawn" and therefore would have a better chance of withstanding constitutional attack.

If defense facilities are to be protected, I would favor the approach of a screening program authorization which would establish a procedure for keeping persons like those described in section 1(4) of the bill out of sensitive positions in defense facilities. However, we would defer to the views of the Department of Defense as to the necessity of such legislation.

The bill provides in section 5A(d) authority to permit a determination of the extent and the nature of an individual's subversive memberships, associations, and activities. However, 5A(d)(1)(C) of the bill authorizes consideration of memberships and affiliations in organizations whose subversive character is not to be arrived at under the strict due process procedures required by the courts for such determinations. Accordingly, we recommend the deletion of that portion of the bill.

Similarly we believe section 5A(e) should be deleted for presuming under certain circumstances the existence of probable cause for the characterization of other organizations and individuals.

Section 5A(h) generally codifies the provisions of section V.B. of DoD Industrial Personnel Security Directive and seems to permit the investigator who propounds the questions to be the final arbiter of the relevancy of each question. Provisions should be made for a ruling on any objections to relevancy by a hearing officer or board prior to any adverse action under this section for failure to respond.