

AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950 1655

at any time he chooses to answer the questions which he declined to answer at his interview. Accordingly, defendants argue that Greene does not require specific authorization by the President or Congress for the Department of Defense to have included in Directive 5220.6 "normally accepted administrative practices" which permit suspension of a security clearance without a hearing and related procedural rights when the suspension does not amount to a "final" revocation.

In formulating the Greene test, the Supreme Court stressed the effect on the individual's livelihood of the challenged administrative action. Greene v. McElroy, *supra*, at 500, 502, 506-7, 508; Garrott v. United States, 340 F.2d 615, 619 (Ct. Cl. 1965). Here, it is undisputed that under Section V. B., once a security clearance has been suspended, there is no further administrative or judicial remedy to challenge the suspension. Further processing of the case is discontinued. Defendants argue that the suspension remains in effect and further processing is discontinued only for as long as plaintiff refuses to answer the propounded questions. The Court is of the opinion, however, that this remedy is illusory. In effect, it requires plaintiff to submit to procedures which he believes are unauthorized and unconstitutional, thus rendering moot his objections to the procedures, in order to obtain a hearing with the procedural safeguards of Sections 3, 4 and 5 of Executive Order 10865.^{2/} In these

^{2/} Executive Order 10865 (25 Fed. Reg. 1583), entitled "Safeguarding Classified Information Within Industry", sets up comprehensive procedures to provide the "maximum possible safeguards" to protect the interests of a holder of a security clearance. It was issued in 1960 by President Eisenhower after Greene v. McElroy. It will be discussed in more detail elsewhere in this memorandum.