

GREENE v. McELROY.

Opinion of the Court.

seriously restrained in their employment opportunities through a denial of clearance without the safeguards of cross-examination and confrontation, we note the Government's own assertion, made in its brief, that "[w]ith petitioner's contention that the Industrial Security Program is not explicitly authorized by statute we may readily agree"

The first proffered statute is the National Security Act of 1947, as amended, 5 U. S. C. § 171 *et seq.* That Act created the Department of Defense and gave to the Secretary of Defense and the Secretaries of the armed services the authority to administer their departments. Nowhere in the Act, or its amendments, is there found specific authority to create a clearance program similar to the one now in effect.

Another Act cited by respondents is the Armed Service Procurement Act of 1947, as amended. It provides in 10 U. S. C. § 2304 that:

"(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising. However, the head of an agency may negotiate such a purchase or contract, if—

"(12) the purchase or contract is for property or services whose procurement he determines should not be publicly disclosed because of their character, ingredients, or components."

It further provides in 10 U. S. C. § 2306:

"(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to this limitation and subject to subsections (b)–(e), the head of an agency may, in negotiating contracts under section 2304 of this title, make any kind of contract that he considers will promote the best interests of the United States."