

1524 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

no doubt, have a security clearance, it is plain that this proposal meets the needs of national security. In addition, as a further safeguard, the hearing officer could be furnished with the necessary information to make those decisions *in camera* where necessary. The job of investigators and prosecutors is to investigate and prosecute. Their proper tasks give them a natural interest in secrecy that is incompatible with a proper judicial approach to the delicate question of when a source of information or documentary evidence should be revealed. The present bill, therefore, unfairly weights the scales against the accused and is in contravention of one of the basic postulates of our legal heritage—that an accused is presumed innocent until proven guilty and should, therefore, have an unfettered opportunity to make his defense.

To this point we have addressed ourselves to an attempt to demonstrate that portions of H.R. 15626 are unsound and unwise. We have done so because we know that this Committee wishes to draft a bill that is sound and practical. But we would be derelict if we did not point out that the bill as presently drafted is open to objection, not only for the reasons we have given, but also because of its failure to observe the rigorous Constitutional limitations imposed by the First Amendment on Congressional action in this sphere. We note only the most salient points. The recent decision in *United States v. Robel*, 389 U.S. 258, provides weighty support for the view that it is beyond Congress' power to enact security legislation of this type which covers those who do not occupy or wish to occupy "sensitive" positions. *Robel* also stands for the proposition that associational activity can be the basis of a disability only if the person in question is an active member of the association, has knowledge of the illegal goals of the group and has a specific intent to further those goals, see also *Elfbrandt v. Russell*, 384 U.S. 11, 17. The bill under consideration does not meet this limitation. Nor as is attempted here can disabilities be imposed because of the invocation of the Fifth Amendment, see *Spevack v. Klein*, 385 U.S. 511. And as the Department of Justice has pointed out, Sections 5A(d)(1)(c) and 5A(e) cannot stand in light of *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123. As other statements which have been submitted make clear this brief list is merely representative and does not exhaust by any means the constitutional infirmities contained in H.R. 15626.

Respectfully submitted,

/s/ Thomas E. Harris,
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Mr. TUCK. If there are no further questions, the committee will adjourn to come together again at the call of the chairman.

(Whereupon, at 11:35 a.m., Wednesday, May 22, 1968, the subcommittee recessed, to reconvene at the call of the Chair.)

Following the hearings, a proposed revision of the bill H.R. 15626 was drafted for consideration by the committee and discussed with representatives of the Department of Defense. The revision follows: