Now, Mr. Yeagley, do you know of any cases in which this has been true since the passage of this act in 1950?

Mr. YEAGLEY. I don't believe any have been called to my attention.

Mr. WATSON. In fact, isn't it true that many Communists, a good number of them high-ranking intelligence and political figures, have defected and been granted asylum in the United States since the act was passed and have cooperated with the CIA, the Department of State, and the FBI?

Mr. YEAGLEY. Yes, there have been a good many defections in recent years.

Mr. WATSON. Mr. Chairman, I might point out further that quite a few of these same individuals have also testified before this committee as witnesses and have appeared before the Senate Internal Security Subcommittee, so that we see no validity in that criticism which was presented at that time.

Mr. Yeagley, the message also claimed that enactment of the Internal Security Act "would antagonize friendly governments."

I would like to point out that at the time the act was passed in 1950 this committee's report on the bill pointed out that 30 of the 70 major nations in the world had already enacted much more drastic antisubversive laws than even this one was. Some of them had actually outlawed the Communist Party as such, is that not true?

Mr. YEAGLEY. I am sure it must be. I haven't counted them, but I know that generally what you say is true.

Mr. WATSON. Since that time other nations have done the same thing, while a few have enacted milder security legislation based on the Internal Security Act.

Mr. Yeagley, are you aware of any friendly government which has been antagonized by the passage of the Internal Security Act?

The reason we are trying to get this in the record is that in 1950 we had a lot of speculation, but we have lived with this act now, Mr. Liebling and you lawyers, and the proof of the pudding is in the eating. So that we have been with it for 18 years and we want to find out whether or not all of these apprehensions and fears have been justified and whether this act has seriously impaired our security position.

Mr. YEAGLEY. I don't recall any particular case, Mr. Congressman, in which any foreign government may have been concerned or annoyed by proceedings under this act. I might point out for what it is worth that the Scarbeck espionage case was brought under the espionage provision of the Internal Security Act and involved his compromise in Warsaw by the Polish Security Police. I don't know what their reaction was to that.

Mr. WATSON. Maybe Mr. Liebling can contribute to an answer.

Mr. LIEBLING. I can't.

Mr. WATSON. Are you aware of any friendly government which has been antagonized by our passage of this act?

Mr. LIEBLING. No.

Mr. WATSON. The veto message also alleged that the Internal Security Act would put the United States Government in the "thought-control business."

Mr. Yeagley or Mr. Liebling, have you as the head of this division, or Mr. Liebling over in the Defense Department, tried to control the

thought of the American people, or do you think that such has resulted as a result of the passage of this act?

Mr. YEAGLEY. I haven't considered it a matter of thought-control. I would suppose that there are still people that have that view.

For example, when we brought proceedings against front organizations under this law and brought on witnesses to testify to the Communist influence in the organization to establish Communist domination and control, obviously there were so-called innocent members, sometimes a great many of them, who were not members of the Communist Party, and I think that there were people who felt that this effort was an interference with the operation of their organization.

On the other hand, if you are going to proceed against operations of the Communist Party, that is a determination to be made by the Congress and the executive branch, and it will require the production of evidence of party activities.

Mr. WATSON. Mr. Yeagley, I am sure that you would agree, especially in recent months, that the Justice Department has been rather slow. In fact they have not proceeded at all against anyone, but do you mean to tell me that you have procedures in trying to harass or to control the thought of any individual or that you have tried to prosecute one or identify him as a Communist under the provisions of the SACB? Have you done that?

Mr. YEAGLEY. Not at all, Mr. Congressman. I was trying to say that I suppose there are still people who feel that it is an interference.

Mr. WATSON. There will be people against this, from time immemorial, but you are unaware of and certainly you have engaged in no activity of thought-control?

Mr. YEAGLEY. Absolutely not.

Mr. WATSON. Absolutely not. And lastly the message said that it would give the Government officials "vast powers to harass all of our citizens in the exercise of their right of free speech."

Certainly you have not engaged in any such activities as that, have you?

Mr. YEAGLEY. No, sir.

Mr. WATSON. In fact, isn't it true, Mr. Yeagley, that the Supreme Court in its 1961 decision on the Internal Security Act rejected the claim that the act in any way infringed upon first amendment rights of freedom of speech and association?

Mr. YEAGLEY. That is right.

Mr. WATSON. Even the Court said that. The veto message also claimed that the act would "make it easier for subversive aliens to become naturalized as United States citizens."

Now, do you know of any subversive aliens who have obtained U.S. citizenship under the provisions of this act who would not have been able to obtain it if the act had never been in existence?

Mr. YEAGLEY. No, I don't.

Mr. WATSON. You don't.

Finally, Mr. Yeagley, the veto message said that the Internal Security Act "would not hurt the Communists, instead it would help them * * *.

"I repeat"—and again reading from the veto message—"the net results of this bill would be to help the Communists, not to hurt them."

Now, at this point I would like to state that in the testimony before the House Appropriations Subcommittee and also in the Annual and Fiscal Reports of the FBI, J. Edgar Hoover has made it clear that the very opposite is true, that the act has very definitely hurt rather than helped the Communist Party.

In addition, former FBI undercover operatives have testified over and over again before this committee that the Communist Party fears the Internal Security Act, has been intensely worried about it, and has most definitely been hurt by it.

Statements by J. Edgar Hoover and FBI agents of the type I have mentioned were inserted in the *Record* by Mr. Ashbrook of this committee on November 28, 1967, when the chairman's bill, H.R. 12601, a bill to amend the Internal Security Act, was being debated.

By the way, this bill, as you know, passed the House by a vote of 269 to 104. In fact, Mr. Yeagley—and I want to commend you for this—relating to this particular point as to whether or not it has hurt or helped the Communist Party, you testified yourself before the Internal Security Subcommittee last year that the Internal Security Act was the law most feared by the Communists and that they have worked harder to defeat it than any other law; is that not true, sir?

Mr. YEAGLEY. I believe I did.

Mr. WATSON. And, Mr. Yeagley, finally, do you know of anything that would contradict the testimony of Mr. Hoover, former FBI undercover operatives, and your own testimony on this issue and which would indicate that the act has helped rather than hurt the Communist Party?

Mr. YEAGLEY. No, I don't know of any way in which this law has helped the Communist Party.

Mr. WATSON. Thank you very much, Mr. Yeagley.

Mr. CULVER. Mr. Chairman.

Mr. TUCK. You may ask one or two additional questions.

Mr. CULVER. Mr. Yeagley, I certainly agree with Congressman Watson that the proof of the pudding should be in the eating. We have had this statute on the books for 18 years. We have yet to register a single Communist. It has cost the American taxpayers $6 million during that period in appropriations. As I think Mr. Truman wisely anticipated, it has resulted in endless constitutional argumentation for nearly 2 decades.

I wonder whether or not, on the basis of that, you really feel that this statute has been all that effective. We discussed the disclosure record, but certainly that has been an accurate forecast, has it not, as far as your experience with it?

Mr. YEAGLEY. I am not sure that I understand. If I understand the question, my answer would be that there have been constitutional questions raised in the proceedings that have been brought, in all of them, if that is what you are asking.

Mr. CULVER. And almost without exception there has been a finding of unconstitutionality in various aspects of the legislation, in various parts of the statute; is that not true?

Mr. YEAGLEY. Yes, as to the membership provisions. However, in the basic case that was decided in 1961 the Court upheld the law, but held later on, when we were down to enforcing it, that if they exercised the fifth amendment, it becomes enforceable.

Mr. CULVER. What has been the substantive effect of the Court's finding? Hasn't it been, the long and short of it, to essentially gut the statute or to do so on a piecemeal basis?

Mr. YEAGLEY. Yes, except for the organizational provisions that the Court has not ruled on. I suppose that this is the reason that the Congress amended the statute to accord with Court decisions earlier this year.

Mr. CULVER. So there has been generally a consistent finding of unconstitutionality or at least a frequent finding during the 18 years of this statute?

Mr. YEAGLEY. Except for the two areas I mentioned.

Mr. CULVER. I was interested also in Congressman Watson's statement with regard to your willingness to enforce the law and, as you are not unaware, there have been repeated demands in the Congress that the Attorney General take a more aggressive posture with regard to the implementation of the SACB legislative scheme.

With regard to that and with regard to the suggestion that this helps and doesn't hinder, has there been any reluctance to "enforce the law" because it will possibly risk the compromising of very valuable intelligence information if you were to implement fully and without administrative discretion concerning the directives of this statute?

In short, I am saying, if you did what the Congressman said to do, that is, enforce the law as aggressively and boldly as the statute permits, would not such an implementation, in your judgment, necessarily result in the compromise of valuable intelligence information that this Government now possesses?

Mr. YEAGLEY. I don't know that I would say so necessarily. I would have to point out again that each proceeding involves producing some FBI informants and removing them from their duties as informants, also, with the changing posture as to disclosure of electronic surveillances, we must determine in each proposed proceeding not only whether these many be taint, but whether or not there is any problem in that area. Right now we are quite interested in knowing what the Supreme Court's decision is going to be in the *Kolod* case.

Mr. CULVER. If you were sitting in the White House in Mr. Truman's chair in 1950 and you were presented with this statute and you were conscientious in terms of the executive branch responsibility to "enforce the law" and you could reasonably anticipate congressional pressure to do so, can't you understand why the Attorney General might recommend on that occasion that at first blush this would call for the compromising of very valuable intelligent information if we were to "vigorously enforce the law"?

Is it not the thing that frustrates the Congress that we have had attorneys general that have exercised discretion and discrimination in the relatively few cases that they have seen fit to initiate under the statute and that has been a determination of the national interest which they administratively felt to be appropriate?

Mr. WATSON. Mr. Chairman, certainly Mr. Yeagley needs no defense at my hand, but I think it is grossly unfair for my friend to ask him as to what he would do if he were in Mr. Truman's shoes. We have tried personally to eliminate Mr. Truman and not reflect upon him, and the line of my questions was specifically concerned with certain points of that veto message.

Mr. CULVER. Mr. Chairman.

Mr. WATSON. I asked specifically as to the particular points rather than what he would have done had he been in Mr. Truman's shoes. I think it is unfair.

Mr. CULVER. Mr. Watson, if we could have the record show very clearly that I certainly don't want to eliminate Mr. Truman. As a matter of fact, I think my political record in the Congress is generally much more sympathetic to the views which he espoused than some other members of the Democratic Party. But I do think it is not inappropriate to try and make a careful determination here as to what is frustrating Congress about the enforcement of this law, what are some of the impediments to the vigorous enforcement of the law, and whether or not in fact the answer to that is that very possibly it would result in the compromise of intelligence information. And I know Mr. Watson has asked Mr. Yeagley to testify whether or not we have experienced problems with the CIA, with the Department of the Navy, with relations with the foreign governments, with immigration cases, and it seems to me, with all due respect, that these are also questions which the appropriate officials in the CIA are only qualified to respond to with expertise, or perhaps the Secretary of the Navy or perhaps the Secretary of State or someone else who initially gave that particular counsel and admonition to President Truman and, therefore, I think in the history of the past 18 years are best able to assess the effects on the adminstration of their own programs.

I just hoped Mr. Yeagley might play President for a moment in response to my question.

Mr. TUCK. I would think if I were in Mr. Yeagley's case, I would not care to answer the question as to what I would do if I were President of the United States 18 years ago.

However, if he cares to answer, that is all right with me. I think your question also implies that Mr. Yeagley is considering not enforcing the law.

I understand that those in the executive department take a firm oath to enforce all the laws. It is up to the Congress to pass the laws and up to the executive department to enforce the laws. If anyone wouldn't vigorously enforce the law, I think he would be subject to impeachment.

Mr. CULVER. To make it perfectly clear, Mr. Chairman, I am not trying to impugn Mr. Yeagley, who has enjoyed very admirable service to our Government, for any lack of willingness to enforce the law.

I wish him to comment on some of the counsel that the President received in 1950 when this subject was considered and wondered whether or not some of the problems that Mr. Yeagley's Department is presently experiencing in "enforcing the law" with regard to the Subversive Activities Control Board does not bear out very convincingly the very thing that President Truman made reference to in his veto message.

Mr. TUCK. I think it might be more in line with the situation if you would ask the gentleman whether or not he wrote the veto message.

Mr. WATSON. If the gentleman is in doubt as to the direct responses that Mr. Yeagley and Mr. Liebling gave to me in reference to these specific quotes—and I was very specific—if he is in doubt as to the accuracy of their statements and thinks perhaps that the CIA

and the Army and Navy and Air Force can better answer these questions, although I believe if they had had any complaints they would have registered them with the Department of Justice, I think the proper procedure would be to bring these various agencies in here and then get their direct testimony on it because he has already answered quite positively "no" in reference to all of these things.

Mr. CULVER. The only thing I am trying to suggest, Mr. Watson, is that if Mr. Yeagley does consider himself in a position to make a response to the questions you directed to him, that certainly responding to a hypothetical question concerning his posture on the recommendations regarding the veto message in 1950 I don't think is any reflection on his fine integrity or indeed the memory of one of the greatest Presidents we have had.

Mr. YEAGLEY. I naturally don't want to sit in judgment on any President. I don't want to completely duck the answer to your question, Congressman Culver. As I indicated in my earlier testimony, I think the law has had a good effect from the standpoint of the U.S. Government in relation to the Communist Party, the nature of its operation, the extent of its influence, and the number of its members.

As you have pointed out, we encountered constitutional difficulties in enforcing several of the provisions of the law. I was not in the Department when the veto message was written or issued, nor when the Attorney General prepared his recommendations, so that I can't help in that area.

Mr. CULVER. On this business about hurting the Communist Party, again I think we have had some discussion on that point before. But it seems to me that it has been of great value to the Communist Party to have the United States Government for 18 years before the Supreme Court, with a poor batting average, dramatically propagandizing to the world that the United States does not live up to the high example in the Bill of Rights and judicial due process, and so forth.

It seems to me that the leadership of the Communist Party in making a decision to vigorously combat legally every possible challenge to the statute are certainly not insensitive to the worldwide propaganda value of such an exercise and it seems to me that before the eyes of world opinion the United States can't say that this statute has necessarily put us in an attractive light.

The fact that some other governments have adopted far more stringent, far more narrow, far more sweeping statutes regarding internal security doesn't surprise me in the least.

What concerns me is whether or not the United States, the leader of the free world, whether or not the United States, who I think and I hope represents a standard to mankind in the area of individual freedom, can make an effort to reconcile the national security interest consistent with individual freedom in a much more refined way with less consequences to individual liberties.

So that it seems to me that the question here is with regard to how much it hurt the Communist Party. I can't see where, standing and viewed from their vantage point, this has been such a disastrous exercise to take the United States Government through the courts for 18 years and win most of the important substantive decisions.

Mr. TUCK. You have just made a long speech, and, if you have some questions, ask a question. He has already answered the question.

Mr. CULVER. I would like to hear his response to that.

Mr. TUCK. What did you ask? He has already answered and said that it not only has not helped the Communist Party, but hurt the Communist Party.

Mr. CULVER. He said that?

Mr. TUCK. He has answered the question and given the committee his opinion.

Mr. CULVER. I don't think that is exactly the sequence of events.

He has suggested that this has hurt the Communist Party more than it has helped it, without a great deal of elaboration other than the suggestion you made 2 weeks ago that there was a disclosure value in the Subversive Activities Control Board hearings. I have tried to suggest that possibly this assessment is not a valid one. And I would be interested in his response to my suggestion.

Mr. YEAGLEY. It is obviously a matter of personal opinion and judgment as to what the effect has been. I don't have any hesitancy at all in my own view that the disclosure that resulted from the evidence and the testimony at these proceedings was very useful. In reference to the constitutional problems, I might reiterate that the basic disclosure requirement of the law was upheld by the Supreme Court in its 1961 opinion.

It was our enforcement efforts in the face of fifth amendment claims later on in which we encountered the bulk of the trouble.

Mr. WATSON. In fact, Mr. Yeagley, if I may interject here, you have had a lot of constitutional problems to arise and difficulties to arise over the past few years, not only in relation to this, but as to many other acts; haven't you?

Mr. YEAGLEY. We have constitutional issues raised in practically all of the areas of security enforcement, whether criminal or civil, because we are of necessity in an area involving the first amendment and very frequently in an area involving the fifth amendment.

Mr. TUCK. As a matter of fact, the plan of the Communists is to raise a constitutional question wherever they can and at the same time they wish to destroy the Constitution of the United States and shatter our Bill of Rights; isn't that true?

Mr. YEAGLEY. Yes, sir.

Mr. TUCK. As I understand, both you and Mr. Liebling favor this bill within the limitations of the suggestions that you make; is that correct?

Mr. YEAGLEY. I am sorry. I didn't hear the question.

Mr. TUCK. I said, as I understand it, you favor the amendments which are proposed in this bill within the limitations of the suggestions which you have made?

Mr. YEAGLEY. Yes. I might mention one thing that bears on earlier testimony here and that is as to extending the screening program to defense facilities. I think in my testimony earlier I indicated, "assuming that the program is needed" or "assuming that it is desired by Defense," that we would make the following suggestions, or something to that effect, because we have not endeavored to assess the need for extending the program to defense facilities which Mr. Liebling said may involve 3,500.

Our comments largely in that area were an effort to suggest language or point our problems we saw from the legalistic standpoint.

Mr. WATSON. Mr. Chairman, since apparently much of the discussion is centered around the necessity under this act of divulging the names of informants and otherwise, Mr. Yeagley, could you give us a rough estimate of the number of informants, FBI or otherwise, who have had to be surfaced in order to implement this particular act over the past 18 years?

Mr. YEAGLEY. To do it now from memory would be a very loose and general figure. It would be well over 100, I suppose, but I wouldn't know right now the exact number.

Mr. WATSON. Of course, Mr. Yeagley, many of these same informants especially in the major case of the Communist Party were defected Communist Party members and were FBI informants who had already been previously exposed or surfaced in order for your Department to make the prosecutions under the Smith Act; is that not true?

Mr. YEAGLEY. Well, to some extent. I was thinking in terms of the informants that were released for the purposes of these particular cases. I said well in excess of 100. It may not be that many. Maybe it is roughly 100. I don't know.

Mr. WATSON. But many of them would have been already surfaced in order for you to prosecute under the Smith Act?

Mr. YEAGLEY. Some. You see, the problem there is that if they had been surfaced 2 years before, their value as witnesses is limited. We would still have to update their testimony to the time of filing the petition, or close to it.

We did use some of them I know. We used Louis Budenz in the *Communist Party* case and some others as experts. We tried to use them wherever we could for the very purpose of saving others.

Mr. WATSON. In fact, they were a large part of the prosecutions, under the Internal Security Act, of the Communist Party?

Mr. YEAGLEY. In the *Communist Party* case itself.

Mr. WATSON. That is a major one. May I make one final observation, and you might comment on it.

The purpose of informants is ultimately to either expose the operations of subversives or Communists or to prosecute them. It is not just merely to have someone watching somebody all the time and for the Justice Department to do nothing about it ultimately. Isn't the basic purpose of informants to get information in order that a case might be prosecuted?

Mr. YEAGLEY. That observation might be true from my standpoint, but I am not so sure that it is from the standpoint of the FBI. As far as they are concerned, it is basically an intelligence operation. They primarily want to have the intelligence of what is going on, how extensive the activity, and secondarily to determine what can or should be done about it.

Mr. WATSON. Finally, we can conclude from Mr. Hoover's earlier testimony in never complaining about the operations of the Internal Security Act that this matter of surfacing informants has not presented any particular problem to him?

Mr. YEAGLEY. I wouldn't speak for Mr. Hoover in that regard. I think the facts speak for themselves. I do know what he has testified to, as you have indicated, but of course I do know, too, that we have had some problems of how many informants to use and which ones.

Mr. CULVER. I didn't hear the last.

Mr. YEAGLEY. We have had, of course, in the past some problems of how many informants to use and which ones should be used, but I should note the Bureau has been most cooperative in producing informants for our lawyers to interview.

Pursuant to Congressman Willis' request, I submit herewith a letter from the Department of Justice expressing the Department's views on H.R. 15828.

Mr. TUCK. The letter will be inserted in the record at this point.

We thank you, gentlemen.

(The letter dated May 20, 1968, follows:)

DEPARTMENT OF JUSTICE,
Washington, May 20, 1968.

Hon. EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 15828 designed to strengthen the internal security of the United States.

Since the proposed legislation to be cited as the "Internal Security Act of 1968" embodies several distinct amendments to the United States Criminal Code (Title 18 U.S.C.) and the Subversive Activities Control Act of 1950, as amended (Title 50, U.S.C., Section 781 et seq.), we shall comment seriatim upon each section to facilitate our discussion of this rather broad Bill.

Title I of H.R. 15828 is composed of amendments to the national security provisions of Title 18 of the United States Criminal Code.

Section 101(a) of the Bill would amend the definition of "war premises" as found in Section 2151 of Title 18, U.S.C., dealing with the crime of sabotage. Under existing law, the term "war premises" includes all buildings, grounds, etc., wherein war material is being produced, manufactured, stored, mined, etc. Under the amended definition, "war premises" would include those premises wherein war material is being "or may be produced, manufactured, . . .". Subsection (b) would amend the definition of "national defense premises" to include all buildings, grounds, mines or other places wherein national defense material is being "or may be produced, manufactured, etc."

The foregoing amendments to the existing law would substantially enlarge the scope of the sabotage statutes. If enacted, they would require the Federal Bureau of Investigation to investigate charges of "sabotage" whenever an industrial accident occurred in almost any industrial facility, since such facilities could probably produce "war material" under the broad definition afforded that term by Section 2151 of the sabotage statute.

In addition to the investigative and consequent enforcement problems indicated above, there also appears to be a constitutional question as to vagueness in the proposed amendment. For it is not clear whether the amendment is intended to cover all premises wherein it is *possible* to produce, store, etc., war materials or is intended to apply only to those premises planned or intended to be so utilized. In light of the broad scope of the existing sabotage statutes defining premises, wherein war material and national-defense material is being produced, manufactured, stored, etc., there would appear to be little reason to doubt that the amendment would apply to all premises in which it is possible to produce or store such materials.

Therefore, we are opposed to the enactment of Section 101(a) and 101(b) insofar as they seek to expand the definition of the terms "war premises" and "national-defense premises."

Section 101(a) and (b) would also amend the existing phrase "or other installations of the Armed Forces of the United States, or any associate nation," as contained in Section 2151 to read as follows "or other military or naval stations of the United States, or any associate nation." Inasmuch as the existing language is broader in scope than the proposed change, we are opposed to its enactment.

Section 102(a) of the Bill would amend the initial provision of the Smith Act, (Title 18, U.S.C., Section 2385), which punishes the knowing or willful advocacy or teaching of the duty or desirability of overthrowing the Federal Government or

the government of any state by force or violence, by adding at the outset the phrase, "Without regard to the immediate provable effect of such action".

While the meaning of this proposed amendment to the Smith Act is not entirely clear, it would appear to be an attempt to escape or mitigate the consequences of the "clear and present danger test" or its equivalent. This test, as you may know, has been applied by the Supreme Court in practically all cases involving the punishment or curtailment of speech commencing with *Schenck* v. *United States*, 249 U.S. 47. The "clear and present danger" test was utilized in the first Smith Act case involving the top echelon of the Communist Party, *Dennis* v. *United States*, 341 U.S. 494, and in *Yates* v. *United States*, 354 U.S. 298. Chief Justice Vinson stated in *Dennis*, "The doctrine that there must be a clear and present danger of a substantive evil that Congress has a right to prevent is a judicial rule to be applied as a matter of law by the courts" (341 U.S. 513).

In the cases involving freedom of speech such as *Schenck* and *Dennis*, the Supreme Court has imposed the "clear and present danger test," or its legal equivalent, as a means of determining whether the words spoken or written are outside of the area of constitutionally protected speech, as guaranteed by the First Amendment to the Constitution. To circumscribe or eliminate the "clear and present danger test," as is apparently attempted in the proposed amendment, would appear to constitute an attempt to eliminate the very mechanism the courts have created to assist them in determining what speech has gone beyond the protection of the First Amendment. We are therefore opposed to the enactment of Section 102(a) of the Bill.

Section 102(b) of the Bill would further amend Section 2385 of Title 18, United States Code, by inserting immediately after the first paragraph thereof a new paragraph:

> Whoever with intent to cause the overthrow or destruction of any such government, in any way or by any means advocates, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying any such government by force or violence; . . .

The foregoing is an apparent attempt to bring the Smith Act expressly into conformity with the holding of the Supreme Court in *Dennis* v. *United States*, 341 U.S. 494, 499. The *Dennis* case held that even though the Smith Act in paragraphs one and three did not expressly require the specific intent to cause the violent overthrow of the government, it was the purpose of Congress to require such an intent and that the structure and purpose of the statute demanded the inclusion of intent as an element of the crime. The amendment, however, would have no effect on paragraphs one and three since intent has been judicially declared as an element of the crime in these sections. Since this amendment does not appear to meet any genuine need in the Smith Act, we are consequently opposed to its enactment.

Section 102(c) amends the last paragraph of Section 2385 to provide that the term "organize" with respect to any society, group, or assembly of persons, includes encouraging recruitment or the recruiting of new and additional members and the forming, regrouping, or expansion of new or existing units, clubs, classes, or sections of any such society, group, or assembly of persons.

The final paragraph in the Smith Act defining the terms "organize" and "organizes" was amended by Congress in 1962 to obviate the effect of the decision of the Supreme Court in the *Yates* case, *supra*, where the Court held that the term "organize" meant the organization of the Communist Party, as such, and not the recruiting of new members and the forming of new groups. The new amendment would delete the word "organizes," and adds the phrase "encouraging recruitment" and the words "recruiting of new or additional members."

While the proposed amendment would not appear to alter the purpose and the effect of the existing provision of Section 2385, except in a minor way, we have no objection to its enactment, if deemed desirable.

Section 103 would amend Chapter 115 of Title 18 of the United States Code dealing with treason, sedition and subversive activities by adding a new section 2392. The new section would punish anyone owing allegiance to the United States who gives aid or comfort to an adversary of the United States by an overt act within the United States or elsewhere. The term "adversary" of the United States would include a foreign nation or armed group which is engaged in open hostilities against this country or with which the Armed Forces of the United States are engaged in open hostilities.

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).

Section 2 of the proposed amendment defines the term Communist-action organization as used in the subsection in substantially the same language as that contained in Section 782(3)(a) of Title 50, U.S.C. Section 204 also defines the term Communist organization to include a Communist-action organization and any organization in the United States which is substantially directed, dominated or controlled by a Communist-action organization or is substantially directed, dominated or controlled by one or more members of a Communist-action organization and operated primarily for the purpose of giving aid and support to a Communist-action organization.

With respect to the employment of Communists in defense facilities, Section 204 would appear to be subject to the same objection the Supreme Court found in the case of *United States* v. *Robel*, 389 U.S. 258, in that there is no need to establish that the individual poses the threat the Government seeks to prevent.

In the *Robel* case, the Supreme Court held that Section 5(a)(1)(D) of the Internal Security Act established guilt by association alone, without any need to establish that an individual's association posed the threat feared by the Government in proscribing it. The Court also pointed out that the statute made it irrelevant whether an individual might be a passive or inactive member of an organization designated by the Board, or that he may be unaware of the organization's unlawful aims, or disagree with those unlawful aims.

The proposed amendment seeks to meet the objections which the Supreme Court noted with respect to Section 5(a)(1)(D) in the *Robel* case. Thus, the proposed amendment would prohibit defense facility employment of those members of Communist-action organizations who are active members and who subscribe or assent to some unlawful objective of the organization. It is noted that the term "any unlawful objective" of the amendment is quite broad and is not confined to the commission of acts of sabotage or related subversive acts. Although we support the purposes of Section 204, we note that the measure of proof required under this amendment would be quite difficult to obtain.

In any event, there are substantial questions as to whether the proposed amendment would meet the criteria of constitutionality expressed by the Supreme Court in the *Robel* case and related cases dealing with the imposition of criminal sanctions as a result of a person's membership in the Communist Party. Consequently, we object to the enactment of Section 204 as presently drafted.

Title III of the Bill deals with reprisals against congressional witnesses.

Section 301 would amend Section 1505 of Title 18, U.S.C. by making it a felony for any official of the Executive Branch of the Government to cause an employee to be demoted, suspended, dismissed, retired or otherwise disciplined as a result of his attendance at any inquiry being held by a committee of Congress or as a result of his testimony before any committee unless such testimony discloses misconduct on his part. Adverse action taken against an employee within a year of his attendance or testimony shall be considered *prima facie* evidence that such action was taken as a result of the employee's testimony.

Section 301 would also amend Section 3486 of Title 18, U.S.C., which deals with immunity as a result of incriminating testimony by adding a new subsection (e). This provision would prevent the demotion, suspension, etc., of any witness who is a member of the Armed Forces or an officer or employee of the Executive Branch as a result of testifying or furnishing official papers or records before a congressional committee, unless such testimony is given or official papers or records are produced in violation of law or they disclosed misconduct on the part of the witness.

Section 302 forbids any reprisal by the Executive Branch through its officials in any manner or by any means not prohibited by Section 1505 of Title 18, U.S.C., against any witness who testifies before a congressional committee or any officer or employee of the Executive Branch who furnishes any congressional committee, chairman or member thereof, any information or any document disclosing any wrongdoing or breach of security in such agency. Persons who violate this section by ordering or initiating such a reprisal or urging, advising or attempting to bring it about are punishable by imprisonment not to exceed one year or a fine not to exceed $1,000. It is noted that the punishment for violating Section 301 consists of imprisonment of not more than five years or a fine of not more than $5,000, or both. The penalty under Section 301 appears excessive, particularly in view of the one year penalty under Section 302 of the Bill.

In our view these sections present several problems. First, it might be noted that the provision regarding attendance at hearings is extremely broad and is not limited to attendance upon congressional request or at hearings relating to

the employees official duties. Read literally, it would prohibit charging an employee leave without pay for attending any hearing which may interest him without taking annual leave and without agency permission. We doubt that the provision is intended to permit federal employees to be spectators at hearings whenever they wish and regardless of their duties.

Section 301 also raises a presumption which seems somewhat unreasonable, for there is no necessary connection between disciplinary action and the appearance within a year of an employee at a congressional hearing. The bill would even seem to apply even though the preliminary disciplinary proceedings were commenced prior to the testimony if the disciplinary action should follow the testimony. In our view, this provision would adversely affect effective personnel management.

Similarly, the prohibition on disciplinary action against employees furnishing records to congressional committees may have a serious effect on records management. If an agency is unable to regulate the custody and care of its records, it will be unable to keep any systematic filing system. If any employee is permitted to take any records without permission and furnish them to committees, whether or not requested, agencies will be unable to keep track of them or to furnish them when formally requested by courts, the Congress or other agencies.

Furthermore, Section 301(e), pertaining to the production of documents, does not exempt material classified pursuant to Executive Order 10501 and such legislation would also effectively prohibit administrative or criminal action against any Government employee who may unlawfully disclose or comprise information in violation of the espionage statutes and the Atomic Energy Act. It is manifest that the protection of classified information dictates that its disclosure be made only when authorized by the proper authority.

We strongly oppose enactment of these proposals.

Section 303 of the Bill would require the courts to give preference to criminal proceedings in cases under Title 18, Chapter 37 (espionage), Chapter 105 (sabotage) and Chapter 115 (treason, sedition, etc.) as well as prosecutions under the Atomic Energy Act of 1946.

Our experience in the prosecution of cases involving subversive activities has not been such as to indicate a necessity for the enactment of Section 303. For many of the enumerated offenses requiring acceleration are capital offenses for which bail is not normally granted. In those instances where bail is granted, it is generally of a high amount and more often than not the defendant remains incarcerated. Since the defendant is jailed the courts give priority to such cases. In the circumstances, we perceive no need for this provision.

The Bureau of the Budget has advised that there is not objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ J. Walter Yeagley,
J. WALTER YEAGLEY,
Assistant Attorney General.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. TUCK. In response to the committee's request, the AFL–CIO has by letter dated May 17, 1968, through its associate general counsel, submitted its views on H.R. 15626. Without objection, I therefore ask that the letter of views of the AFL–CIO be included in the record at this point.

(The letter follows:)

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., May 17, 1968.

The Honorable EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

Re: H.R. 15626, To Amend the Subversive Activities Control Act of 1950.

DEAR CONGRESSMAN WILLIS: In response to the Committee's invitation, the American Federation of Labor and Congress of Industrial Organizations (AFL–

CIO) takes this opportunity to submit a statement of its views on H.R. 15626, and to request that this statement be made part of the record of the hearings on said bill. We recognize that the Committee has been favored with a number of comprehensive and meticulous section-by-section analyses of this proposed legislation. This statement will therefore be brief and will deal mainly with the Federation's views on the basic thrust of the bill.

The AFL–CIO's relentless opposition to Communism, and its sympathetic appreciation of the security problems caused by Communist subversive activities is beyond question and is, we are sure, well known to this Committee. Thus the ultimate goal of H.R. 15626 is one with which the Federation is in accord. Nevertheless, the AFL–CIO cannot support the bill in its present form. It cannot do so because H.R. 15626 is overbroad in two respects—in the number of workingmen and women it covers and in the criteria for denying clearance that it sets out. The AFL–CIO's Second Constitutional Convention, held in 1957, set out the essence of organized labor objections to overbroad security programs in the following terms:

"The American labor movement has a great heritage as a foremost champion of the preservation and extension of individual civil liberties in our land. We rededicate ourselves to the task of keeping inviolate the fundamental freedoms guaranteed to every American by the Constitution and the Bill of Rights.

"The AFL–CIO stands not only as a bastion of freedom but also as a bulwark against the threat of International Communism to our way of life and to the entire free world. In the face of this ever-present danger there is a need to maintain an effective security system against espionage and subversive activities by our totalitarian foes. This danger requires the maintenance of effective counterintelligence for vigorous enforcement of criminal laws and for an effective security system administered with full safeguards of the individual liberties guaranteed by our laws."

* * * * * * *

"RESOLVED, that the AFL–CIO welcomes the recent decisions of the U.S. Supreme Court dealing with loyalty and security. These decisions served to strengthen the individual liberties of all Americans.

"Properly, the application of the necessary security measures should be limited to persons having access to secret or highly classified information affecting national security. To go beyond this limit and to subject to security screening thousands of individuals employed in defense facilities and in the government establishments but having no access to security information is not only unnecessary but objectionable. We, therefore, are opposed to legislative proposals which would apply security screening wholesale to employees in such plants, establishments or facilities without regard to the access of such employees to top-secret and secret security information.

"We reaffirm our determination to preserve and defend American democracy from any and all enemies, within or without.

"We call on Congress and the public to be alert in opposition to any infringements of civil liberties in the administration of the security programs and in the conduct of congressional investigations."

The Federation has never deviated from this view and the intervening years have provided ample support for its position.

The reach of H.R. 15626 is such that it could cover all airline and railroad employees, a very high percentage of those in the aerospace, utility and educational fields, and a significant number of the employees engaged in general manufacturing and mining. The vast scope of the program threatens its efficient functioning. The volume of the work it entails tends to require cursory checks which would not be a source of discomfort to the dedicated subversive who has planned his life with the end in view of committing acts of sabotage. And the very size and scope of the assigned task is sure to engender bureaucratic errors, omissions and oversights which could make it possible for a dedicated subversive to slip through the security net and gain access to truly secret information. There is, in addition, a further potential loss to the smooth and efficient functioning of the government inherent in this bill. The United States needs skilled and intelligent people to man its defense establishment and to work in its defense industries. Many of the most able of these will assuredly look elsewhere for employment rather than run the gauntlet of checks provided for in H.R. 15626.

The authorization to run checks on so many workers also creates a serious and unwarranted threat to the right of privacy. As Mr. Justice Brandeis stated in his famous dissent in *Olmstead* v. *United States*, 277 U.S. 438, 478, which has

since carried the day, the right of privacy is "the most comprehensive of rights and the right most valued by civilized men." See also e.g. *Warden* v. *Hayden*, 387 U.S. 294. The creation of voluminous files of "raw" unanalyzed data concerning the intimate details of the lives and beliefs of a significant proportion of our population is a specter so incompatible with the basic tenants of a free society that it should incline this Committee to a sober reconsideration of the scope of this bill. The right of privacy is not, of course, an absolute. But intrusions into the private lives of American citizens should be permitted only where the expected benefits can be shown to be of a very high order. No such showing has or can be made here. Today the Communist movements appeal to the working men and women of this country is at its nadir. For this reason we are not aware of any information which would suggest that sabotage has been a problem of any proportion in the prosecution of the war in Vietnam. Thus H.R. 15626 takes insufficient account of this fact that the period since 1950 has proved a point that should never have been in doubt—that the vigilance, good sense, innate loyalty of the American working man provides the firmest possible defense against Communist subversion. Whatever the felt needs of the late 40's and early 50's might have been recent history should give us the courage to free ourselves from the excesses of that period and to return to our historic traditions in which we place our trust in the responsibility and loyalty of free men.

The threat to the right of privacy we have noted is intensified by the fact that H.R. 15626 requires the perpetuation, and probable enlargement, of a bureaucracy charged with the monitoring of the private lives and thoughts of American citizens—charged in other words with a task that aligns the Federal Government far too closely with the government of Big Brother in Orwell's *1984*. The Statement of Joseph J. Liebling, Director for Security Policy of the Department of Defense, indicates that this bureaucracy comprises over 11,000 people and spends over $45 million per year. A Congress as concerned with economy as the present one, which is seriously considering cutting $6 billion from the Federal Budget should, we submit, cut down the size of this swollen security force, whose very existence is a danger to our free institutions, not enlarge it.

The problems we have noted thus far are exacerbated by the excessively broad grounds for disqualification from employment set out in H.R. 15626. In this regard, Sections 5A(d) 15–17 are the most objectionable. The notion that a security force should inquire into the mental health, alcoholic intake and sexual habits of railroad conductors, utility workers, etc., is an ominous one in a society built on freedom and respect for the inviolate nature of the individual. Consideration of the processes that would have to be used to secure reliable evidence as to such matters is enough to require that these provisions should be reconsidered. In addition, it hardly appears self-evident that it is proper to place in the hands of the Executive Department the power to bar every citizen who has relatives in Russia, Eastern Europe, or China from such a high proportion of the blue collar jobs available in this country. Yet that is the precise effect of Section 5A(d)(10). And while the AFL–CIO and the vast majority of its membership has given unstinting support to the Administration's prosecution of the war in Vietnam, it seems to us to be unsound to place the job rights of those who oppose that policy peacefully, and out of a sense of loyalty, in jeopardy. Yet that is a probable effect of Section 5A(d)(3). In addition to these specific points, which could be expanded, there is another danger inherent in Section 5A(d). It gives the Executive a broad discretion which could be used as a cloak to further objectives other than the exclusion of potential saboteurs and subversives from defense positions. This discretion could, for example, be used as a mechanism to allow anti-union employers to rid themselves of workers who hold the "subversive" idea that representation by a labor union is a good idea.

The overbreadth of the bill is not the only reason why the AFL–CIO cannot support H.R. 15626. The Federation also objects to the fact that the proposed legislation does not go far enough in assuring fair procedures to those who wish to challenge an adverse security determination. The exceptions contained in Section 5A(k) to the right to cross-examine witnesses and to secure relevant documentary material are of such potential magnitude that they threaten to engulf those rights. We submit that the minimum improvement that is necessary is to provide that the hearing officer in charge of a particular case, rather than those who have investigated and decided to prosecute the matter, decide whether the national security requires deviation from these essential rights. Moreover, the bill should make it clear that a refusal to produce a witness under 5(a)(k)(B) or (C) should be sustained only if the informant is an undercover agent. The present wording is far too vague. Since the hearing officer will,

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,
THOMAS E. HARRIS,
Associate General Counsel.

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:

A BILL

To amend the Internal Security Act of 1950 to authorize the Federal Government to deny employment in defense facilities to certain individuals, to protect classified information released to United States industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Internal Security Act of 1950 is amended by adding at the end thereof the following new title:

"TITLE IV—DEFENSE FACILITIES AND INDUSTRIAL SECURITY

"SEC. 401. This title may be cited as the 'Defense Facilities and Industrial Security Act of 1968'.

"DEFINITIONS

"SEC. 402. For the purposes of this title—

"(1) The term 'facility' has the meaning assigned to such term by paragraph (7) of section 3, and the term 'defense facility' means any facility designated as such under section 403.

"(2) The term 'classified information' includes any information, regardless of country of origin, which for reasons of the national defense or security is specifically designated pursuant to law or Executive order by an agency of the United States Government for limited or restricted dissemination or distribution. The term 'classified information' also

includes any project, production, or service which is classified.

"(3) The term 'classified', as applied to a project, production, or service, means a project, production, or service to which access is restricted, or information concerning which is for restricted dissemination or distribution, as specified pursuant to law or Executive order by an agency of the United States Government for reasons of the national defense or security.

"(4) The term 'sensitive' means, with respect to a position, place, or area of employment, an individual's special and enlarged opportunity or capacity, by reason of his position, place, or area of employment, to commit, or to aid or abet another to commit, an act of sabotage, espionage, or any other act which would impair the military effectiveness of the United States, or the production and development of essential materials and services of importance to the national defense, or would endanger the security of military personnel or of classified information. The term 'sensitive' means, with respect to information, such information as is classified; with respect to a project, production, or services, such projects, production, or services as are classified, or any other project, production, or service which if sabotaged, damaged, or obstructed would impair the military effectiveness of the United States, or the production or development of essen-

tial materials or services of importance to the national defense, or would endanger the secuirty of military personnel.

"(5) The term 'act of subversion' means any unauthorized disclosure of classified information, or any act, omission to act, conspiracy, or solicitation to commit any act or omission which causes or would tend to cause damage or injury to any facility or its production and services, when committed with the intent to impair the national defense, or to advantage a foreign power, or to prejudice the security of the United States against its enemies, foreign or domestic, or to effect any plan, tactic, or strategy of any subversive organization.

"(6) The term 'organization' includes any group, society, association, or legal entity, or any chapter, branch, unit, or affiliate thereof, or any combination of two or more individuals associated together for joint or concerted action on any subject or subjects, whether incorporated or not.

"(7) The term 'subversive organization' means—

"(A) any organization described in section 406(a), and

"(B) any other organization, whether or not described as Communist, Marxist, Marxist-Leninist, revolutionary socialist, anarchist, nihilist, Fascist, Nazi, totalitarian, or racist, which has as a purpose, or which advocates or teaches the necessity, propriety, or desirability of,

the unlawful use of force or violence, the commission of crime, or the use of other unlawful means (i) to overthrow, destroy, or alter the form or system of government of the United States or of any State, possession, territory, or political subdivision thereof, or (ii) to compel or restrain governmental action by any unit or subdivision of government, in any of its branches, legislative, executive, or judicial, in order to effect any political, economic, social, or policy change.

"(8) The term 'advocate' means to urge or recommend as a policy, rule, or principle to be translated into action immediately or at a future time as soon as circumstances permit.

"(9) The term 'teach' means to indoctrinate as a program for winning adherents and as a policy, rule, or principle to be translated into action immediately or at a future time or as soon as circumstances permit.

"(10) The term 'association', when applied to an individual's conduct, means an individual's activities, or other objective manifestation of conduct, in relation to another person or organization.

"(11) The terms 'affiliated' and 'affiliate', when applied to an individual's relation to an organization, have the meaning assigned to such terms by paragraph (17) of section 3 of title I of this Act.

"(12) The terms 'sabotage', 'espionage', sedition', 'insurrection', and 'treason' mean those offenses punishable as such under Federal or State law.

"(13) The terms 'saboteur', 'spy', 'seditionist', 'insurrectionist', and 'traitor' mean those persons who commit, conspire to commit, or solicit another to commit, the offenses referred to in paragraph (12) of this section, of which the terms are descriptive.

"(14) The term 'sleeper' means a member of an organization who, at the request or recommendation of any officer or leader of such organization, or pursuant to a directive or recommendation of such organization, and for the purpose of accomplishing any plan, tactic, or strategy of such organization, conceals or endeavors to conceal his membership, whether for a certain or uncertain period, by ceasing to engage in any public activity of, or any contact or association with, the organization that would disclose or tend to disclose to nonmembers his identity as a member of such organization.

"DESIGNATION OF DEFENSE FACILITIES

"SEC. 403. (a) Under such regulations (including procedures for administrative review) as shall be prescribed by the President, the Secretary of Defense shall designate as a defense facility any facility which is occupied or engaged, in whole or in part, as a contractor or subcontractor, in the ex-

ecution of any contract with or for the United States for the rendering of goods or services as follows:

"(1) any classified project, production, or service for military use or which he determines to be of military significance;

"(2) the fabrication, production, or assembly, for military use, of weapons, weapons or defense systems, missiles, rockets, missile and rocket propellants, projectiles, ammunition, explosives, aircraft, vessels, armed vehicles, and specialized vehicles;

"(3) the fabrication, production, or assembly, for space use or exploration, of missiles, rockets, missile and rocket propellants, and specialized vehicles or craft, which he determines to be of significance to the defense of the United States; or

"(4) the subassemblies or components of any of the foregoing items.

The Secretary shall promptly notify the management, and any labor organization (as that term is defined in section 2(5) of the National Labor Management Relations Act, 1947, as amended), of any facility which he proposes to designate as a defense facility, of the opportunity of the management and such labor organization to oppose such designation by written objection and oral argument. In the absence of objection to the proposed designation or upon final

determination in favor of such designation, the Secretary of Defense shall immediately cause the management to post (in such place or places within or upon the premises of such facility as shall be likely to give knowledge or notice of such designation to all employees of, and to all applicants for employment in, such facility) a conspicuous notice of such designation of such facility. Nothing in this section shall be construed to require the Secretary to disclose information which he determines will impair the national interest or security. Upon the request of the Secretary, the management of any facility so designated shall deliver to each employee of, or applicant for employment in, such facility (A) a written statement informing him that such facility has been designated as a defense facility under this section, that the prohibitions of section 5(a)(2) of this Act are applicable to employment in such facility, and of the identity of organizations determined by final order of the Subversive Activities Control Board to be Communist-action organizations, and (B) a copy of sections 2 and 3 of this Act.

"(b) The Congress of the United States hereby finds that the production and services described in subsection (a), paragraphs (1) through (4) of this section, are sensitive. For the purposes of sections 5(a)(2) and 404(a) of this Act, the Secretary of Defense shall, with respect to such production and services, designate the positions, places, and

areas of employment in any defense facility which he determines to be sensitive.

"AUTHORITY TO DENY ACCESS TO DEFENSE FACILITIES AND CLASSIFIED INFORMATION

"SEC. 404. (a) The President is authorized to institute such measures and issue such regulations, standards, restrictions, and safeguards as may be necessary to protect defense facilities against sabotage, espionage, or any act of subversion, and, with respect to any position, place, or area of employment determined by the Secretary of Defense to be sensitive pursuant to section 403(b), to deny employment therein to any person on the basis of findings that such person's employment is not clearly consistent with the national interest.

"(b) The President is authorized to institute such measures and issue such regulations, standards, restrictions, and safeguards as may be necessary to protect against unauthorized disclosure classified information released to or within any facility located in the United States, including procedures for determining eligibility and authorization for access to classified information so released, and to deny such access authorization on the basis of findings that the granting or continuing of such access authorization is not clearly consistent with the national interest.

"(c) Where a reasonable doubt exists that any per-

son's employment in a defense facility or access to classified information is consistent with the security of the production, services, or information to be safeguarded pursuant to the provisions of this title, such person's employment or access to classified information may be denied, suspended, or revoked. Such doubt may arise only after consideration of all relevant and material evidence adduced, and based upon affirmative findings supported by substantial evidence. In making a determination as to such person's eligibility or authorization for such employment in a defense facility or access to classified information, as well as a determination of the scope of the investigation to be made for the purposes of this title, consideration shall be given to the nature and position of the employment, the level of clearance sought, and whether or not the employment involves access to classified information.

"(d) The President may establish criteria and authorize inquiries and investigations concerning an individual or organization, as well as inquiries directed to an individual regarding his present or past membership in, or affiliation or association with, any subversive organization, and such other activities, behavior, associations, facts, and conditions, past or present, which are relevant and material to any determination to be made under the provisions of this title.

"(e) Under such regulations as the President may prescribe, conditional employment without access to classified information may be tendered any individual in any facility pending determination of such individual's eligibility or authorization for any employment which is subject to the provisions of this title.

"(f) The President may perform any function vested in him by this title unless otherwise expressly stated, through or with the aid of such officers or agencies as he may designate.

"RESTRICTED AREAS

"SEC. 405. For the further safeguarding of defense facilities, or parts thereof, occupied or engaged in the production and services described in subsection (a) of section 403, and of the release of classified information to any facility, the President may, under such regulations as he shall prescribe, authorize the Secretary of Defense, or his designee for such purpose, to establish area restrictions and prohibitions limiting access to any such facilities and areas adjacent thereto against intrusion by unauthorized persons. Notice of such restrictions or prohibitions shall be posted within or upon the premises of such facility at such places as shall be likely to give notice of such restrictions or prohibitions, and shall include a notice of the penalty provided by this section for violation thereof. Whoever, contrary to the re-

strictions or prohibitions applicable to any such area, willfully enters, or remains in, any such restricted or prohibited area shall be fined not more than $500 or imprisoned not more than six months, or both.

"*SUBJECTS OF INQUIRY AND CRITERIA*

"*SEC. 406. (a) For the purposes of determining any individual's eligibility for employment in a sensitive position, place, or area of employment in any defense facility or for access to classified information, the authority of the President under subsection (d) of section 404 includes, but shall not be limited to, inquiries and criteria regarding such individual's past or present membership in, or affiliation or association with, one or more of the following categories of organizations:*

"*(1) Any organization which, by final order of the Subversive Activities Control Board, has been determined to be a 'Communist organization' as defined in paragraph (5) of section 3 of this Act.*

"*(2) Any organization, foreign or domestic, which has been organized or utilized for the purpose of advancing the objectives of the Communist movement or for the purposes of establishing any form of Communist dictatorship in the United States or abroad.*

"*(3) Any organization, foreign or domestic, which advocates, aids or abets, or engages in, the giving of any money,*

property, or thing, or the conduct of any activity, which is of aid, comfort, or assistance to any foreign government, group, or association engaged in armed conflict with the United States, under such circumstances that it is reasonable to infer that a purpose of such activity is to impede or interfere with the operation or success of the Armed Forces of the United States, or to advantage any foreign government, group, or association and to prejudice the interests of the United States.

"(4) Any organization, foreign or domestic, which advocates, counsels, aids or abets, or engages in, the violation of any Federal law related to the internal security of the United States or its defense against foreign aggression.

"(5) Any organization, foreign or domestic, which advocates, counsels, aids or abets, or engages in, the use of force and violence or other unlawful means for the purpose of altering the form or system of government of the United States or of any political subdivision, territory, or possession thereof, or for the purpose of compelling or restraining governmental action to effect any political, economic, or social change.

"(6) Any organization, organized or utilized by any foreign government, or by any foreign party, group, or association acting in the interest of any foreign government, for the purpose of (A) espionage, (B) sabotage, (C) obtaining

information relating to the defense of the United States or the protection of the national security, (D) impairing, hindering, or delaying the production of defense materials in the United States or in countries in defensive alliance with the United States, or (E) obstructing the execution of a defense treaty of the United States.

"(7) Any organization, foreign or domestic, affiliated with, or substantially dominated or controlled by, or acting in concert with, or in support of, any party, group, or association of the character described in the foregoing paragraphs of this subsection.

"(b) In determining the significance to be given, for the purposes of this section, to the organizational membership or associations of any individual, but with due regard to the prohibitions of section 5(a)(2) of this Act, consideration shall be given to—

"(1) the character and history of that organization;

"(2) the time during which such individual was a member of or affiliated or associated with such organization and, if such individual no longer is a member of or affiliated or associated with such organization, the time at which his membership, affiliation, or association was terminated, the circumstances of such termination, whether such termination was voluntary or involuntary,

or for temporary, deceptive, or spurious purposes, and the degree to which he has separated himself from the activities of that organization or of its leadership;

"(3) such individual's knowledge of the nature and purposes of that organization, and factors relevant thereto, including but not limited to the extent to which the nature and purposes of the organization were publicy known at the time of such membership or association; the extent to which such individual has received instruction or training in such organization; whether such individual has met clandestinely or secretly in cells or units of such organization; if such organization has been found by final order of the Subversive Activities Control Board to be a Communist organization, or if publicly described by the Attorney General, the Director of the Federal Bureau of Investigation, or any Federal agency as totalitarian, Fascist, Communist, or subversive, whether such individual had actual knowledge or notice of such final order or description; and such individual's knowledge of the publications of such organization and the statements of its leaders from which the nature or purposes of such organization may be inferred;

"(4) such individual's commitment to the purposes of such organization, and factors relevant thereto, including but not limited to whether such individual has

made financial contributions to, or collected funds on behalf of, such organization; has attended meetings, classes, or conferences of such organization or those sponsored by it; has participated in any recruiting activities on behalf of such organization; has executed orders, plans, or directives of the organization; has served as agent, messenger, correspondent, organizer, propagandist, agitator, or in any other capacity for or on behalf of such organization; has attended conferences with officers and other members of the organization in the furtherance of any plan or enterprise undertaken by such organization; has advised, counseled, or in any other way imparted information, suggestions, or recommendations to officers or members of such organization or to anyone on its behalf; has participated in any way in the activities, planning, or actions of such organization; has been accepted to his knowledge as one to be called upon for services in support of such organization by its officers or members; has indicated by word or action a willingness to carry out to any degree the plans, objectives, or designs of the organization;

"(5) the degree to which such individual participated in the activities of that organization, and whether, if such individual has ceased such activities, he has continued to meet and associate with any leader or officer

of such organization, or whether he is a sleeper for such organization; and whether, if such individual has limited his activities, he has done so according to a plan of such organization, or for the purpose of concealing his membership or activities therein; and

"(6) based upon what such individual has done or said, and all other relevant facts, including but not limited to the foregoing considerations, his intent to assist, directly or indirectly, and by whatever means, in achieving the ends or ultimate purposes of such organization; and whether the evidence relating to the associations of such individual with such organization would be such as to support an inference that he is at common law a co-conspirator with it or any member or members thereof for any purpose.

"SEC. 407. (a) For the purposes set forth in subsection (a) of section 406, the authority of the President further includes, but shall not be limited to, inquiries and criteria of one or more of the following categories relating to any such individual who is the subject of clearance:

"(1) The commission of, or attempt, conspiracy, solicitation, or preparation to commit, sabotage, espionage, sedition, insurrection, or treason.

"(2) Advocacy of the use of force and violence, or any unlawful means, to overthrow or alter the consti-

tutional form of government of the United States or of any political subdivision, possession, or territory thereof, or to obstruct the execution or enforcement of any Federal law, or to compel or restrain governmental action to effect any political, economic, or social change.

"(3) Organizing, conspiring to organize, aiding or abetting, or active participation in, any unlawful activity to advance any cause, demonstration, or protest in opposition to the execution of any law or of any policy or practice of the Government of the United States authorized by law, relating to the defense or security of the United States, Defense Department procurement of personnel, services, or supplies, the raising and support of armies, or the employment of the Armed Forces of the United States.

"(4) Advocacy of, conspiring to organize, aiding or abetting, or active participation in, any activity in violation of law, Federal or State, and punishable by imprisonment, for the purpose of advancing any Communist, Marxist, Marxist-Leninist, revolutionary socialist, anarchist, nihilist, Nazi, Fascist, or other political or ideological cause, or for the purpose of executing any plan, program, or activity, whether or not pursuant to a general or specific directive or recommendation, of any Communist, Marxist, Marxist-Leninist, revolutionary

socialist, anarchist, nihilist, Nazi, or Fascist party or organization, or of any member, leader, organizer, employee, or agent thereof.

"(5) Establishing or continuing a sympathetic association with a saboteur, spy, insurrectionist, seditionist, traitor, or any leader, employee, organizer, or officer of any subversive organization, or with an espionage agent or other secret representative of a foreign nation whose interests may be inimical to the United States, without satisfactory explanation and under such circumstances and of such nature as to raise a reasonable doubt that the association is for innocent or lawful purposes.

"(6) Such substantial evidence of the individual's adherence or commitment to any Communist, Marxist, Marxist-Leninist, revolutionary socialist, anarchist, nihilist, Nazi, Fascist, or any other ideology which would destroy the constitutional system of government of the United States, as creates a reasonable doubt that such individual is reliable or trustworthy to engage in a sensitive position, place, or area of employment in a defense facility or to have access to classified information.

"(7) Service as secret agent or employee, or as a propagandist, courier, or messenger for any foreign government or any foreign organization which is Communist or Communist controlled.

"(8) Giving of any money, property, or thing, or the conduct of any activity or service, which is of aid, comfort, or assistance to any foreign government, group, or association engaged in armed conflict with the United States, without satisfactory explanation and under circumstances from which it may reasonably be inferred that a purpose of such activity is to impede or interfere with the operation and success of the Armed Forces of the United States, or to advantage any foreign government, group, or association and to prejudice the security interests of the United States.

"(9) Inciting hostilities or conflicts against the United States or against any foreign power or government friendly to the United States which may tend to involve the United States in hostilities or to impair the security of the United States.

"(10) Any publication, orally or in writing, or any overt act, conduct, or course of conduct, indisputably odious, shocking, and offensive to the community of citizens of the United States which demonstrates, and which may reasonably be determined under the circumstances to be intended to demonstrate, a fixed and settled hatred and contempt for, disloyalty to, and estrangement from, the form or constitutional system of government of the United States.

"(11) To broadcast, or to solicit another to broadcast, by radio or television, or to disseminate or publish or solicit another to disseminate or publish in writing or by visual or pictorial representation, any false statement of fact, with knowledge of its falsity or with reckless disregard of the truth, and which, under the circumstances, has the effect of bringing the Armed Forces of the United States, the Department of Defense, or the Government of the United States into disrepute, hatred, or contempt, with the intent to promote or advance the interests of any Communist power or organization or to promote or advance the interests of any foreign power or organization engaged in armed conflict with the United States and to prejudice the interests of the United States.

"(12) Performing or attempting to perform any duty or employment or otherwise acting so as to serve the interests of another government in preference to the interests of the United States.

"(13) Refusal, in the course of any investigation for the purposes of this title, to answer any inquiry relating to any matter or any question with respect to which such individual has previously refused to testify upon the ground of self-incrimination or upon any other grounds, in any authorized inquiry relating to subversive activities conducted by a congressional committee, Federal court,

Federal grand jury, or other duly authorized Federal agency, as to any question relating to the subversive activities of the individual involved or others.

"(14) Any deliberate misrepresentation, falsification, or omission of material facts from a personnel security questionnaire, personal history statement, or similar document.

"(15) Intentional unauthorized disclosure to any person of classified information, or willful violation or disregard of security regulations.

"(16) Recurrent and serious, although unintentional, violations of security regulations, or recurrent and serious, although unintentional, unauthorized disclosures of classified information.

"(17) The presence of a spouse, parent, brother, sister, or child in a nation whose interests may be inimical to the interests of the United States or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relations, or any other facts or circumstances which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure likely to cause action contrary to the national defense or security interests.

94-756 O—68—pt. 1——16

"(18) Criminal or infamous conduct, homosexual perversion, drug addiction or habitual use of drugs to excess, habitual use of intoxicants to excess, an adjudication of insanity or treatment for serious mental or neurological disorder without satisfactory evidence of cure, or any behavior, association, fact, activity, or condition which tends to establish reasonable doubt that the individual is reliable or trustworthy for employment in the production and services or for access to information to be protected pursuant to the provisions of this title.

"(b) In determining the significance to be given for the purposes of this title to the findings with respect to the aforesaid inquiries and criteria, consideration shall be given to—

"(1) the recency of any activity, fact, or condition;

"(2) its frequency or recurrence;

"(3) its nature, seriousness, and significance in relation to other findings and in relation to the employment and level of clearance at issue;

"(4) any credible explanation such individual may offer;

"(5) the general reputation of the individual with regard to relevant characteristics at issue; and

"(6) any other fact on which a rational and fair determination may be based.

"PRIVACY OF INQUIRIES AND PROCEDURES

"SEC. 408. So far as may be expedient and consistent with the objectives and purposes of this title, inquiries and procedures that may involve or evoke information of a derogatory nature relating to any individual or organization shall be conducted with due regard for the protection of such individual or organization from unfair publicity or unjust injury. Under such regulations as the President may prescribe, members of the general public may be denied access to the whole or any part of the proceedings and hearings conducted pursuant to the provisions of this title.

"OBSTRUCTION OF INQUIRY OR PROCEEDINGS

"SEC. 409. In the course of any inquiry, investigation, proceeding, or hearing to determine the eligibility of any individual for employment in a sensitive position, place, or area of employment in any defense facility or for access to classified information, whether or not on review of any such employment or access authorization previously granted, the willful refusal of any individual to answer any relevant inquiry directed to him, or the giving of any willfully false, misleading, or evasive response or testimony on any relevant subject, may be considered sufficient, in the absence of satisfactory explanation, to justify a refusal further to process any such application unless compliance is made, or to

justify denying, suspending, or revoking any such employment or access authorization. Should a refusal further to process any such application be made, or should any access authorization be denied, suspended, or revoked for any such reason, the individual adversely affected shall be entitled on request to a review of such action and a hearing thereon as the President by regulation shall provide.

"*SUMMARY DENIAL OF ACCESS AUTHORIZATION*

"*SEC. 410. The measures instituted or regulations issued by the President pursuant to this title may operate summarily to deny, suspend, or revoke any individual's employment in a defense facility or access to classified information, provided that (1) he shall be notified in writing of the reasons for the action taken against him within thirty days from the time such action is taken, except that the furnishing of such statement of reasons may be postponed, from time to time, for good cause, but shall not be postponed for a period in excess of ninety days from the time such action is taken, and (2) such individual, if he so requests, shall be given a hearing thereon in accordance with applicable procedures set forth in section 411 of this title.*

"*HEARING PROCEDURES*

"*SEC. 411. (a) Except as provided in subsection (e) of this section, an individual's employment in any defense facility or access to classified information may not be finally*

denied, suspended, or revoked unless such individual (hereafter in this title referred to as 'applicant') has been given—

"(1) a written statement of reasons for the denial, suspension, or revocation stated as comprehensively and detailed as the national security permits;

"(2) an opportunity, after he has replied in writing within a reasonable time under oath or affirmation in specific detail to the statement of reasons, for a personal appearance at which time he may present evidence in his own behalf;

"(3) a reasonable time to prepare for the proceeding;

"(4) the opportunity to be represented by counsel; and

"(5) a written notice advising him of final action, which notice, if final action is adverse, shall specify either the finding has been for or against him with respect to each allegation in the statement of reasons.

"(b) The applicant shall be afforded an opportuinty to cross-examine persons who have made oral or written statements adverse to the applicant relating to a controverted issue except that any such statement may be received and considered without affording such opportunity if—

"(1) the head of the department supplying the statement certifies that the person who furnished the informa-

tion is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest; or

"(2) the head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in view of the level of clearance sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause determined by the head of the department to be good and sufficient.

Nothing contained in this title shall be deemed to support a claim by an applicant to inspect or have access to the investigative reports of any agency of the Government.

"(c) Wherever procedures under paragraphs (1) and

(2) of subsection (b) of this section are used, the applicant shall be given a summary of the information which shall be as comprehensive and detailed as national security permits, appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

"(d) Records compiled in the regular course of business or other physical evidence, other than investigative reports, may be received and considered—

"(1) without authenticating witnesses but subject to rebuttal, provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned with safeguarding defense facilities and classified information pursuant to this title; or

"(2) when relating to a controverted issue and which, because they are classified, may not be inspected by the applicant, provided that (A) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (B) the head of the department concerned or such designee has made a

determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (C) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant.

In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

"(e) Nothing contained in this title shall be deemed to limit or affect the responsibility and powers of the head of a department of Cabinet rank to deny, suspend, or revoke access to a classified military project or to classified information if the security of the Nation so requires when such head of the department personally determines that the procedures prescribed in sections 410 and 411 of this title cannot be invoked consistently with the national security, and such determination shall be conclusive. Such authority may not be delegated.

"TRAINING OF ADMINISTRATIVE PERSONNEL

"SEC. 412. Investigative personnel, screening or hearing officers, counsels, examiners, and members of boards, assigned

or authorized for the administration or execution of the regulations issued by the President pursuant to this title shall be specially trained and qualified for their duties as such, and shall be knowledgeable on the subject of the origin and history of Communist and other subversive organizations, domestic and foreign, their diversity and identification, leadership, organizational techniques, conflict doctrines, tactics, and strategy.

"REIMBURSEMENT FOR LOSS OF EARNINGS

"SEC. 413. The President may, in accordance with such regulations as he may prescribe, provide for the reimbursement of all or any part of an applicant's net loss of earnings resulting directly from the suspension, denial, or revocation of employment in any defense facility, or any facility to which classified information has been released, if such applicant, at the time of such suspension, denial, or revocation, was employed in any such facility and if, at a later time, it has been determined that (1) the applicant is eligible for such employment or access, and (2) after considering all of the facts and circumstances under which the suspension, denial, or revocation occurred, it is fair and equitable that the United States, rather than the applicant or his employer, bear the loss for which reimbursement is to be made. Reimbursement may not exceed the difference between the amount the applicant would have earned as an employee of the

same employer had he continued in the same position as that held at the time of suspension, denial, or revocation and his interim earnings during the period commencing on the date of suspension, denial, or revocation and ending with the date of giving notice to the applicant by regular first-class mail addressed to his last known address of his eligibility for employment or access authorization. Due regard shall be given to the duty of the applicant to minimize damages during the period of any such suspension, denial, or revocation, by reasonably seeking and accepting other employment for which he may be qualified.

"COMPULSORY PROCESS

"SEC. 414. (a) Under such regulations as the President my prescribe, the President (or his designee for such purpose) shall have power to issue and, in his discretion for good cause shown, may issue, process to compel witnesses to appear and testify or produce evidence at any designated place and at any stage of any inquiry, investigation, or proceeding entered upon pursuant to the provisions of this title. Any process so issued may run to any part of the United States and its possessions, including the Commonwealth of Puerto Rico. In any such inquiry, investigation, or proceeding, the applicant may be called by the Government to testify as a witness as of cross-examination. 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, documentary or otherwise, nor shall testimony or evidence, so compelled, nor any fact or information which may be discovered as a result of such testimony or evidence, be used as evidence in any criminal proceeding against him in any court; but no natural person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying. Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify or produce evidence in obedience to any process duly issued under this section, shall be fined not less than $500 nor more than $5,000, or imprisoned not more than two years, or both. Upon certification by the President (or his designee) concerning any such neglect, refusal, or failure by any person, to the United States attorney for any judicial district in which such person resides or is found, the United States attorney shall bring the matter before the grand jury for its action.

"(b) The fees and expenses of witnesses subpenaed or called by or on behalf of the applicant or any intervening or

interested party shall be borne by the applicant or such party excepting that the President may, in accordance with such regulations as he shall prescribe, provide that such fees and expenses shall, under certain equitable circumstances and in the interests of justice, be borne in whole or in part by the United States. Witnesses subpenaed or called to testify or produce evidence at any inquiry, investigation, or proceeding are authorized travel expenses and per diem as provided by law for witnesses in courts of the United States.

"JURISDICTION OF COURTS

"SEC. 415. (a) In any case where a person's employment in a defense facility, or access to classified information, has been denied, suspended, or revoked, pursuant to this title, or by reason of any agreement between such person's employer and an agency or officer of the United States responsible for the safeguarding of any such facility or information, or by reason of any action taken by such employer in concert with such agency or officer of the United States, no court of the United States shall have jurisdiction at any time to issue any restraining order or temporary or permanent injunction having the effect of granting or continuing such employment or access. No court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person adversely affected by the enforcement, execution, or application of the provisions of this title,

except after exhaustion of the administrative remedies authorized or provided pursuant to the provisions of this title.

"(b) The authority of the President under this title includes the right to seek in any Federal court a temporary or permanent injunction, restraining order, or other order against any facility, or the management thereof, or against any other person, to prevent the employment in or access to any defense facility or access to classified information by any individual whose employment in or access thereto has been suspended, denied, or revoked pursuant to the provisions of this title.

"FACILITIES IMPORTANT TO THE NATIONAL DEFENSE

"SEC. 416. With a view toward the maintenance of essential production and the security of the United States, the President shall develop and execute, with the advice and assistance of appropriate Federal agencies, and under such regulations as he may prescribe, programs and measures to protect facilities within the United States, and its territories and possessions, which are of importance to defense mobilization, defense production, and the essential civilian economy, against sabotage, espionage, acts of subversion, and other destructive acts and omissions. These programs and measures shall include—

"(1) the development and promulgation of standards of security to be applicable to the foregoing facilities

which shall as far as practicable accommodate differences in degrees and types of security required, different categories of facilities, different security ratings, and such other considerations as may be pertinent;

"(2) the development of security measures in consultation with the representatives of industry, trade associations, labor organizations, professional security associations, and other technically qualified persons; and

"(3) the furnishing of advice and assistance to the management or the owner of such facility with respect to administering and executing a security program therefor.

"ADMINISTRATIVE PROCEDURE ACT

"SEC. 417. The Administrative Procedure Act, as amended (5 U.S.C. 1001 et seq.), shall not apply to the use or exercise of any authority granted by this title.

"SEPARABILITY OF PROVISIONS

"SEC. 418. If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby."

(b) Paragraph (7) of section 3 of such Act is amended to read as follows:

"(7) The term 'facility' means any manufacturing,

producing, or service establishment, enterprise, or legal entity, any plant, factory, industry, public utility, mine, laboratory, educational institution, research organization, railroad, airport, pier, waterfront installation, vessel, aircraft, vehicle, or any part, division, department, or activity of any of the foregoing."

(c) Paragraph (17) of section 3 of such Act is amended to read as follows:

"(17) A person, though not a member, shall be deemed 'affiliated' with or an 'affiliate' of an organization when there exists between such person and the organization such a close working alliance or association that the conclusion may reasonably be drawn that there is a mutual understanding or recognition between such person and organization that the organization can rely and depend upon such person to cooperate with it and to work for its benefit for an indefinite future time. A practice of giving or loaning money or any other thing of value, or of providing security for the repayment of any such loan, to any organization, other than by a commercial bank or lending institution in the usual course of business, shall create a rebuttable presumption of affiliation with such organization. Nothing in this paragraph shall be construed as an exclusive definition of affiliation."

SEC. 2. (a) Section 5 of the Internal Security Act of 1950 is amended to read as follows:

"EMPLOYMENT OF MEMBERS OF COMMUNIST-ACTION ORGANIZATIONS

"SEC. 5. (a) When there is in effect a final order of the Board determining any organization to be a Communist-action organization it shall be unlawful for any purposive member of such organization, with knowledge or notice of such final order of the Board—

"(1) to hold any nonelective office or employment under the United States; or

"(2) knowingly to be employed in the performance of any classified project, production, or service in any facility; or knowingly to be employed in any position, place, or area of employment determined by the Secretary of Defense to be sensitive pursuant to the provisions of section 403 of this Act; or

"(3) to hold employment as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, or organizer with any labor organization, as that term is defined in section 2(5) of the National Labor Management Relations Act, 1947, as amended (29 U.S.C. 152), or to represent any employer in any manner of proceeding arising or pending under that Act.

"(b) For the purposes of this section—

"(1) The term 'purposive member' means any mem-

ber of a Communist-action organization who (A) has knowledge or notice of the purpose of the world Communist movement as set forth in section 2 of this Act, (B) has knowledge or notice that such organization is substantially directed, dominated, or controlled by a foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this Act, and operates primarily to advance the objectives of the said world Communist movement, and (C) having such knowledge or notice has remained or becomes a member of such Communist-action organization.

"(2) The term 'classified' has the meaning assigned to such term by paragraph (3) of section 402 of this Act.

"(c) Upon the trial of any indictment against any member of a Communist-action organization for a violation of the provisions of subsection (a) of this section, it shall be sufficient evidence, prima facie, that such person has knowledge or notice (1) of the purpose of the world Communist movement as set forth in section 2 of this Act, (2) that such organization is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this Act, and operates primarily to advance the objectives of said world Communist movement, upon due

proof that such person has received a copy of sections 2 and 3 of this Act and a statement, oral or written, informing him that such organization has been determined by final order of the Subversive Activities Control Board to be a Communist-action organization."

(b) Subsection (k) of section 13 of such Act is amended to read as follows:

"(k) When any order of the Board issued under subsection (g), (h), (i), or (j) of this section becomes final under the provisions of section 14(b) of this title, the Board shall publish in the Federal Register the fact that such order has become final."

SEC. 3. Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. 191), is amended as follows:

(1) The last paragraph of such section is amended by striking out the period at the end of subparagraph (b) and inserting in lieu thereof a comma and the following: "and with authority for such purposes to deny to any person, or to revoke or suspend any person's authorization for access to or employment on such vessels (foreign or domestic), harbors, ports, and waterfront facilities, pursuant to which the President may extend and apply, to the extent he deems applicable, the procedures, standards, provisions, and regulations authorized and provided by title IV of the Internal Security Act of 1950."

(2) At the end of such section add the following new paragraph:

"In any case where a person's employment or access with respect to any such vessel, harbor, port, or waterfront facility has been denied, suspended, or revoked, pursuant to the preceding paragraph, or by reason of any agrement between such person's employer and an agency or officer of the United States responsible for the safeguarding of the foregoing vessels, harbors, ports, and facilities, or by reason of any action taken by such employer in concert with such agency or officer of the United States, no court of the United States shall have jurisdiction at any time to issue any restraining order or temporary or permanent injunction having the effect of granting or continuing such employment or access. No court of the United States shall have jurisdiction of any action or proceeding on the complaint of any person adversely affected by the enforcement, execution, or application of the provisions of the preceding paragraph, except after exhaustion of the administrative remedies authorized or provided under such preceding paragraph."

Certain questions were propounded to the Department of Defense with respect to the proposed revision, and the reply follows:

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

ADMINISTRATION

25 JUN 1968

Mr. Chester D. Smith
General Counsel
House of Representatives
Committee on Un-American Activities
Washington, D. C. 20515

Dear Mr. Smith:

This is in reply to your letter of June 19, 1968, requesting information for incorporation in the Committee report to accompany H.R. 15626. For convenience in identifying this information, I have restated each question before the answer.

1. Question: The overall number of clearance requests under the Industrial Security Clearance Program for the years 1966-67. (If the statistics in this aspect were readily available only for 1967 that would suffice for my purposes.)

   Answer: Figures for the calendar year 1966 are not readily available; therefore, I have limited the answer to calendar year 1967. The number of requests received for Government-granted clearances were 212,413; the number of contractor-granted clearances was approximately 301,773, making a total of approximately 514,186.

2. Question: The number of clearances, (1966-67) in all categories, granted involving no derogatory information or question relating to granting of clearances.

   Answer: Again, as in my answer to question 1, above, the calendar year 1966 figures are not readily available and I have limited my answer to calendar year 1967. The total was approximately 484,310.

3. Question: The number of cases requiring adjudicative actions because of the presence of information raising a question pertaining to clearance of an individual.

Answer:

Number of clearance actions containing some adverse information (CY 1967)	29,876
Adverse information of a significant nature forwarded by DISCO to the national level for formal adjudication	715

4. Question: The number of cases adjudicated at the national level and the statistical breakdown as to how many were finally cleared and how many denied clearances.

Answer:

Total number of cases received for formal adjudication (CY 1967)		715
Total number of cases actually adjudicated on a formal basis by ISCRO (CY 1967)		577
Number of clearances granted	290	
Number denied a clearance	129	
Number of cases not processed to a conclusion for other administrative reasons, including but not limited to the following: employment was terminated; applicant refused to appear for a hearing; applicant refused psychiatric examination determined to be pertinent, etc. (A statistical breakdown of this 158 figure is not available).	158	

5. Question: The categorical breakdown of denials, such as unsuitability, hostage-type, homo-type and so on, rate of percentage thereof, such as hostage --.

Answer: As applied to the 577 formal adjudications completed.

Category	No. 129	% 100.0
Criminal Conduct	39	30.2
Sexual Perversion	34	26.4
Psychiatric	31	24.0
Falsification	9	7.0
Intoxication	7	5.4
Financial	4	3.1
Security Violation	3	2.3
Subversion/Association	2	1.6

In response to your question pertaining to the Industrial Defense Facilities Program, there are approximately 3500 facilities presently designated as "defense facilities." Of this number, 20% or 700 are cleared facilities with prime contracts. It is estimated that an additional 10% or 350 have unclassified prime or subcontracts. The balance or approximately 2450 normally have no contractual relationship with the Department of Defense.

With respect to H.R. 15626, and your questions pertaining thereto:

1. Question: Would the Industrial Security Clearance Program be materially expanded over what you now have?

Answer: There would be no expansion in the number of facilities or personnel clearances included in the Industrial Security Program, as distinguished from the Industrial Defense Program.

2. Question: With regard to the Defense Facilities Program, would our present bill reduce or increase this program?

Answer: The revised draft of the bill would significantly decrease the number of facilities designated under the Industrial Defense

Program, but would significantly increase the number of individuals subject to security screening. At present there are an estimated 2450 "defense facilities" with which the DoD normally does not have a contractual relationship, leaving an estimated total of 1050 "defense facilities" in which the DoD has a contractual relationship.

As a separate matter, in compliance with Mr. Culver's request, the following information is submitted for inclusion in the transcript of testimony in the appropriate place:

"Mr. Culver. Could you tell me, in numbers in the past fiscal year, how many firms have moved off the standby status into a status where by they would not fall under the sweep of this particular legislation?"

Answer: Mr. Haas: Six.

"Mr. Culver. I would also be interested in the number with regard to the active designation, you know, defense work status, where you have made a change, where they have been on a top secret project one month or producing something of a strategic nature."

Answer: Mr. Haas: In the last fiscal year there were approximately 150 plants deleted from the active list. About the same number was added.

I trust that this information will be of assistance to you. Please advise if you need further information.

Sincerely yours,

Joseph J. Liebling
Director for Security Policy

INDEX

INDIVIDUALS

A

B

C

D

ORGANIZATIONS

M

N

P

U

PUBLICATIONS

○