

OCTOBER TERM, 1958.

Opinion of the Court.

360 U.S.

the head of the disseminating agency, even though such person or agency may have been solely or partly responsible for its production."

The second, Exec. Order No. 10501, 18 Fed. Reg. 7049, which revoked Exec. Order No. 10290, is entitled "Safeguarding Official Information In The Interests Of The Defense Of The United States" and provides in relevant part:

"Sec. 7. *Accountability and Dissemination.*

"(b) *Dissemination Outside the Executive Branch.* Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production."

Clearly, neither of these orders empowers any executive agency to fashion security programs whereby persons are deprived of their present civilian employment and of the opportunity of continued activity in their chosen professions without being accorded the chance to challenge effectively the evidence and testimony upon which an adverse security determination might rest.²⁶

Turning to the legislative enactments which might be deemed as delegating authority to the Department of Defense to fashion programs under which persons may be

²⁶ No better, for this purpose, is Exec. Order No. 8972, 6 Fed. Reg. 6420, filed on December 12, 1941, which empowered the Secretary of War "to establish and maintain military guards and patrols, and to take other appropriate measures, to protect from injury or destruction national-defense material, national-defense premises, and national-defense utilities" Even if that order is relevant authority for programs created after World War II, which is doubtful, it provides no specific authorization for non-confrontation hearings.