

GREENE v. McELROY.

CLARK, J., dissenting.

In 1942, under the authority of that Executive Order, the Secretary of War undertook the formulation and execution of a program of industrial security.* The procedures in operation from 1942 and 1943 are outlined in a 1946 publication of the Department of War entitled "Suspension of Subversives from Privately Operated Facilities of Importance to the Security of the Nation's Army and Navy Programs."† Interestingly enough, the instructions were issued in time of peace, did not give the suspect a hearing, and were signed by the then Chief of Staff—now President—Dwight D. Eisenhower.

In 1947, the National Security Act, 61 Stat. 495, effected a reorganization of the military departments and placed the Secretary of Defense at the head of the National Military Establishment. Section 305 (a) of the Act transferred to the new organization "[a]ll laws, orders, regulations, and other actions applicable with respect to any function . . . transferred under this Act" Section 213 created a Munitions Board

* Report of the Commission on Government Security (1957), S. Doc. No. 64, 85th Cong., 1st Sess. 237, n. 7.

† War Department Pamphlet No. 32-4 (1946) provided both criteria and procedures for removal of subversives. The basic criterion was "good cause to suspect an employee of subversive activity . . .," the latter being defined as "sabotage, espionage, or any other wilful activity intended to disrupt the national defense program." The basic procedure for removal was set out in ¶ 10:

"10. When adequate investigation has revealed that there is good cause to suspect an employee of subversive activity on a national defense project of importance to Army or Navy procurement, the vital success of the project, as well as the security of the loyal employees, may require that the Army or Navy, without revealing the nature or source of its evidence, request the immediate removal of such individual from the project. To this end the cooperation of the organizations representative of organized labor is solicited for the following program: . . ."

Clearly this procedure did not anticipate confrontation or cross-examination.