

## AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950 1519

While it would seem constitutionally permissible to punish citizens who, for example, furnish financial or other material aid to the Viet Cong or North Vietnam or to similar adversaries, the amendment in question appears to resemble the Treason Statute, (Title 18, U.S.C., Section 2381), and would consequently be subject to the same constitutionally imposed evidentiary criteria required by that statute. Under Article III, Section 3 of the Constitution defining treason, the Government is required to allege specific overt acts of treason upon the part of the accused and to prove each of these acts by the testimony of two eyewitnesses to the particular act. Treason requires both adherence to the enemy and giving aid and comfort to that enemy.

Section 2392 utilizes the terms of the treason statute, including "aid" or "comfort" and "overt act" but leaves out the term "adheres" and seeks to expand the term "enemy" to include, in addition to foreign nations, armed groups engaged in open hostilities against the United States.

The proposed amendment, in our view, bears too close a resemblance to the treason statute and might well appear to the judiciary to involve an attempt to, in effect, try a person for treason without meeting the constitutional standards of proof for such a conviction. In addition to the constitutional problems raised by this proposal, the actions made punishable are in substantial measure proscribed by the Foreign Assets Control regulations issued pursuant to the Trading With the Enemy Act (31 C.F.R. 500.01, *et seq.*—50 App. U.S.C., Section 5(b)).

In view of the foregoing reasons we are opposed to the enactment of Section 103 of H.R. 15828.

Title II of H.R. 15828 involves amendments to the Internal Security Act of 1950 (50 U.S.C., Section 781, *et seq.*).

Section 201 of the Bill would amend Section 12 of the Subversive Activities Control Act by extending the term of a member of the Subversive Activities Control Board to seven years. Section 201 also makes the Chairman of the Board the chief executive and administrative officer with respect to personnel and Board funds. We have no objection to its enactment, if desired.

Section 202 amends Section 14 of the Subversive Activities Control Act, entitled "Judicial Review," by adding a new sentence at the end of subsection (a), "In any appeal or review pursuant to this subsection, the sole question to be decided would be the validity of the decision and order of the Board at the time of its issuance." This proposal would limit appellate review of Board orders to the conditions existing at the time of the order and not at the time of appellate review and could eliminate the remand of a Board case for "staleness," where such "staleness" resulted from appellate delays. We have no objection to the enactment of Section 202 of the Bill.

Section 203 is a finding by the Congress that it is per se a clear and present danger to the national security to have employed in a defense facility individuals who wilfully and knowingly remain members of a communist organization more than 90 days following an order of the Subversive Activities Control Board against such organization.

This is an addition to present law, and we have no objection to the enactment of such legislation.

Section 204 would amend Section 5 of the Subversive Activities Control Act by inserting immediately after subsection (a), a new subsection (b). Subsection (b) (1) (A) would make it unlawful for any member of a Communist organization, knowing or having reasonable grounds for believing such an organization to be a Communist organization, in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such an organization. Subsection (B) makes it unlawful for any individual who is an active member of an organization which he knows to have been the subject of a final order by the Subversive Activities Control Board, determining it to be a Communist-action organization and having subscribed or assented to any unlawful objective of such organization, to engage in any employment which may affect the national security of the United States in a facility which is designated as a defense facility.

Subsection (C) forbids any officer or employee of a defense facility from contributing funds or services to a Communist organization, knowing or having reason to believe that it was such an organization, or from advising, counseling or urging any person, knowing or believing that such a person is a member of a Communist organization, to perform or omit to perform any act if such an act or omission would constitute a violation of subparagraphs (A) and (B).