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STATE DEPARTMENT SECURITY—1963—65

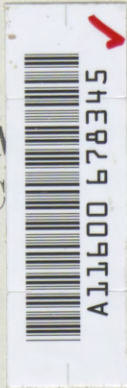
THE OTEPKA CASE—VI

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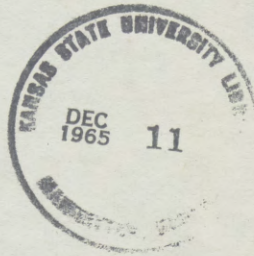
HEARINGS
BEFORE THE
COMMITTEE TO INVESTIGATE THE
OPERATION OF THE INTERNAL SECURITY
OTHER INTERNAL SECURITY LAWS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

PART 7

Printed for the use of the Committee on the Judiciary



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SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS

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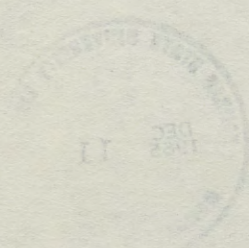
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J. G. SOURWINE, *Chief Counsel*
BENJAMIN MANDEL, *Director of Research*

¹ Succeeded Olin D. Johnston, deceased.

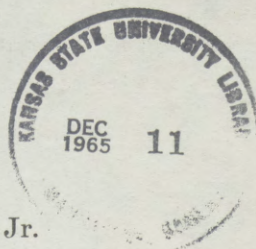


RESOLUTIONS

Resolved, by the Internal Security Subcommittee of the Senate Committee on the Judiciary, That testimony heretofore taken by the subcommittee in executive session from the witnesses named below, as part of the subcommittee's investigation of security in the State Department, and not previously made public, is hereby authorized to be released from the injunction of secrecy, printed, and made public.

Frank L. Auerbach
David I. Belisle
William O. Boswell
Edwin A. Burkhardt
Abram Chayes
William J. Crockett
Victor H. Dikeos
Allyn C. Donaldson
Frederick G. Dutton
Thomas Ehrlich
Wilson C. Flake
Richard A. Frank
Col. George W. French, Jr.
Henri G. Grignon
Elmer D. Hill
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Stanley E. Holden
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Frances G. Knight
Eugene Krizek
John S. Leahy, Jr.

Seymour Levenson
Raymond A. Loughton
J. Edward Lyerly
Robert J. McCarthy
Charles A. Mace
Allen B. Moreland
Lawson A. Moyer, Jr.
John R. Norpel, Jr.
Otto F. Otepka
George James Pasquale
Richard I. Phillips
John F. Reilly
Joseph E. Rosetti
Hon. Dean Rusk
Abba P. Schwartz
Terence J. Shea
Charles Shinkwin
Frederick W. Traband, Jr.
Thomas Valenza
William Wieland
Hessel E. Yntema, Jr.



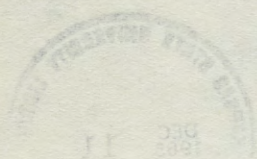
JAMES O. EASTLAND, *Chairman.*
THOMAS J. DODD, *Vice Chairman.*
OLIN D. JOHNSTON.
JOHN L. McCLELLAN.
SAM J. ERVIN, Jr.
ROMAN L. HRUSKA.
EVERETT MCKINLEY DIRKSEN.
KENNETH B. KEATING.
HUGH SCOTT.

Approved October 28, 1964.

Resolved, by the Internal Security Subcommittee of the Senate Committee on the Judiciary, That testimony taken by the subcommittee in executive session from William J. Crockett on May 4, 1965, as part of the subcommittee's investigation of security in the State Department, and not previously made public, is hereby authorized to be released from the injunction of secrecy, printed, and made public.

JAMES O. EASTLAND, *Chairman.*
THOMAS J. DODD, *Vice Chairman.*
JOHN L. McCLELLAN.
SAM J. ERVIN, Jr.
BIRCH BAYH.
GEORGE A. SMATHERS.
ROMAN L. HRUSKA.
EVERETT MCKINLEY DIRKSEN.
HUGH SCOTT.

Approved July 6, 1965.



FOREWORD

This is part 7 of an extensive series of hearings held during 1963, 1964, and part of 1965 on "State Department Security." The subject matter of these hearings included various subtopics, necessarily intertwined. There are a number of clearly defined areas of testimony which can be presented separately, and other instances in which testimony covering two or more subjects can be combined with satisfactory coherency. Because of the great volume of this hearing record, covering nearly 2½ years, it has been decided to organize the testimony for release by subjects or areas.

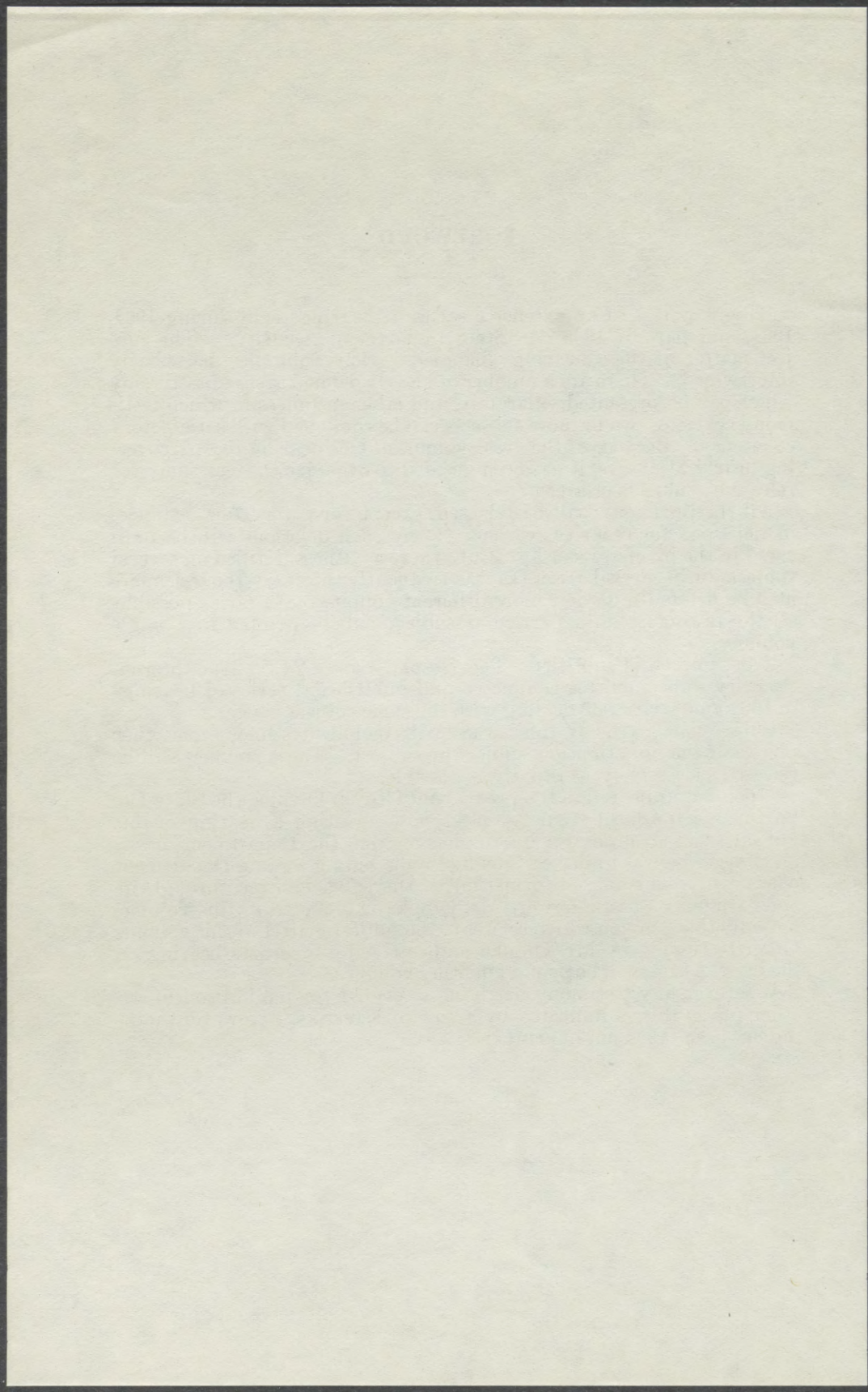
All the testimony will be released, except for a very few instances of deletions for security reasons. (Any such deletions will be indicated in the printed record.) But, where a witness testified on several subjects or in several areas (as was frequently the case), the testimony may be printed in two or more different volumes. So far as possible, all the testimony on a particular subject will be printed in a single volume.

This volume is subtitled "The Otepka Case—VI." The Internal Security Subcommittee conducted and published a series of hearings in 1961 and early 1962 dealing with the same subject matter.

Subsequent parts of this series will include testimony on other phases of the investigation, subject by subject. These volumes will be released successively, as rapidly as possible.

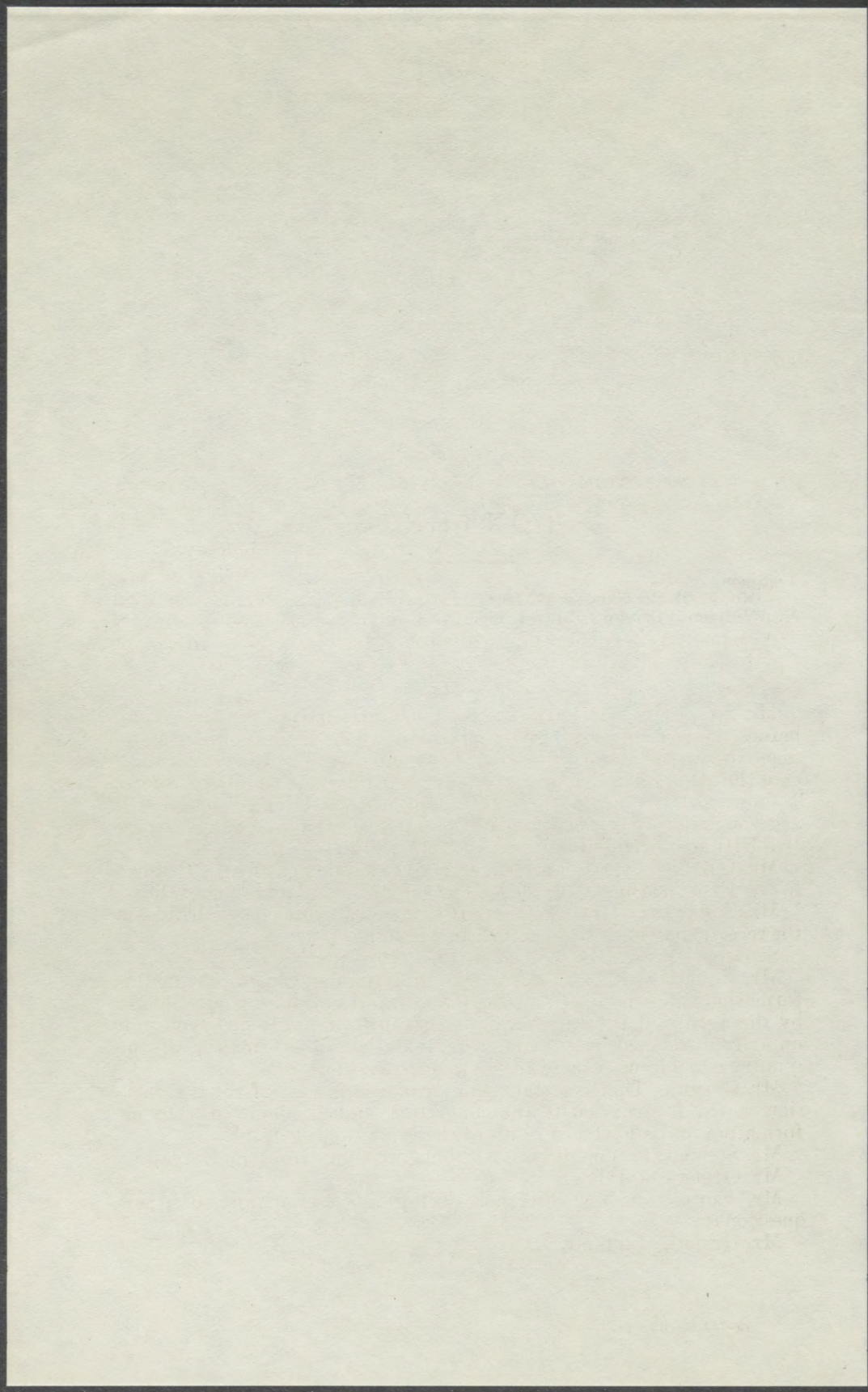
Much has appeared in the press about Otto F. Otepka, the State Department's top-level security officer now awaiting a hearing on his appeal from an order for his discharge from the Department, based on charges he was guilty of "conduct unbecoming a State Department officer" in furnishing information to the subcommittee through its chief counsel. Testimony by Mr. Otepka is included in this volume, but only that portion which relates to the subject matter of this volume. Other testimony by Mr. Otepka and testimony of others bearing on the Otepka case, will be printed in other volumes.

Wherever any testimony has been excerpted for publication in another place, this is indicated by a row of asterisks. However, nothing has been taken out of context.



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STATE DEPARTMENT SECURITY—1963-65

The Otepka Case—VI

TESTIMONY OF OTTO F. OTEPKA, CHIEF, DIVISION OF EVALUATIONS,
OFFICE OF SECURITY, DEPARTMENT OF STATE

MONDAY, AUGUST 17, 1964

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE THE
ADMINISTRATION OF THE INTERNAL SECURITY ACT
AND OTHER INTERNAL SECURITY LAWS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:55 a.m., in room 2300,
New Senate Office Building, Senator Roman L. Hruska presiding.
Also present: J. G. Sourwine, chief counsel.
(Mr. Otepka was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Otepka, during the early part of your testimony before the committee, you mentioned having made a voluntary statement to two agents of the FBI. The committee records do not indicate that this statement was ever supplied for the committee record. I show you what purports to be a copy of this statement and I will ask you if in fact this is a copy of the statement that you made to these two FBI agents under date of August 15, 1963.

Mr. OTEPKA. This is a carbon copy of the statement which I signed in the FBI on August 16, 1963. The statement is dated August 15.

Mr. SOURWINE. Mr. Chairman, if it turns out this is not already in the record, may it go in the record at this point?

Senator HRUSKA. It will go in the record at this point.

Mr. SOURWINE. Mr. Otepka, was this a statement embracing information which had been elicited from you through long questioning by the agents of the Bureau, or is this information which you voluntarily furnished when you were told the subject matter of the inquiry which caused these agents to question you?

Mr. OTEPKA. That is a statement encompassing all of the information which I furnished to the committee, and I submitted such information to the FBI as a result of their questioning of me.

Mr. SOURWINE. You did not withhold anything from the Bureau?

Mr. OTEPKA. I did not.

Mr. SOURWINE. You did not decline to answer any of their questions?

Mr. OTEPKA. I did not.

Mr. SOURWINE. You cooperated fully?

Mr. OTEPKA. Yes.

Mr. SOURWINE. From that is it correct to assume that you did not feel that anything you had done in giving this committee information involved any violation of the law or of your obligations to the Department?

Mr. OTEPKA. No, I did not.

Mr. SOURWINE. That is correct, you say?

Mr. OTEPKA. That is correct, sir.

* * * * *

Mr. SOURWINE. Mr. Otepka, does your memory serve on the question of whether the text of the letter of charges against you under date of November 5, 1963, by the State Department, has been admitted to our record?

Mr. OTEPKA. I do not believe it has, sir.

Mr. SOURWINE. I show you a photocopy of what purports to be that letter of charges, and I will ask you if you can identify it as such.

Mr. OTEPKA. Sir, this is not the letter of charges. This is a decision by the Department sustaining the charges against me after I had submitted my answer.

Mr. SOURWINE. I stand corrected, Mr. Otepka. Mr. Chairman, may this letter go in the record, and may we have from you, Mr. Otepka, a copy of the letter of charges if you have one?

Mr. OTEPKA. I shall be very happy to submit the original of the letter of charges together with all the appendages to that letter.

Mr. SOURWINE. Will you do that at the time you correct your testimony—

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE (continuing)—or do you have those with you now and can you furnish them now?

Mr. OTEPKA. I can furnish this now.

Mr. SOURWINE. You cannot?

Mr. OTEPKA. I can.

Mr. SOURWINE. You can. Will you do so?

Mr. OTEPKA. Very happy to.

Mr. SOURWINE. Are these original records which you want to retain?

Mr. OTEPKA. I do want to retain these, of—

Mr. SOURWINE. May we borrow them long enough to make photocopies for our records?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. And may these be inserted in the record at this point, Mr. Chairman?

Senator HRUSKA. It is so ordered.

* * * * *

Mr. OTEPKA. I offer them for the record, and may I point out, sir, that particularly the one exhibit there which also purports to be a copy of the statement I gave to the FBI on August 15 contains marginal notations. So therefore the other copy which I offered into the record should be compared with this copy.

Mr. SOURWINE. Well, do you have any objection to having these marginal notations included in the record or—

Mr. OTEPKA. No, I do not. They are the Department's notations, not mine.

Mr. SOURWINE. All right. May they be included, Mr. Chairman.

Senator HRUSKA. They may go in.

(EDITOR'S NOTE.—Following the production from his files, by Mr. Otepka, of the document ordered into the record at this point, another copy of the same statement was ordered into the record. This second copy had been supplied to Mr. Otepka by the State Department with its notice of proposed action under date of September 23, 1963. This copy supplied by the State Department contained marginal notes, which Mr. Otepka testified he did not make and which appear to be the result of an analysis within the Department of the classification status of documents listed. Since the text of the statement furnished originally by Mr. Otepka is the same as the text of the statement furnished by the Department, which appears below. Mr. Otepka's copy of the document is not printed here.)

(The documents referred to read as follows:)

DEPARTMENT OF STATE,
Washington, September 23, 1963.

Mr. OTTO F. OTEPKA,
*Office of Security,
Department of State.*

DEAR MR. OTEPKA: This is a notice of proposed adverse action in accordance with the regulations of the Civil Service Commission.

You are hereby notified that it is proposed to remove you from your appointment with the Department of State, as Supervisory Personnel Security Specialist, GS-15, in the Office of the Deputy Assistant Secretary for Security, thirty (30) days from the date of this letter.

On August 16, 1963, at Washington, D.C., you executed a voluntary sworn statement, dated August 15, 1963, before Carl E. Graham and Robert C. Byrnes, Special Agents of the Federal Bureau of Investigation. A copy of this statement is attached as Exhibit A. Information contained therein will be referred to specifically in some of the charges listed below.

Furthermore, during the period March 13, 1963, to June 18, 1963, Mr. John F. Reilly, Deputy Assistant Secretary for Security, caused the following procedures to be instituted:

(a) Mrs. Joyce M. Schmelzer, secretary to Mr. Frederick W. Traband, Supervisory Personnel Security Specialist, periodically observed your classified trash bag (hereinafter referred to as "burn bag") which was in the possession of your secretary, Mrs. Eunice Powers. Mrs. Schmelzer and Mrs. Powers were located in the same room and across from one another.

(b) When Mrs. Schmelzer saw that your burn bag was full, she would ask Mrs. Powers if she wanted her (Mrs. Schmelzer) to take your burn bag to a Department Mail Room with Mr. Traband's.

(c) When Mrs. Powers accepted Mrs. Schmelzer's offer, Mrs. Schmelzer would inform Mr. Traband of this fact. Mr. Traband would then call Mr. Rosetti, Supervisory Security Specialist, or Mr. Shea, Supervisory General Investigator, if Mr. Rosetti was not available, and inform him that your burn bag was being delivered to the Mail Room.

(d) While carrying your burn bag and Mr. Traband's to the Mail Room, Mrs. Schmelzer would mark your burn bag with a red "X" (with a crayon or pencil mark) and deposit both burn bags in the Mail Room, Room 3437.

(e) Mr. Rosetti or Mr. Shea, and on one occasion Mr. Robert McCarthy, Supervisory Security Specialist, would obtain your burn bag from the Mail Room within five to ten minutes after Mrs. Schmelzer left it there and would turn it over to Mr. Reilly or Mr. Belisle (Special Assistant to the Deputy Assistant Secretary for Security), in their office, Room 3811. (On one occasion when Mrs. Powers herself took your burn bag to the Mail Room, Messrs. Rosetti and Shea picked it up from the Mail Room immediately after Mrs. Powers deposited it there.) Your burn bag was then transferred to Mr. Reilly's brief case.

(f) Mr. Reilly's brief case was then taken by Mr. Shea to Room 1410, 2612A or 3811 for examination of its contents. Your burn bag was inspected by Mr. Shea either alone or with Mr. Belisle and/or Mr. Rosetti.

(g) The contents of your burn bags were carefully examined. All carbon paper or copies were read by turning the carbon side toward the light thus allowing the paper to be read from the back. Torn pieces of paper were grouped together and then pieced together to make readable documents. One-time typewriter ribbons were also read on occasion.

During the course of inspecting the contents of your burn bag on May 29, 1963, a typewriter ribbon was retrieved. This ribbon has been read and the contents are reproduced as Exhibit B. Information contained therein will be referred to specifically in some of the charges listed below.

(1) *You have conducted yourself in a manner unbecoming an officer of the Department of State.*

Specifically: You furnished a copy of a classified memorandum concerning the processing of appointments of members of the Advisory Committee on International Organization Staffing to a person outside of the Department without authority and in violation of the Presidential Directive of March 13, 1948 (13 Fed. Reg. 1359). This Directive provides:

"* * * all reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies), shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business."

You were reminded of the prohibition contained in this Directive on March 22, 1963, when you received and noted a copy of a letter from Mr. Dutton, Assistant Secretary of State, to Senator Eastland, Chairman of the Senate Committee on the Judiciary, dated March 20, 1963. A copy of this letter, indicating that you "noted" it, is enclosed as Exhibit C.

In your sworn statement, referred to above and enclosed as Exhibit A, you stated on pages 7 and 8 that you gave a copy of a classified memorandum entitled "Francis O. Wilcox, Arthur Larson, Lawrence Finkelstein, Marshall D. Shulman, Andrew Cordier, Ernest Gross, Harding Bancroft, Sol Linowitz", to Mr. J. G. Sourwine, Chief Counsel, United States Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, of the Committee on the Judiciary. This memorandum concerns "the loyalty of employees or prospective employees" of the Department within the meaning of the Presidential Directive of March 13, 1948.

This is a breach of the standard of conduct expected of an officer of the Department of State.

(2) *You have conducted yourself in a manner unbecoming an officer of the Department of State.*

Specifically: You furnished a copy of a classified memorandum concerning the processing of appointments of members of the Advisory Committee on International Organizations Staffing to a person outside of the Department without authority and in violation of the Presidential Directive of March 13, 1948 (13 Fed. Reg. 1359). This Directive provides:

"* * * all reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies), shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business."

You were reminded of the prohibition contained in this Directive on March 22, 1963, when you received and noted a copy of a letter from Mr. Dutton, to Senator Eastland, dated March 20, 1963. A copy of this letter, indicating that you "noted" it, is enclosed as Exhibit C.

In your sworn statement, referred to above and enclosed as Exhibit A, you stated on page 9 that you gave a copy of a classified memorandum entitled "Processing of Appointments of Members of the Advisory Committee on International Organizations Staffing" to Mr. J. G. Sourwine. This memorandum concerns "the loyalty of employees or prospective employees" of the Department within the meaning of the Presidential Directive of March 13, 1948.

This is a breach of the standard of conduct expected of an officer of the Department of State.

(3) *You have conducted yourself in a manner unbecoming an officer of the Department of State.*

Specifically: You furnished a copy of an investigative report concerning a prospective employee of the Department to a person outside of the Department without authority and in violation of the Presidential Directive of March 13, 1948 (13 Fed. Reg. 1359). This Directive provides:

"* * * all reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies),

shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business."

You were reminded of the prohibition contained in this Directive on March 22, 1963, when you received and noted a copy of a letter from Mr. Dutton, to Senator Eastland, dated March 20, 1963. A copy of this letter, indicating that you "noted" it, is enclosed as Exhibit C.

In your sworn statement, referred to above and enclosed as Exhibit A, you stated on page 10 that you gave a copy of an investigative report dated May 27, 1960, to Mr. J. G. Sourwine, concerning "Joan Mae Fogltanz". This report concerns "the loyalty of employees or prospective employees" of the Department within the meaning of the Presidential Directive of March 13, 1948.

This is a breach of the standard of conduct expected of an office of the Department of State.

(4) *You have been responsible for the declassification of a classified document containing classified information without following the procedures set forth in Volume 5, Section 1970, et seq., of the Department's Foreign Affairs Manual as supplemented by FAMC 102, dated January 30, 1963.* This document, which was classified CONFIDENTIAL, was addressed to Mr. McGeorge Bundy, the White House, and was signed by Mr. William H. Brubeck, Special Assistant to the Secretary and Executive Secretary of the Department.

Specifically: On June 18, 1963, the xeroxed copies of the tops and bottoms of the pages of the aforementioned document were retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms had been cut from a xeroxed copy of the Brubeck document and have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a copy of a document declassified that copy of the document. Exhibit D is a statement from Messrs. Belisle, Rosetti, and Shea, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(5) *You have been responsible for the mutilation of a classified document in violation of 18 U.S.C. 2071, which provides:*

"(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 795.)"

This document, which was classified CONFIDENTIAL, was addressed to Mr. McGeorge Bundy, the White House, and was signed by Mr. William H. Brubeck.

Specifically: On June 18, 1963, the xeroxed copies of the tops and bottoms of the pages of the aforementioned document were retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms had been cut from a xeroxed copy of the Brubeck document and have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a document "mutilates" that document within the meaning of 18 U.S.C. 2071. Exhibit D is a statement from Messrs. Belisle, Rosetti, and Shea, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(6) *You have been responsible for the declassification of a classified document containing classified information without following the procedures set forth in Volume 5, Section 1970, et seq. of the Department's Foreign Affairs Manual as supplemented by FAMC 102, dated January 30, 1963.* This document, which was classified CONFIDENTIAL, was addressed to SY—Mr. Belisle from SY/EX—Mr. John Noonan, Supervisory Security Specialist, and was on the subject "Security Meeting".

Specifically: On June 18, 1963, a thermofaxed copy of the tops and bottoms of the pages of the aforementioned document was retrieved from your burn bag.

This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms had been cut from a thermofaxed copy of the document and they have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a copy of a document declassified that copy of the document. Exhibit D is a statement from Messrs. Shea, Belisle and Rosetti, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(7) *You have been responsible for the mutilation of a classified document in violation of 18 U.S.C. 2071, which provides:*

"(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 795.)"

This document, which was classified CONFIDENTIAL, was addressed to SY—Mr. Belisle from SY/EX—Mr. John Noonan, and was on the subject "Security Meeting".

Specifically: On June 18, 1963, a thermofaxed copy of the tops and bottoms of the pages of the aforementioned document was retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms had been cut from a thermofaxed copy of the document and they have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a document "mutilates" that document within the meaning of 18 U.S.C. 2071. Exhibit D is a statement from Messrs. Shea, Belisle and Rosetti, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(8) *You have been responsible for the declassification of a classified document containing classified information without following the procedures set forth in Volume 5, Section 1970, et seq. of the Department's Foreign Affairs Manual as supplemented by FAMC 102, dated January 30, 1963. This document, which was classified CONFIDENTIAL, was addressed to you from Messrs. Traband and Levy (Supervisory Personnel Security Specialist), and was on the subject "SY Evaluative Services to ARA and OIA".*

Specifically: On June 18, 1963, a xeroxed copy of the tops and bottoms of the pages of the aforementioned document was retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms had been cut from a xeroxed copy of the subject document and have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a copy of a document, declassified that copy of the document. Exhibit D is a statement from Messrs. Shea, Belisle and Rosetti, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(9) *You have been responsible for the mutilation of a classified document in violation of 18 U.S.C. 2071, which provides:*

"(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both;

and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 795.)"

This document, which was classified CONFIDENTIAL, was addressed to you from Messrs. Traband and Levy, and was on the subject "SY Evaluative Services to ARA and OIA".

Specifically: On June 18, 1963, a xeroxed copy of the tops and bottoms of the pages of the aforementioned document was retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms had been cut from a xeroxed copy of the subject document and have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a document "mutilates" that document within the meaning of 18 U.S.C. 2071. Exhibit D is a statement from Messrs. Shea, Belisle and Rosetti attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(10) *You have been responsible for the declassification of a classified document containing classified information without following the procedures set forth in volume 5, Section 1970, et seq. of the Department's Foreign Affairs Manual as supplemented by FAMC 102, dated January 30, 1963.* This document, which was classified CONFIDENTIAL, was drafted by ARA/RPA:JMBarta (International Relations Officer), and concerned the procedure for reviewing and disposing of adverse information on employees of International Organizations dealing with Inter-American Affairs.

Specifically: On June 18, 1963, a xeroxed copy of the tops and bottoms of the pages of the aforementioned document was retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms which were cut from a xeroxed copy of the Barta document, have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a copy of a document declassified that copy of the document. Exhibit D is a statement from Messrs. Shea, Belisle and Rosetti, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(11) *You have been responsible for the mutilation of a classified document in violation of 18 U.S.C. 2071, which provides:*

"(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

"(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 795.)"

This document, which was classified CONFIDENTIAL, was drafted by ARA/RPA:JMBarta, and concerned the procedure for reviewing and disposing of adverse information on employees of International Organizations dealing with Inter-American Affairs.

Specifically: On June 18, 1963, a xeroxed copy of the tops and bottoms of the pages of the aforementioned document was retrieved from your burn bag. This burn bag was obtained from the Mail Room in accordance with the procedure outlined above. These tops and bottoms which were cut from a xeroxed copy of the Barta document, have been matched with a complete copy for identification purposes.

The act of cutting the classification indicators from a document "mutilates" that document within the meaning of 18 U.S.C. 2071. Exhibit D is a statement from Messrs. Shea, Belisle and Rosetti, attesting to the fact that they have identified these clippings as having come from the classified document referred to above.

(12) *You have conducted yourself in a manner unbecoming an officer of the Department of State.*

Specifically: On March 19, 1963, carbon paper consisting of seven pages was recovered from your burn bag. This burn bag was obtained by Mr. Rosetti

from the Mail Room after it had been placed there in accordance with the procedure outlined above. The burn bag was inspected and carbon paper recovered from it by Mr. Shea. Mr. Rosetti's signed statement regarding this incident is enclosed as Exhibit E. Mr. Shea's statement is enclosed as Exhibit F. The carbon paper has been reproduced and copies thereof are attached as Exhibit G. This carbon paper contains questions which you prepared and furnished to a person or persons outside the Department for the use of Mr. J. G. Sourwine, in the interrogation of Mr. Reilly. Mr. Sourwine subsequently asked these questions of Mr. Reilly when he appeared before the United States Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, of the Committee on the Judiciary. Mr. Reilly's signed statement is enclosed as Exhibit H.

This is a breach of the standard of conduct expected of an officer of the Department of State.

(13) *You have conducted yourself in a manner unbecoming an officer of the Department of State.*

Specifically: On June 10, 1963, a one-time typewriter ribbon was recovered from your burn bag. This burn bag was obtained by Mr. Rosetti from the Mail Room after it had been placed there in accordance with the procedure outlined above. Mr. Rosetti's signed statement regarding this incident is enclosed as Exhibit I. This typewriter ribbon has been read and the contents are reproduced as Exhibit J. The ribbon contained twenty-four questions which you prepared and furnished to a person or persons outside the Department for the use of Mr. J. G. Sourwine, in the interrogation of Mr. Belisle. Mr. Sourwine subsequently asked fifteen of these questions of Mr. Belisle when he appeared before the United States Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, of the Committee on the Judiciary. Mr. Belisle's signed statement is enclosed as Exhibit K.

This is a breach of the standard of conduct expected of an officer of the Department of State.

Copies of the memoranda and documents referred to in the charges which are classified and concern "the loyalty of employees or prospective employees" of the Department are available for inspection by you and your attorney upon request to Mr. John W. Drew, Jr., of my staff, in Room 2239.

You are hereby given ten (10) days from the date of this letter to answer these charges. You may reply both personally and in writing if you so desire. Any written reply you wish to make should be addressed to my attention. You may furnish affidavits or other evidence in support of your reply if you so desire. If you wish to make an oral reply you may call Mr. Drew, extension 6251, for an appointment.

As soon as possible, after your answer is received, or after the expiration of the ten (10) day limit, if you do not answer, a written decision will be issued to you.

During the thirty (30) day notice period to which you are entitled, you will remain in an active duty status at your present grade and salary.

Sincerely yours,

JOHN ORDWAY,
Chief, Personnel Operations Division.

Enclosures: See Exhibit Index A through K. (Follows.)

EXHIBIT A

WASHINGTON, D.C., August 15, 1963.

I. Otto F. Otepka, make the following voluntary statement to Carl E. Graham and Robert C. Byrnes, who have identified themselves as Special Agents of the Federal Bureau of Investigation. No threats or promises of any kind have been made to me to make this statement and I know it can be used against me in a court of law. I have been advised of my right to have legal counsel before making any statement whatsoever.

Mr. Byrnes informed me in general that the FBI was conducting an investigation with respect to myself concerning an allegation that had been received that I had furnished classified information to an unauthorized person. In the course of our discussion it was made known to me specifically that the alleged unauthorized person was the Chief Counsel of the United States Senate Committee on the Judiciary. His name is Julien G. Sourwine. I shall hereinafter for the purposes of this inquiry identify such documents which were furnished by me to the Chief Counsel of this Committee. It is important to me at the outset that it be known for the record that I am a member of the classified or competi-

tive Civil Service and that I am now and have been a career member of that service for over 27 years.

The circumstances in regard to which I am alleged to have furnished documents or information to the said Chief Counsel relate to an investigation which was being conducted by the Internal Security Subcommittee of the Committee of the Judiciary beginning in November, 1961. I first appeared before that Committee at its request and with the express permission of the Department of State together with two other members of the Bureau of Security and Consular Affairs, and I responded to the questions of its Chief Counsel frankly and truthfully to the best of my knowledge and ability. Subsequently I reappeared before that Subcommittee once in April, 1962, also at the Committee's request and with the permission of my superiors. Also appearing at or about that time were my superiors. In November, 1962, the Committee publicly released the transcripts of my testimony and that of other Department of State personnel together with a report of the Committee containing the Committee's conclusions and recommendations with respect to the security practices and procedures of the Department of State.

Beginning in March 1963, and during April 1963, I appeared before the same subcommittee in accordance with its request and with the knowledge of my superiors, for a total of four times. I was given to understand that the Committee was seeking to ascertain from the Department of State whether or not the Department of State had implemented the Committee's recommendations to improve certain security practices found by the Committee to be deficient. During May, 1963, my immediate superior, Mr. John F. Reilly, also testified before the Committee on three separate days. Prior to his appearance and at his own personal request I obtained from the Chief Counsel of the Committee, Mr. Sourwine, the stenographic transcripts of my testimony of March and April, 1963, and furnished those transcripts to Mr. Reilly. Mr. Reilly indicated to me he had not read my transcripts before. I do not know the reason why.

Following the first appearance of Mr. Reilly, which I believe was on May 21, Mr. Reilly personally came to my office and informed me that Senator Thomas J. Dodd, the presiding chairman of the Subcommittee, had given him, Mr. Reilly, "a bad time" on that day. Mr. Reilly related to me that he had told the Subcommittee that I had voluntarily disqualified myself from the evaluation of the case of William A. Wieland. Mr. Reilly asked if I could "straighten out" Mr. Dodd on this matter. I said I did not know Mr. Dodd but were I to be again questioned by the Subcommittee I would be very happy to state for the record what had transpired between myself and Mr. Reilly when on a prior occasion he discussed with me at his request my future role in the re-evaluation of the Wieland case. I prepared for the record and have in my possession a memorandum indicating the exact nature of my discussions with Mr. Reilly on any prior occasion concerning what function I should play as Chief of the Division of Evaluations in the Wieland case.

Following the conclusion of Mr. Reilly's testimony, Mr. Julien Sourwine, the Chief Counsel of the Subcommittee, requested that I come to see him, which I did, after working hours on the day of his request. To the best of my recollection this was on May 23. Mr. Sourwine voluntarily informed me that there were contradictions in my testimony and the testimony of Mr. Reilly. He offered to let me read the stenographic transcripts of Mr. Reilly's testimony and upon doing so he said I should give him a memorandum that would answer point by point all of the instances in which I felt Mr. Reilly's testimony was inaccurate or untrue. After carefully reading the transcripts of Mr. Reilly's testimony I was both shocked and amazed. I therefore prepared a memorandum consisting of 39 double-spaced pages annotated by exhibits which I shall identify below, and I furnished a copy of this memorandum to Mr. Sourwine together with copies of the exhibits mentioned therein. This memorandum was intended to serve as my reference in rebuttal, explanation, or clarification of statements made by Mr. Reilly in my future appearance before the Committee which had already been made known to me.

At this point I would like to state for the record that what particularly concerned me in regard to Mr. Reilly's testimony was that he made statements to the Subcommittee concerning my personal character and performance. As a knowledgeable and experienced career civil servant, I know that one's superior owes one primary duty especially to his subordinate. That is: if the subordinate's performance is or has been deficient that subordinate should first be so told by the superior. The superior should not derogate the employee's performance before a legislative body or any organization outside the employee's place of employment without fulfilling his first duty to his subordinate. Mr. Reilly never expressed to me his dissatisfaction with my performance nor did

he ever let me know that he had anything but a favorable opinion concerning my character. However, neither Mr. Reilly nor his predecessor has given me an annual efficiency report as required by the Department's regulations since October, 1960, almost three years. Not only did I request such efficiency reports from Mr. Reilly but I succinctly informed his Executive Officer on several occasions that these reports were long overdue. Mr. Reilly, of course, is entitled to his explanations for this delinquency. The fact is I still do not have any efficiency reports for those three years. Furthermore, I wish this record to bear out that my whole history of performance in the Department of State reflects not only the most satisfactory comment by those officers who have rated me but that prior to my entering on duty in the Department of State in June, 1953, I was the recipient for six successive years preceding my appointment to the Department of State of "Excellent" efficiency ratings. Such an adjective rating was the highest attainable.

In considering the request made to me by Mr. Sourwine to identify inaccuracies or untrue statements by Mr. Reilly, I was already cognizant of the following provision in Section 652, Title 5, of the United States Code. This is a law enacted by the United States Congress. It reads as follows:

"The right of persons employed in the Civil Service of the United States, either individually or collectively, to petition Congress or any member thereof or to furnish information to either house of Congress or to any Committee or member thereof shall not be denied or interfered with."

It was my honest belief and conviction in the light of contradictions in the record of the Senate Internal Security Subcommittee that I should support my refutation of Mr. Reilly's statements concerning me with such necessary information as would establish that my own statements were truthful and accurate. I carefully observed in the transcript of Mr. Reilly's testimony that he had entered selected documents into the record relating to me.

The documents herein involved which were furnished by me to the Chief Counsel of the Senate Committee on the Judiciary as an appendage to my prepared written comments are as follows:

(Exhibit 1)

No classification
No control.
Copy attached.

(1) This included a memorandum dated January 27, 1963, for Mr. Hefner, OIA, from Harlan Cleveland, IO, on the subject of "Loyalty Investigations of United States Citizens Employed by International Organizations."

Not classified.
Not controlled.

(2) Routing slip dated February 4, 1963, of Department of State to Mr. Otepka from Mr. John F. Reilly on the subject of "Loyalty Investigations of United States Citizens Employed by International Organizations" with the notation "Would you look into this please and may I have your views by Feb. 8?"

Not classified.
Not controlled.

(3) One page memorandum to Mr. Reilly from Mr. Otepka dated February 8, 1963.

(Exhibit 2)

Is not classified.
Is not controlled.

(1) Thirty-two page document entitled "Staffing International Organizations, A Report of the Advisory Committee on Management Improvement to the Assistant Secretary of State for International Organization Affairs" dated March, 1963. A three page cover memorandum to this document is also attached and which bears the title of "Staffing International Organizations, Summary of Recommendations."

CONFIDENTIAL
Copy in OFO
files.
(Part of this
note not
readable.)

(2) Five page memorandum dated September 10, 1962, from Mr. Otepka to Mr. Reilly on the subject of "Francis O. Wilcox; Arthur Larson; Lawrence Finkelstein; Marshall D. Shulman; Andrew Cordier; Ernest Gross; Harding Bancroft; Sol Linowitz." This document bears a classification of "Secret" but with a stamped notation at the bottom stating that the document would be considered "Confidential" upon removal of attachment. At the conclusion of the fifth page there is a notation that the attachments were "tabs A, B, C and D." These attachments were not furnished to Sourwine. Attached to this document at the conclusion is a one page memorandum dated September 17, 1962, from Mr. Reilly to Mr. Czayo on the subject "Processing of Appointments of Members of the Advisory Committee on International Organization Staffing" classified "Confidential."

CONFIDENTIAL
Copy in J.F.R.
chron. Could
be declassified.

(Exhibit 3)

No class.
No control.

(1) Thirty-six page document entitled "Staffing International Organizations, A Report of the Advisory Committee on International Organizations", published by the Department of State, Washington, D.C., April 22, 1963 (a public document). Attached to this document are Appendices I and II consisting of six pages.

Are not
classified.
OK controlled.

(2) Routing slip from Mr. Belisle to Otepka dated May 13, 1963. Attached to this routing slip is a one page memorandum dated May 6, 1963, to Mr. Reilly from Gladys P. Rogers on the subject "Staffing International Organizations—A Report of the Advisory Committee on International Organizations."

No classification
No control.

(3) ? Undated routing slip from Belisle to Otepka. Attached to this routing slip is a three page memorandum from Mr. John F. Reilly to Mr. George M. Czayo on the subject "Processing of Appointments of Members of the Advisory Committee on International Organization Staffing." This three page memorandum bears a stamped security classification of "Confidential".

CONFIDEN-
TIAL
But this memo
was rejected.
Perhaps it has
no official
standing: Ergo:
no classification.

(4) One page memorandum dated August 7, 1962, to Mr. Simpson, EMD, to attention of Mrs. Solvig with copy for Mr. Otepka, captioned "Request for Waiver, Advisory Committee on International Staffing: Ernest A. Gross, Marshall D. Shulman, Andrew W. Cordier, Harding Bancroft, Lawrence Finkelstein, Francis O. Wilcox, Arthur Larson". This was a nonclassified memorandum with two attached routing slips; one dated September 13, 1962, from Otepka to Mr. Belisle and to Mr. Reilly. The other routing slip was from Belisle to Otepka, addressed to "Otto", dated September 11, 1962.

(5) One page memorandum dated May 14, 1963, to Mr. Belisle from Mr. Otepka. The memorandum indicates there is an attachment of "Report of the Advisory Committee on International Organizations."

(Exhibit 4)

No class.
No control.
Original in
Belisle file.

(1) Memorandum dated April 5, 1962, from Mr. Otepka to Mr. William O. Boswell on the subject "Reorganization" consisting of three pages.

No class.
No control.
Original in
Belisle file.

(2) Memorandum dated April 9, 1962, from Otepka to Boswell entitled "Reorganization."

No class.
No control.
Copy in OFO
chron.

(3) One page memorandum dated April 13, 1962, from Otepka to Murray Jackson on subject "Reorganization."

(Exhibit 5)

Apparently
OUO markings
on Exhibit.

(1) One page memorandum dated August 31, 1960, on subject "Use of Short Form Investigative Reports in Certain Applicant Cases" marked "Official Use Only."

OUO markings
on Exhibit.

(2) Two page memorandum dated June 15, 1960, to Mr. William O. Boswell from Asa L. Evans on the subject "Proposal to Reduce Investigative Backlog" marked "Official Use Only."

OUO markings
on Exhibit.

(3) Two page memorandum dated June 6, 1960, to Mr. William O. Boswell from Asa L. Evans on subject "Proposal to Reduce Investigative Backlog" marked "Official Use Only."

OUO marking
on original
in SY file
Joan Mae
Fogltanz.

(4) Copy of Department of State investigative report dated May 27, 1960, at Chicago, Illinois, on "Joan Mae Fogltanz" marked "Official Use Only."

This is an
example.
It is not an
actual report.

(5) Two page Department of State investigative report dated May 27, 1960, on "Joan Mae Fogltanz" marked "Official Use Only."

This is an
example.
It is not an
actual report.

(6) Two page Department of State investigative report May 27, 1962, at Chicago, on "Joan Mae Fogltanz" marked "Official Use Only."

(Items 4, 5 and 6 of Exhibit 5 are wholly favorable reports which were attached to the memorandum dated June 6, 1960, and were mentioned by the author of that memorandum as an example of extraneous long form reporting)

(Exhibit 6)

No class.
No control.
Copy attached.

(1) Two page memorandum dated October 31, 1963, from Mr. Reilly to Mr. Robert L. Berry; Mr. Otto F. Otepka; and Mr. John T. Noonan, captioned "Change in Procedure for Preparation of Investigative Reports and Granting of Clearances." The bottom of this memorandum contains a date stamp of Office of Security, Division of Evaluations, November 1, 1962.

(Exhibit 7)

Is not classified.
Is not privileged.

(1) Seven page Multilith memorandum dated January 16, 1963, from Murray E. Jackson to Mrs. Jean W. Tavel on the subject "Urgent Personnel Actions Pending in SY."

(Exhibit 8)

Is not classified.
Is not privileged.

(1) One page memorandum dated May 3, 1962, from Mr. Herman Pollack to Mr. Michel Cieplinski on the subject of "Assignments to Advanced Career Training."

(Exhibit 9)

Is not classified.
Is not controlled.

(1) A letter dated May 16, 1962, to Mr. Otepka from Mr. John Ordway, Chief, Personnel Operations Division, Department of State, regarding the appointment of Mr. Otepka to the National War College.

(Exhibit 10)

Is not classified.
Is not controlled.

(1) Copy of a letter to Mr. Otepka dated June 1, 1962, from Lieutenant General Francis H. Griswold, Commandant of the National War College, Washington, D.C., congratulating him on his designation for attendance at the college.

(Exhibit 11)

Is not classified.
Is not controlled.

(1) Final Security Clearance Form (blue).
(2) Notification of Emergency Interim Security Clearance 180 days (yellow).
(3) Notification of Emergency Security Clearance 90 days (white).

(Exhibit 12)

Memo in Lyons' SY file is marked LOU contains adverse personal info. Not classified. Not controlled. (Rest of note not readable.)

(1) Copy of a memorandum dated June 6, 1960, to Mr. William O. Boswell from Mr. Emery J. Adams on the subject "Assignment of Charles W. Lyons to SY/E" marked "Limited Official Use".

(2) Copy of efficiency report of Carl L. Bock prepared by Charles W. Lyons, Deputy Chief, Division of Evaluations, covering period of November 16, 1960, to September 30, 1961. This consists of a four page form number FS315 along with three pages of narrative comment.

(3) A three page memorandum dated March 30, 1962, from Otepka to William O. Boswell captioned "Charles W. Lyons, FSO-4, Chief, Personnel Security Branch, SY/E."

Copy in Lyons' SY file: not classified. Not controlled. Contains adverse personal info. Not in Lyons' file. Can be decontrolled.

(4) Memorandum dated June 8, 1960, from William O. Boswell to Emery J. Adams captioned "Assignment of Charles W. Lyons to SY/E", bearing notation at bottom of memorandum "Limited Official Use".

(5) Memorandum dated June 1, 1962, from Murray E. Jackson to Mr. Otepka captioned "FSO and FSR: Efficiency Reports."

Not in Lyons' file. Is not classified or controlled. Not in Lyons' file. Is not classified. Is not privileged.

(6) Memorandum June 14, 1962, from Otepka to Murray Jackson captioned "Efficiency Report for Charles W. Lyons."

(Exhibit 13)

Can be
decontrolled.

(1) Undated memorandum consisting of one page captioned "Emergency Security Clearances" bearing stamped notation "Official Use Only." To this was attached a routing slip addressed to "Dave" (David Belisle).

Additionally to the above described documents, Mr. Byrnes showed me the following documents and requested my statement with respect to each as to whether I had furnished any such document to Mr. Sourwine. It was stated to me that some of the documents or purported documents were found in a burn bag located in my office. For the record, this burn bag is not in my immediate office but is located in the reception room occupied by my secretary, Mrs. Eunice Powers. In response to questions of Mr. Byrnes, I hereby positively and unequivocally deny that I furnished any of the following documents to Mr. Sourwine or that I furnished any such document to any person except an employee of the Division of Evaluations or of the Office of Security.

One page memorandum dated May 20, 1963, from Mr. Otepka to Mr. Traband relating to Frank Aloysius Januszkiewicz.

One page memorandum dated December 5, 1961, from Mr. J. C. Sabin to Security Office file regarding "Seymour Judson Janow."

One page memorandum dated May 8, 1963, from Harlan Cleveland to Mr. Reilly on the subject "Isidor Lubin."

One page memorandum dated June 3, 1963, from Ralph S. Roberts to Mr. William J. Crockett on subject "Weekly Activities Report."

One page letter from Philip Goldberg to Mr. Glenn Wolfe, Director, Office of Cultural Presentations, Department of State.

Two page memorandum bearing caption "Enclosure for the Deputy Assistant Secretary for Security" and containing in the upper right hand corner the notation "RES Alexander Inspection, Rpt. Sept. 26-Oct. at Cairo."

Three page memorandum from Frank J. Devine to Mr. Toussaint on subject "Pan American Union, Security Information Re Employees—Request for Ascertaining Facts and Evaluation."

Three page memorandum bearing title "Procedure for Reviewing and Disposing of Adverse Information on Employees of International Organizations Dealing with Inter-American Affairs."

One page memorandum bearing title of "Evaluations of Adverse Information of Certain Employees of International Organizations Dealing with Inter-American Matters."

Two page memorandum dated May 3, 1963, from John Noonan to Mr. Belisle on subject "Security Meeting."

Two page memorandum dated May 23, 1963, from Mr. F. W. Traband and R. P. Levy to Mr. Otto F. Otepka on subject "Evaluative Services to ARA and OIA."

Four page memorandum for Mr. McGeorge Bundy of the White House dated January 28, 1963, over signature of the Executive Secretary of the Department of State, William H. Brubeck, on the subject "The President's Inquiry Concerning Communists on the Staff of International Organizations Dealing with Inter-American Affairs."

One page of FBI report on Harlan Cleveland prepared by Special Agent William H. Atkinson at Washington, D.C.

I have not furnished any FBI report or portions thereof to Mr. Sourwine.

I have never at any time committed, nor shall I ever commit any offense knowingly injurious to my country.

I am an American. I was born an American. I will live an American. I shall die an American. No man can suffer too much and no man can fall too soon, if he suffer or if he fall in the defense of the liberties and constitution of his country. To me, loyalty to the highest moral principles and to my country are paramount. They shall always be above loyalty to any party, to any person or to any government department. However, I believe I have not and I will not knowingly violate any public trust. In carrying out my assigned duties I feel that I have always respected and carried out the commands of my superiors.

It is my desire that this matter be judged by prudent men only on the basis of the whole record of my Federal service and the testimony I have given, and others have given, with respect to the incidents alleged. I sincerely always have believed that he who has truth on his side is a fool and a coward if he fails to own it because of other men's opinions.

In regard to the allegation that I furnished classified data to an unauthorized person, it is an established fact that the Senate Committee on the Judiciary and its Internal Security Subcommittee is empowered to investigate and legislate to assure that there is adequate protection at all times of the internal security of the United States. It is also known that the Senators who comprise the Committee, together with its Chief Counsel, are loyal and patriotic Americans who have many times been entrusted with data relating to the defense of the United States and the operations of the Department. These are men of unimpeachable trustworthiness whose authority to have access to classified information of the United States Government truly cannot be questioned. It seems they must have such access to legislate. Furthermore the Committee affords protection to information obtained by its proceedings and to its witnesses by conducting its proceedings in Executive (closed) sessions. The Committee itself classifies the written record of its Executive sessions. I have been informed that information obtained in Executive sessions is not released without agreement of the full committee and the executive department involved is consulted before any decision is reached.

I have testified in Executive sessions and the information I furnished was given only in direct relationship to my testimony. The whole record of my statements was classified by the Committee as "Confidential": I have not in any sense ignored that classification. I am at a loss to understand therefore as to who is the "unauthorized person." I would find it incredible to believe that the Chief Counsel of the United States Senate Committee on the Judiciary is such a person within the purview of some law that I am alleged to have violated.

I have read this statement consisting of eighteen pages which, except for the first paragraph and this last paragraph, was dictated by me. It is true and correct to the best of my recollection. I have initialed each page and all corrections and sign my name below.

OTTO F. ОТЕПКА.

Witness:

Robert C. Byrnes, Special Agent, FBI, Washington, D.C., 8/16/63.

Carl E. Graham, Special Agent, FBI Washington, D.C., 8/16/63.

(EDITOR'S NOTE.—The following pages of Exhibit B are reproduced in the order in which they were received by the subcommittee. Some pages were numbered, though not consecutively, and some were not numbered. No changes were made by the subcommittee to adjust what appear to be grammatical errors, typing errors, or omissions.)

EXHIBIT B

(Unnumbered page)

comments with respect to pencilmarks 4a and 5. page 601 pencilmark 8 See comments with respect to pencilmarks 4a and 5. page 606 pencilmark 9 Reilly took his oath of office as Director, SY on April 16, 1962, therefore the document referred to on page 606 as being issued on March 12, 1963—was issued *after* not before Reilly entered on duty. pages 608-613 Budget matters. Otepka will discuss this with Sourwine orally—this is a complex subject. page 612 pencilmark 10—Jay—for your information only this is a statement of fact and not a bone of contention by me: The Chief of the protective service Branch, Investigations Division, which performs the job of protecting dignitaries has for a many many years so *complained* about the fact that he and his men are overworked. His persistent griping and that of some members of his staff is hardly indicative of the fact that they enjoy their *wormwork*. Whats some of the men joy is its pecuniary benefits—not that they don't deserve them—plush hotels, worldwide travel, gifts from dignitaries, including liquor. These men bring home—a great deal of tax free liquor when they return from their trips. The Secretary's plane and escort plane are closely/not inspected by customs authorities.

(Page 6)

Page 614 pencilmark 11—Comapre Joyce—was just telling me that the men from were working on the telephone box in front of our across from us—she couldn't quite read the numbers clearly but she thought they were 52 and 53. Page 614 pencilmark 11—compare this statement with the chart appearing on page 119 of the Committee's Hearing of November 16, 1961—testimony of

Oteпка—that charts shows 25 positions to be abolished in the Office of Security broken down as follows: 6—in the Division of Evaluations 71—in the Division of Investigation (14 in the field and 3 at Headquarters) 1 in the Division of Physical Security—1 position on the staff of the Director (The Deputy Director) page 616—pencilmark 12 Oteпка will testify on workloads in the Division of Evaluations contrary to Reilly's statement. page 619—pencilmark 13 See comments for pencilmark 12 pages 621-626 Intelligence Reporting Function—pencilmarks 14, 15, 16, 17, 18, 19—Oteпка will discuss this process orally with Sourwine. He will inform him that J. Clayton Miller had an initial role (1961) in the then proposed reorganization of the Intelligence Reporting Branch. At the time Miller was inspecting the Office of Security he occupied the same space as Wieland in the Office of Management, Bureau of Administration. The Intelligence Reporting Branch was placed in the Division of Evaluations in 1949. In January 1962 the results of the Boswell-Jones reorganization of SY, then a name was changed to the Intelligence Processing Section and -7- it became a part of the new Records and Services Branch which included the Control File Room and other components that were created within the Division of Evaluations by Boswell. Oteпка became the head of the Division of Evaluations on January 21, 1962 which included three branches. Personnel Security Branch, Records and Services Branch, and Special Review Branch. The Special Review Branch was created by the Boswell reorganization plan by reason of the abolishment of the position of Deputy Director (Oteпка) who at the instructions of Boswell beginning in June 1961 and to January 1962 directing/was a staff of seven (copy illegible) highly efficient personnel security operation. These seven (copy illegible).

(Unnumbered page)

therefore were reconstituted in January 1962 as the new Special Review Branch in the Division of Evaluations. A ninth member of that staff, John Oonon, was reassigned by Boswell in this reorganization plan as head of the Intelligence processing Section. John Norpel was made the Acting head of the Records and Service Section. In this reorganization added 28 positions to the Division of Evaluations, giving it a total of 68 positions. However, on April 16, 1962 Boswell by another reorganization planned transfer the Records and Services Branch, including the Intelligence Processing Section, to the Executive Office and make John Noonan the Head of the Records and Services Branch. Norpel remained in the Division of Evaluations as a member of the Special Review Branch. This new shift transferred 36 positions out of the Division of Evaluations including 6 evaluators leaving it with a total of 32 positions as of April 1, 1962.

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Oteпка protested the April 16th reorganization by his memo to Boswell (see EX. 4 3 attachments). Oteпка anticipated by this reorganization the usurpation and erosion of evaluative functions. The Intelligence Processing Section was transferred out of the Office of Security to the Bureau of Intelligence & Research on Feb. 18, 1963. Between April 16, 1962 and Feb. 18, 1963, John Noonan was elevated from a GS-12 to GS-14 as the Chief of the Records and Services Branch. The higher classification was predicated on the heavy emphasis placed on the job description on the function of the Intelligence Processing Section and the fact that Noonan serves as an occasional lecturer on personnel security matters, involving intelligence tactics of foreign agents before groups of new Department employees, and other groups. (Oteпка addresses groups of Senior rank). Noonan's job description exceeds Oteпка's by several pages and phantasmagoria of detail. 5 evaluators and 3 clerks were transferred out of SY by the Feb. 18 1963 shift. Noonan however was retained and continues to head up the reduced Records and Service Branch. He lost 2 GS-12's, 2 GS-11's and 1 GS-9 position by this move. The highest grade employee that he now supervises is a GS- , yet there remains a GS-14 with this inflated job description, with special emphasis on intelligence processing. Obviously, because he in peril of losing his grade Reilly & Belisle have been building him up by assigning him functions of the Division of Evaluations. Only two of five evaluators transferred can be properly termed to be within the scope of Reilly's remarks on page 623. (pencilmark 16), as individuals.

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Who have been handling the Intelligence Processing Function for many years: "page 629 pencilmark 20—Reilly didn't answer the question. He knows what

the responsibilities of both persons are. ARA/RPA—Mr. George N. Monsma Room 6489. May 27, 1963 file to Otepka from Rosetti. 5-27-63 file to Otepka from Traband.

Page 630—pencilmark 21 . . . Otepka will check on this and furnish details. Pages 631-632-633—pencilmarks 22, 23, 24 . . . Organization chart dated July 31, 1962 furnished to Otepka by the Executive Office shows the staffing of the Div. of Evaluations on that date (it is in fiscal year 1963) as 34 positions; broken down it consists of 2 officers and 14 clerks. The chart shows no vacancies. The total in . . . reimburseable positions; however, the incumbents of reimburseable positions are never identified on these charts, Otepka therefore assumes from Reilly's testimony on this page that Otepka has 6 reimburseables. It is Otepka's guess that two reimburseables are paid for by the Bureau of Cultural & Educational Affairs, and 4 are paid for by the Arms Control & Disarmament Agency. Otepka obtained a chart prepared by the Executive Office as of Nov. 30, 1962 (this chart was not offered to Otepka and he was not furnished any additional chart until May 1963). The Nov. 30, 1962 chart shows a total of 33 positions—19 officers and 14 clerks. The loss of one position occurred by the transfer of Louis Hage a GS-11 evaluator to the Records & Service Branch under the jurisdiction of John Noonan. Charlie Lyons the then Executive Officer wrote no memorandum.

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To Otepka nor did he Belisle or Reilly advise Otepka in advance of their intention to transfer the Hage position out (The loss of Hage himself was not material because Otepka long sought to obtain a better qualified person). Lyons merely notified Otepka by phone of the loss of both positions and its occupants. When Otepka protested he was told this was the boss' decision and it was final. The two vacancies on the Nov. 30, 1962 chart occurred by the previous transfer of Jarvis Pentacost, GS-11 to the Division of Investigations, Miami Field Office, on and the transfer of David Hall, GS-11 to the Division of Domestic Operations in Headquarters. In anticipation of these vacancies and after the transfer of the persons Otepka orally requested the Executive Officer to provide him with a list of qualified eligibles in SY to consider for the vacancy or to ask the Officer of Personnel to recruit qualified persons. Lyons and Forsyth, Assistant Executive Officer gave Otepka varying statements, that Belisle and Reilly were studying developments and wished to wait before filling either position, and that Belisle and Reilly did not wish to fill either position. Reilly then told Otepka that he didn't think he needed the Pentecost position but would study the matter. He also told Otepka that the Hall position (A GS-11) would be filled by asking the Executive Officer. Otepka so notified Lyons orally (this is customary and all that . . . is needed). Otepka told Lyons that there would have to be outside recruitment because there was only one person in the Division of Evaluations at a lower grade to be promoted but that persons was not yet eligible because her next promotion could be only from GS-7 to GS-9. After some medelay Otepka

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reminded the Assistant Executive Officer of the vacancy and was told neither job would be filled. Subsequently Otepka was told that he could fill both positions. Finally it was learned shortly before January that one position would be filled. However, at no time in this confusion did the Executive Office furnish the name of any person to the Division of Evaluations. On January 7, 1963 Otepka learned by reading a weekly report prepared by the Office of the Director that the position of David Hall, GS-11 was transferred from the Division of Evaluations. He had no previous notification of this. On January 10, 1963 a freeze was imposed on outside recruitment and also on promotion actions in the entire Office of Security. As of May 1963 the Division of Evaluations was shown to have 31 positions with one officer vacancy. Page 641 pencilmark 25 . . . See comments with respect to pencilmarks 15 and 19. Page 646 . . . pencilmark 260 Otepka will supply information contrar—page 646 pencilmark 27 . . . See composite comments re pencilmarks 14-19—pages 653-541 pencilmark 28 . . . Get George Pasquale in and let him tell his story. Page 658 pencilmark 29 . . . Otepka will inform Sourwine re mishandling of clearance by Hill. McCarthy knows about this mishandling—1112—page 659 pencilmark 30 . . . Call Belisle and let him describe his duties himself. Pages 660-661 pencilmarks 31, 32, 33 . . . Ask Belisle to describe his own responsibilities. Page 662-663-664-665 pencilmarks 34, 35, 36, 37; also page 668 (pencilmark 40) Otepka's

memorandum of Oct. 29, 1962 requires a careful reading of its first paragraph. It will be seen that Otepka indicates he was aware of problems in the Division of Evaluations and was giving his attention to their solution since January 1962. Reilly did not enter on duty until in April 1962 and Belisle not until July 1962. Otepka indicates in his memorandum that he had discussed his ideas with Belisle since July 1962. Otepka also discussed his ideas with Reilly after Reilly came aboard in April 1962. It is therefore untrue that Otepka put forward some recommendations which Reilly credits to himself and Belisle. The plagiarism, if any, (copy illegible) but Reilly's and Belisle's. With respect to Reilly's assertion

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that Otepka contradicted his own recommendations, it is assumed Reilly refers to Otepka's statements in response to questions of the Internal Security Subcommittee on. Those questions are related to item 3, pages 4 and 5, and pages 7 and 8 of Otepka's memorandum of Oct. 29, 1962. Regarding item 3 of that memorandum Otepka and Asa Evans (then Chief, Investigations Division) discussed short form reporting in 1960 as a possible means of solving problems of investigative backlogs. Evans, Emery Adams (then Chief, of the Evaluations Division) (see attachment EX. 5) and John Forbes (then Chief of the Employment Division, Office of Personnel)—

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conferred on this matter in August 1960 (see attachment EX. 5). Obviously neither Belisle nor Reilly had any premonition about coming to the Department of State then. Evans, Adams, and Forbes, mutually agreed on short form reporting for clearly favorable cases of certain classes of clerical personnel but only up to GS-4. All other cases were to be long form. Otepka, did not participate in the August 1960 discussion although he was fully aware of the matter then. Boswell, the then Director apparently did not favor the idea (he did not understand it) because he put it on ice. Otepka with this background talked to Berry before he wrote his memorandum of October 29, 1962. Berry had succeeded Evans as Chief of the Investigations Division in July 1962. Berry favored the revival of the suggestion and he indicated he would support it. Both Berry and Otepka agreed that short form reporting was to be restricted to clearly favorable . . . clerical cases only. . . . Otepka then advanced the suggestion in his memorandum of October 29, 1962 but only against the backdrop of the consideration in the previous 1960 suggestion. (Belisle and Berry knew this.) Otepka believed that when he had reduced his October 1962 suggestion to its bare . . . essentials that the re(?) was sufficient understanding on the part of all that short form reporting was to be restricted and that if adopted there would be a full identification of all limitations on this form of reporting. However, on October 31, 1962, two days after Otepka had submitted his memorandum, Reilly issued a memorandum to Berry, Otepka, and Noonan decreeing short form reporting for all reports of investigations which were favorable—regardless of the grade or class of the position involved (see Ex. 6).

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It seems strange that if Reilly and Belisle were really considering short form reporting before Reilly's trip why Reilly did not issue his memorandum before his trip and instead took action only after he got Otepka's memorandum. Upon receiving the Reilly memorandum of October 31, 1962 Otepka immediately made his views known to Reilly that short form reporting was inadvisable in the cases of any officer personnel for many reasons but in particular that it was imperative for evaluators and placement officers to know precisely what statements were made by witnesses. Also Otepka more emphatically told Reilly that he (Otepka) had advocated the evaluation of any investigative reports by investigators (i.e. case supervisors) . . . Otepka said he knew of no investigator (case supervisor) who had any specialized experience on Communist activities and Otepka felt most investigators were ill equipped to identify witnesses in cases whom any have had pro-Communist backgrounds. Otepka said that the performance of evaluations by investigators was a practice contrary to all established sound concepts in effective personnel security administration. Reilly's thesis was that he trusted his investigators, that if an evaluator challenged a case, the evaluator could always ask the investigator to produce his notes since Reilly's directive

required the retention of notes for five years. It is in this vein that Otepka in response to questions of Committee Counsel perhaps, in effect, but not directly "complained" about short form reports. Regarding item 5, Otepka agreed (and still does) with the transfer of the function of scheduling and control of national agency checks to _____ (Page 18 follows.)

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The file room and out of the Division of Evaluations. However, it was as originally understood after discussions had in the Office of Security incidental to the implementation of his transfer that only the mechanical clerical function was being transferred. One clerk spent only 50% of her time on this function in the Division of Evaluations. The remainder was devoted to other clerical tasks. By a subsequent oral instruction and contrary to Otepka's understanding Belisle vested in the Records and Service Branch of the Executive Office the responsibility for issuing emergency security clearances to the Office of Personnel regarding clerical personnel. When asked by the Subcommittee to indicate what functions had been taken away from his Division Otepka merely answered the questions factually. He named the national agency check function among others. He lodged no complaint as charged by Reilly. Concerning subparagraph 5(c) regarding the transfer of security violation matters to the Division of Domestic Operations the Committee's records shows that Otepka did not complain to the subcommittee about the change he had "recommended." He merely identified for the Subcommittee, in response to its questions a function which had been taken out from under his jurisdiction. Otepka did not intend his answer to be a complaint but a cold statement of an accomplished fact. Otepka was not asked by the Committee to explain whether or not he had approved of the transfer of the security violation function elsewhere. If the question had been asked the answer would have been in the affirmative.

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page 667—pencilmarks 39 . . .

The fact is that not a single position as distinguished from a . . . person was eliminated by the RIF. Before the reduction in force Boswell had developed a "private" grading system, apart from the regular Civil Service Commission system of annual efficiency ratings. Boswell's list, was accessible only to certain persons (Otepka can furnish a copy). Boswell rated officer personnel in this private system according to their potential for advancement in the security field. The list included persons only through GS-13. By examining this list and relating it to the names of the persons picked by Boswell to be RIF'ed it will be revealed that Boswell selected persons for the RIF to whom he had given low ratings. Boswell, of course, knew that Otepka had high ratings and he selected Otepka be RIF'ed for a different reason than he the others. In the final analysis as has now been admitted by Boswell, Crockett, and Reilly, the Office of Security did not lose a single position by the RIF. The attachment shows the resulting wholesale re-shuffling of personnel (see Ex. x.7). This re-shuffling of course reorganized all of the Office of Security as planned. Reilly's statement (pencilmark 39) (quoted verbatim here): "There was subsequently, because of the workload, because the workload did not increase, there was subsequently an effort, made, successful, to get restoration" is peculiar. Reilly appears to say: that the Office of Security sought to restore the positions eliminated or to be eliminated because the workload did not increase. It is questionable management to seek to obtain more positions if the workload decreases.

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Reilly's comments to the Subcommittee about Otepka's performance and emotional stability are, first of all, a violation of the accepted concepts of good management. Otepka is a subordinate of Reilly's. He is a member of the career Civil Service system which recognizes meritorious performance by its members as the basis for their progression to position of responsibilities. Reilly, although he has spent many years in the Federal Service, is not a career employee but has held positions that are outside the Civil Service competitive rules. The law allows, as it should with limitations the dispersing of positions at the discretion of the political party in charge of the Executive Branch. Although the Civil Service investigation may have some shortcomings, Otepka has always believed in its principles and objections. The merit system prescribes

that regular annual efficiency ratings shall be given to its members and makes it the duty of supervisors to appraise subordinates of their short-comings, directly and frankly, so that the employee may be aware of and correct his weaknesses or deficiencies. Reilly has not done this in any conversations with Otepka or in correspondence with him. Instead, he is now berating Otepka's performance unofficially to members of the legislative branch which can be construed as having only questionable motives or possible vindictiveness. Otepka came to the Department of State in 1953 from the U.S. Civil Service Commission where he performed exclusively duties as an expert researcher and adviser in its Investigations Division on matters dealing with Communists and other subversive activities that might be ascribed to

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Federal employees, past, present, and future. His last efficiency rating at the Commission preceding his appointment to the Department was "Excellent" the highest attainable under the rating system then in effect. All of the efficiency reports received by Otepka while in the Department of State have been highly favorable. For each year, the Director of the Office of Security rated him officially as possessing and demonstrating these attributes (in part): **FIRST YEAR (1953-54)** . . . "A high degree of administrative skill" "Gifted with the temperament, the judicial mind, and judgment which have contributed immeasurably to the thorough, objective and fair evaluations which have raised the production of his Division to the highest professional standards" "Enthusiasm and willingness to give unstintingly of his time and efforts and his whole hearted cooperation". **SECOND YEAR (1954-55)** . . . (as Chief, Division of Evaluations) "His superior leadership enables such flexibility as to program the activities of his office to permit the expeditious liquidation of the normal workload as well as special projects assigned by higher officials within the time limitations established." 181561715161 617 7-18- He should be rated outstanding with regard to all aspects of his job requirements however the established time schedule for the submission of an outstanding rating precludes the presentation of this rating as outstanding. **THIRD YEAR (1955-56)** . . . (as Chief, Division of Evaluations) Outstanding efficiency rating report submitted to the Office of Personnel. Report approved as "Satisfactory" by performance Rating Committee. Committee explained that criteria for "outstanding" are very stringe and limiting" and Committee action does not "affect to change in any way the high regard your superiors have for your work." The rating report included the following: "The subject during the rating period performed every aspect of the work requirements set forth in his job description in a superior and exemplary fashion. He has shown himself consistently to be capable of sound independent judgment, creative work, and the acceptance of unusual responsibility." "He personally completed a large number of

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evaluations on difficult or controversial cases, which have been recognized as outstanding examples of professional skill in the field of personnel security evaluations." "Mr. Otepka demonstrated exceptional executive ability in directing, training, and evaluating subordinate personnel and in other factors of managerial skill which contributed to the creation of a productive and efficient organization."

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"Mr. Otepka has made maximum use of his subordinates through the processes of work division and delegation of authority, thereby freeing himself to perform in his role of staff security adviser and counselor to the senior administration officials of the Department." "Mr. Otepka is a recognized authority within the Government on rules, regulations and procedures affecting every phase of the Federal personnel security program. He is averitable encyclopedia of knowledge on Communism and other opposing ideologies. He has above average drafting ability with an unusual facility with words aided by a logical and trained legal mind." "Mr. Otepka's understanding of the numerous and highly complex directives applicable to personnel security and his ability to interpret them practically and realistically has prevented his superior officers from stumbling in to security administration pitfalls. He has sense for detecting danger points and bringing these to the attention of the appropriate senior officials with positive

recommendations as to how they can be avoided. His persistent exposition of the difference between "security," and "suitability" risks, for example, has enabled the Department to steer clear of the adverse publicity and embarrassment resulting from improperly reporting personnel security actions to the Civil Service Commission and the subsequently attendant "security numbers game" fiasco."

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"The improved relationship which the Department has enjoyed with the Congress on matters relating to personnel security during the past year or two are due in no small part to the outstanding staff work done by Mr. Otepka in compiling and presenting full and complete information to the interested committees and individuals concerned."

FOURTH YEAR (1956-57) . . . (As Deputy Director) "Mr. Otepka moved into his present position about the middle of April 1957. He has been constantly called upon by me for advice and recommendations, depending upon his exceptional security background and high ability. During the whole period that he has served as Deputy Director we have had a shortage of senior personnel. This has required an unusual amount of detail work by him and placed upon him a primary burden in connection with the inspection of the Division of Evaluations by the Foreign Service Inspectors. The Inspectors and I relied upon him for more far than any one would ordinarily expect because of his knowledge of how its duties fitted into the other work of the office. In recent weeks he has devoted his major effort to the study of the Department's probably most celebrated security case. This has required a full application of his legal training as well as the characteristics already mentioned."

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FIFTH YEAR (1957-58) . . . (as Deputy Director) "I depend very heavily upon Mr. Otepka for substituting for me and advice. His long experience in the personnel security field places him among the top operating officials in this field in all of Government. Much of his effort in the past year has been in the study and evaluation of the most difficult personnel cases we have had in my experience, one which has been complicated from the points of view of both law and equity because of procedural errors and lack of action over the past 13 years. In spite of the demands of this case, Mr. Otepka has taken upon his shoulders an increased share of the operating responsibilities over those he carried at the beginning of the rating period. In addition he has continued to serve successfully as the Department's representative on an inter-departmental working committee on the application of E. O. 10501, the basic document providing for the protection of information by classification procedures, proper storage, controlled transmission and releases. I hope he will be able to adjust to our work priorities to permit Mr. Otepka to broaden his experience in security operations abroad and in physical security beyond the activities covered by E. O. 10501."

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SIXTH YEAR (1958-59) . . . (as Deputy Director) Otepka was not rated for a period covering December 1957-May 1959 because the then Director (E. Tomlin Bailey, a Foreign Service Officer, departed on a Foreign Service assignment in May 1959 before the normal rating period, i.e., from December to December of the following year ended. In April 1958 Otepka received a Meritorious Service Award signed by Secretary of State John Foster Dulles for sustained meritorious accomplishment in the discharge of assigned duties. The justification for this award involved the included following statements: "He has shown himself consistently to be capable of sound independent judgment, creative work, and the acceptance of unusual responsibility."

SEVENTH YEAR (1959-60) . . . "Security being a new field for me, I have relied heavily on Mr. Otepka's advice and recommendations. He has had long experience with and has acquired an extremely broad knowledge of laws, regulations, rules, criteria and procedure in the field of personnel security. He is knowledgeable of Communism and of its subversive efforts in the United States. To this, he adds perspective, balance and good judgment, presenting his recommendations and decisions in clear, well reasoned and meticulously drafted documents. He has brought to these

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attributes to bear during periods totalling almost four months when he has been Acting Director in my absence and throughout the rating period as the State Department representative on an intragovernmental committee concerned with security matters." This last report covered June 1959-September 1960 (15 months). Otepka has received no efficiency report since September 1960. As events now have borne out efficiency reports apparently have been deliberately withheld by William O. Boswell, his former superior, who departed for the Foreign Service in May 1962, as are praise for Otepka's factual and accurate statements given in response to questions of the Senate Internal Security Subcommittee and because Otepka, in his defense of the merit system and the successful personnel security program (1953-60) resisted Boswell's attempts to reorganize the program whereby the Foreign Service system would fully control its administration. Notwithstanding his other (?) not having received efficiency reports the following events since September 1960 should be testimonial to Otepka's performance. (a) Following the announced reduction in force letter sent to the Department by members of Congress attesting to Otepka's performance, ability, experience, and reputation for professional knowledge in the field of security, (b) praise of Otepka by Roger Jones, Deputy Under Secretary for Administration in response to these letters.

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(c) Mass public resentment of the Department by the general public for its planned reduction in force in the Office of Security, including complimentary remarks about Otepka. (d) Response to the letters from the public by the Department all of which contained assurances that Otepka was being placed in another administrative position in security where his skills could be better utilized by the Department. (e) Statement made orally and personally by Roger Jones to Otepka following the latter's testimony before the Subcommittee on November 10, 1961. Jones said Otepka, had done a "magnificent job". Jones stated he was proud of the way Otepka handled himself. (f) The statements made by Ray Cromley, a syndicated columnist, in a series of articles appearing in the Scripps-Howard chain of newspapers, during March 1962. Cromley spent several days in the Department with the permission of high officers. Cromley wrote: "The numerous shifts in security personnel are giving an unsettled feeling to the men who have been and would like to continue to make security work a career. Despite these difficulties, security men do not consider them their operation is as state of collapse.

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men in the group are sincere, intelligent hard working and capable. The division which handled these evaluations is headed by Otto F. Otepka, regarded by security men in and out of the Department as one of the top men in his field. He is strongly anti-Communist. Other men in investigations and evaluations are equally efficient and hard headed. * * * 1—The State Department is not "filled" with pro-Communists, security risks, disloyal men and women or people soft on Communism, as the department's extremist critics often allege. "2—Security should not be 90 percent perfect or even 99 percent perfect. Ideally, it should be 100 percent perfect." Balance those two points against the strong feeling among responsible security officers in side and outside the department that there are some officials who in their present positions at State pose risks to the security of the United States. The men who make these statements have seen the security records of the individuals—unidentified to this reporter—of whom they speak. How have these men gotten to the positions they hold? Why are they not dismissed? The answers are complicated." The State Department has had a modern security system for only a relatively few years. Many of its 14,000 employees were hired before there was an adequate system."

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"There has been an attempt in recent years to give every Foreign Service Officer and every other employee a check. Studies have been made to get at the more obviously suspicious matters in the files of all employees. A great many individuals have been checked intensively. But there has never been the time nor the personnel to make the kind of thorough search of records that State

Department security officers past and present would like to have." "Security men admit that a thorough check upon all present employees of the Department would be very difficult. Much material pertinent to an evaluation of employees as security risks is scattered through many files. Key information that bears on the security reliability of Foreign Service Officers is buried away in these varied files. It is simply because no one has ever had time to cross file material so that it would be readily usable by security men." The recent 15 percent cut in the State Department's domestic investigation, evaluation and allied officers staffs will indefinitely delay this fine check of all Department personnel. It will indefinitely delay the completion and organization of the files to readily permit the thorough investigations that working security officers believe should be carried out." "State Department security men have other problems.

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"There is no agreed, scientific way to determine whether a man or woman will be a security risk or not. There is no agreement in some areas on precisely which things are damning and which are not." For example, a security officer says that after thoroughly study of a particular man, he found that according to regulations and evidence he could not rule the man a security risk. But at the same time, said this security officer: "If the decision had been mind, I would not have had him in the State Department. I could find no evidence that the man had broken any security rules, but his judgments were consistently so bad for the United States and so helpful to the Communists that I considered his work to be not in our best interests." * * * * "Security men say there is a certain tendency not to brand a man a security risk if there is no proof—even if the man's record puts a very strong doubt of his reliability in the security man's mind. There is also a tendency to resolve a doubt in favor of the man—passing an incident or incidents in his record as "youth-fully." Security men are sometimes overruled "up-stairs" on doubtful cases.

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"Security men who report these problems say they don't believe the number of the wrong men who get through these screening is large. But there is a worry on the wrong working level that the few who get through are too, too many." The findings by Crowl Cromley are the views of Otepka. The problems of the past and their significance on the future were discussed by Otepka with Reilly. Otepka vainly sought to impress Reilly with the situation calmly and without compassion. In his discussion of present and future policy with both Boswell and Reilly Otepka occasionally made casual reference to the mission he had been given as Deputy Director by Scott McLeod and John Hanes, former Administrators of the Bureau of Security and Consular Affairs. This mission, Otepka said had been suspended by Boswell through the latter's shifting reorganizations and Otepka sought to convince Reilly that the mission should be resumed. Otepka never spend four hours at any one time with Reilly or any on subject. Reilly is grossly exaggerating the length of the discussions. Evidently these discussions proved to be an irritant to Reilly and he is now twisting the facts in his statements to the Subcommittee. His half-truths and about Otepka's performance are evidently designed to continue the false impression sought to be created by Boswell and Jones that Otepka is not a balanced individual. Obviously Otepka's belief about the need for constant vigilance and re-appraisal in regard to the Department's security program present an obstacle to Reilly's plan to establish a statistical record of some sort without bringing out there real substantive problems that might embarrass the Department in the administration of its security.

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policies. Since Reilly can not claim Otepka is oncompetent and inexperienced he is pursuing the tactic of merely creating the impression that Otepka is "some kind of a nut" while avoiding carefully putting himself into a position where he might have to produce evidence which he does not have and won't fabricate. .8. On May 3, 1962 the Deputy Assistant Secretary for Personnel, Herman Pollack asked the Acting Administrator, Bureau of Security and Consular Affairs for the release of Otepka for the purpose of Otepka's attention

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note dated 5/24/63. Otto F. Otepka/ebp
innuendoes. f. (contd.) innuendoes ggf. (cont ld.)-31-

i. On June 1, 1962 Lt. Gen. Griswold, Commandant of the National War College wrote to Otepka saying in part "Your selection testifies to your outstanding record and to your potential for increasingly important service within the Department of State." You are fortunate to have the opportunity, at the stage of your career to set aside your sound duties for a ten month period and to use that time in exchanging your knowledge and ideas with the equally capable members of the Armed Forces, several civilian agencies of our government, and our faculty. (see attachment Ex. 10). After receiving Ordway's and Griswold's communications (and especially after Griswold's) Otepka expressed to Reilly the desire to return to the security program. Reilly told Otepka there would be no place for him in the Office of Security. Evidently Reilly looking ahead, and also looking back upon Otepka's established reputation in security administration viewed Otepka with his National War College training as a contender for a higher ranking job in security and thus an individual to be reckoned with against any other person (perhaps Reilly himself) who Reilly had in mind as his deputy or senior adviser. With this rejection of Otepka by Reilly Otepka declined the honor of attending the War College, knowing that upon his return he would have to cast about for a job outside his chosen field which Otepka did not care to do.

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Testimony of May 22, 1963 . . . page 680—pencilmark 43 . . . Otepka will testify on this or discuss with Sourwine.

Pages 681-2 pencilmarks 44, 45, 46 . . . Otepka will testify on this or discuss with Sourwine—contra pages 682-83—pencilmark 47 . . . See comments with respect to pencilmarks 22, 23, 24, pages 631, 32-33. Page 684 . . . pencilmark 48 Noonan and does not send fingerprint charts to the FBI. The Civil Service Commission does this. Page 684 . . . pencilmark 49 see Comments with respect to pencilmarks 34, 35, 36, 37, pages 662-665. page 685—pencilmark 50 . . . see comments with respect to pencilmarks, 34, 35, 36, 37, page 662-665. Page 678—pencilmarks 51, 52 . . . statistics—Otepka will testify on this or discuss with Sourwine. Pages 687-88-89—pencilmarks 53, 54, 55, 56 see comments with respect to pencilmarks 34, 35, 36, 37, pages 662-665. Page 691—pencilmark 57 . . . see comments re pencilmarks 14, 15, 16, 17, 18, 19, pages 621-26.

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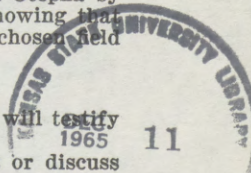
Page 692—pencilmark 58 . . . Otepka will discuss with Sourwine. Page 692-696—pencilmark 59. The entire Wieland file was obtained in August 1962 from Otepka by Belisle who hand delivered it to the Deputy Under Secretary for Administration (Orrick). However, the "Summary" and the "Digest" were obtained from Otepka by Jones' assistant, Hugh Appling in January 1962 . . . and were not with the file given by Otepka to Belisle. Otepka did not regain possession of the file until May 1963. . . . In January 1963 Reilly informed Otepka that he, Reilly, was going to have McCarthy read it to tell him what was in it but not to have McCarthy evaluate it. Otepka advised Reilly that he (Otepka) could tell Reilly what was in it, without such a waste of time on the part of McCarthy. Reilly stated that Otepka had lots of other work to do and he wanted a fresh look at it but again assured Otepka McCarthy would not evaluate it. Otepka said it might be a good idea at that to let McCarthy read it because Otepka was certain that McCarthy would confirm that Otepka's recommendations in the case were proper. In the course of McCarthy's review Otepka furnished to McCarthy, as he had informed Reilly he would, new information on Wieland that had not previously been considered. Otepka gathered from conversations he had with McCarthy that McCarthy was writing a rather extensive briefing on the case (a needless waste of time). However, McCarthy was very non-committal on just what he was required to do.

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The Wieland file was returned to Otepka in early May 1963 and its contents revealed no document prepared by McCarthy. It is odd that he spent one month merely reading the case.

Pages 696-701 . . . see comments above re pages 662-665.

Page 702—pencilmark 60 . . . Otepka did not work out any clearance forms with Reilly. The . . . idea for the new forms and the terminology on the forms was worked out by Otepka alone. He merely submitted the forms to Belisle for approval who made no changes or corrections therein (copies of forms attached



EX. 11). 702-03-04-05 . . . see comments re pages 662-706—pencilmarks 60, 62. Not so. Otepka will testify on this. 707-08-09 . . . see comments re pages 662-665. 709 pencilmark 63 . . . It is surprising that NSA used short form. NSA has just been soundly criticized by the HCUA and it had promised to improve its . . . in investigation program. ve 710—pencilmark 64—Civil Service Commission and AEC have declined to accept some State short form reports because of the inadequacy of the information. Otepka will testify on this. -35-711-712 . . . Ask Kimbell Johnson for information contra 712 . . . pencilmark 650 Otepka can testify on this. 713-14-15-16 . . . Ask Kimbell Johnson. 716—pencilmark 66. Appears to be a misstatement. CSC does investigate . . . It does not interview every applicant . . ., but does interview some applicants . . . 716—pencilmark 67—A very confusing statement by Reilly. Otepka will clarify this i.e. what cases FBI must investigate and he will cite the authority for the investigation. 717—pencilmark 68 . . . See comments for pencilmark 66. 718—pencilmark 69 . . . also pages 719-739. Reilly had sa a hand in the circumventing. Otepka will discuss these matters with Sourwine. 731—pencilmark 70 . . . All of Otepka's memoranda were sent via Reilly. Otepka did not—and does not send any memoranda in situations of this kind directly outside of the Office of Security without going through his superiors.

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-36—Page 750 pencilmark 71 . . . Otepka knows of such cases—these individuals were not ever given emergency clearances which must be signed by the Secretary. Belisle simply cleared them himself. He was outside the scope of his authority . . . Testimony of May 23, 1963 . . . Page 770-795 . . . The following comments are pertinent to the questions and answers on these pages and supplements the comments already offered above with respect to pages 662-665. As stated above Otepka was commended by his superiors for his performance as Chief of the Evaluations Division from April 1954 to April 1957 although he was the Deputy Director from April 1957 to January 1962. He was compelled by instructions from his superiors and by circumstances to devote part of his time to personnel security matters and especially to two highly significant and controversial cases which he was selected personally to evaluate (John S. Service and William Wieland). Otepka in no way shirked his responsibilities as Deputy Director during that time. Otepka's return to Chief, Evaluations Division, occurred on January 20, 1962. He immediately gave his attention to reviewing the effectiveness and integrity of its operations. They were left in the Division several persons who originally served under him while he was Chief of the Division from 1954-57 but for the most part only a few who could work without careful supervision. There was a number

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of newcomers, untried in proven security practices. Otepka inherited three supervisors who were subordinate to him—Charles Lyons, Carl Bock, and Raymond Levy. The first two are these subjects of attachments hereto (see Ex. 12 consisting of 5 attachments). The purpose of this is to develop information that is pertinent to the previous admonition given to [deletion]¹ by the Office of Personnel that a continuation in the future of his past misconduct with females would result in serious disciplinary action against him, that are self-explanatory. Raymond Levy, a lawyer and a very competent evaluator, is a constant problem because of his inability to work without friction with subordinates, especially clerks, and because of his indeciveness[sic] and deciveness and not picking. He is a most frustrating bottleneck. Otepka has advised Reilly fully about his problems with Levy and Bock and has sought to reassign them without detriment to their grades or salary to primary evaluation or secondary review rather than to supervisory duties but he can not do so except with Reilly's express permission and that of the Office of Personnel since they are both classified as Supervisors . . . Reilly has made one excuse or another in this respect, the most recent frequent one being the fact that he must await the results of a management survey conducted for him. This survey has been underway since January 1963 (five full months) with no known results. If Otepka were . . . to be permitted to reassign these men he could make better utilization of all of his evaluators. However, Levy and Bock's tandon the rights and operationally bottleneck work—Levy because of indecision and Bock because (as Lyons puts it in the attachments) "hatred of the old guard concepts," i.e. a conservative approach to security cases. Bock is known to resort to "slowdown" tactics.

¹ Name is deleted to protect Foreign Service officer later cleared of charges by the Department.

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Upon the departure of Lyons, on May 14, 1962 and without consulting Otepka in advance, Reilly promoted Fred Traband from GS-13 to a in the Investigations Division to a GS-14 in the Evaluations Division. Traband's career has been as a police officer and with the Department as an expert on homosexuals only. He came to the Evaluations Division on devoid of any knowledge or comprehension of personnel security regulations and procedures, or in the study of the philosophy and tactics of Communism. As a supervisor therefore he is unable to train subordinates in the diversification of personnel security but with time and practice Otepka believes Trand is a potentially good supervisor. (However, recently Traband unwisely attempt to convince Otepka he should clear Frank Januszkiewicz without evaluating the derogatory substantive information because Traband had been told that Januszkiewicz was politically sponsored and there was no use dealing with the facts. (Januszkiewicz case known to Sourwine). In March 1963 Otepka is covered that gross irregularities which preceded him had been committed in the handling of emergency clearances. He revealed their nature and extent through supervisory channels to the consternation of Boswell and the Deputy Under Secretary for Administration Jones. After Otepka's testimony before the Subcommittee he found that the well advertised invitations posted in the Department's lobby to engage in honest dissent State Department's; lobby were indeed llo not the hallmark of a healthy charge but were resented by his superiors. In January 1963 when requested to compile statements of achievements for 1962, Otepka submitted a got her achievements, and according to This is rumor (gossip) but I was told that the reason Trece received a grade increase was because his Congressman interceded for him; that he told his C that they had never doen much for him in the Dept.

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A prescribed format the statement as attached (Ex. 13). Reilly rejected the statement with a note to Belisle saying "Dave—I strongly question the wisdom of including OFO's last page. It would make it look as if we were endorsing the jogging he gave Boswell and Roger Jones." See Belisle's note to me OFO 9/13/62. In view of later k info rec'd from Czayo re next meeting of the Committee I prepared a memo from Reilly to Czayo requesting that Waiver's be withdrawn OFO wa May 28, 1963. Mr. Belisle attached is a copy of the memo which I sent to Mr. Reilly dated May 21, 1963. The file was returned to SY/E minus the original memorandum. As you requested, attached is a copy of the original memorandum dated xxxxxx which I sent to Mr. Reilly dated May 1, 1963. The Willems file was returned to SY/ on May 27 minus the original memorandum. May 28, 1963 Mr. Belisle—as you request attached is a copy of the original memorandum which I sent to Mr. Reilly with the Willems file dated May 21, 1963. The file was returned to SY/E on May 27 minus the memorandum. Attachment: Copy of memorandum to Mr. Reilly dated May 21, 1963 re Leonard Field Willems, Otto F. Otepka May 6, 1963 MEMORANDUM TO FILES SY/E—Otto F. Otepka—Charles Lyons the attachment is a copy of an efficiency report covering the rating period 11/16/60-9/30/61, prepared by Charles Lyons, the Deputy Chief, Division of Evaluations, regarding the performance of Carl B. Bock. This copy was given to me in December 1961 by Emery Adams, Chief, Division of Evaluations' impertinent comments (described below) and he sent it to the Office of the Director unsigned. I have had Mr. Bock's personnel file checked and it contains no efficiency report for the above period. Mr. Bock also informed me on April 24, 1963 that he never received an efficiency report for this period but inadvertently came into possession of a copy of the narrative position (part V) because he found it in the chronological file of his own secretary who had typed it for Mr. Lyons. For the

(Unnumbered page)

purpose of this memorandum the following comments of Mr. Lyons in the report are significant: "Mr. Bock, in common with other officers in the section, is inhibited by the ultra-conservative attitude which seems to have grown up in the personnel security administration of the Department over the past number of years, and which is reflected in the making a monument of tradition, leaving very little room for individual opinion or new approaches. The result is that individual personnel security cases must be decided on a strict corpusch juris

basis . . . and even in their physical format must adhere to strict traditional concepts." "N" Mr. Bock personally is of a much more liberal bent, and with the gradual dissipation, which is now evident, of the old guard concepts which dominated the personnel security program, I feel that Mr. Bock is well suited to be in the van guard of the more progressive approach now demanded. He has a commendable distaste for red tape, and if he could be made to feel that direct, realistic caution would not be rejected, he could do much to advance the currency and effectiveness of the security program." -2- The remarks concerning the ultra conservative attitude in personnel security administration were directed at personnel in SY whom Mr. Lyons believed were associated with the late Scott McLeod, Administrator of the Bureau of Security and Consular Affairs 1953-57. One of those apparently displeasing Mr. Lyons is the writer of this memorandum. Mr. Lyons served as Deputy Chief, Division of Evaluations from 1960 to 1962. He is a former FBI agent; however, the Department's Biographic Register for 1963 omits reference to this employment and shows his prior government service only as "Govt. Serv. 40-54." He served directly under the writer only a short time (from January 1962-April 1962). During this time, and prior thereto 2, according to Emery Adams, my predecessor, Lyons like some other professional Foreign Service Officers catered in his evaluative judgment to the Foreign Service and did what he could short of foreign service Officers catered in his evaluative

(Unnumbered page)

judgment to the Foreign Service and did what he could did what he could short of illegality to enhance himself in the Foreign Service. He especially avoided making adverse findings on cases involving high ranking Foreign Service Officers who he thought might some day be his superiors. Lyons advised me on one occasion that I should not concern myself with coldly objective performance ratings but I should assign high ratings to my subordinates because they would then show their gratitude to me in many ways. Boswell in his testimony before the Senate Internal Security Subcommittee in 1962 praised Lyons for his role in the celebrated Irving Scarbeck case. Lyons performed no significant investigations in the case but the most pertinent aspects of the case were developed and investigated in Poland and Germany by Kenneth Knauf, a top notch, intelligent, and quiet individual who merely carried out his job without thought of glory. During the trial and after the conviction of Scarbeck Lyons and Boswell immediately hoarded the credit by projecting themselves in to the limelight as the key investigators in the case. Kenneth Knauf told me on April 30, 1963, that he was horrified to see in print that Lyons and Boswell were showering themselves with glory when they contributed absolutely nothing material to the case beyond transporting the papers to the Department of Justice. He said his once high estimation of Boswell tumbled to the extent that he now doubted. Boswell's honesty and integrity. While assigned under me Lyons would frequently disappear from the office or remain in his office for hours behind a closed door. When I questioned him about my growing concern over his not contributing affairs hare of supervision of the Division of Evaluations he explained he was not authorized to disclose the reason for his absence or isolation. It did not take me long to find out and I immediately requested Boswell to reassign Mr. Lyons to his own personal jurisdiction and fill the void in my organization. Boswell then violated the confidence of my privilege communication to him by showing my memorandum to Lyons.

(Unnumbered page)

The latter then ridiculously stated I libeled him. I told him to go ahead and sue because my comments were merely a truthful appraisal by a superior of the performance by a subordinate and the best defense was the truth. O/SY/E:OF Oteпка :ebv O/SY/Oteпка ; ebp O/SY/EOFOteпка :ebp O/SY/EOFOteпка ; ebp May 27, 196

(EDITOR'S NOTE.—The following exhibit was over stamped with an "Office of the Director" stamp bearing the date Mar. 22, 1963, and the name "Mr. Otepka" checked by pencil and the words "noted O.F.O." written opposite. At the top, in the right-hand corner, was typed "SY Mr. Reilly.")

EXHIBIT C

MARCH 20, 1963.

The Honorable JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: I am informed that during the course of testimony before your Committee by Mr. Otto Otepka of the Office of Security of the Department of State, requests were made by the Committee Counsel that the Committee be furnished certain documents in the files of the Department. One of these documents is a confidential circular concerning Foreign Affairs Manual Circular 98-H of January 15, 1963. The other documents all relate to the U.S. Advisory Committee on the Arts and for the most part are internal memoranda from one officer of the Department to another containing the names of possible appointees to the Committee and a discussion, from a security point of view, of these nominees.

The Department will furnish the Committee a copy of the confidential circular concerning Foreign Affairs Manual Circular 98-H of January 15, 1963, and the memorandum relating to the substitution of the Advisory Committee on the Arts for ANTA. However, the Department regretfully cannot furnish the Committee with the other memoranda requested, not only because these memoranda are internal working papers containing the advice of subordinate officers to their superiors, but also because they contain information relating to the security status of prospective employees of the Department of State and the President's Directive of March 13, 1948, requires that such security information be kept confidential.

If I can be of further assistance, do not hesitate to let me know.

Sincerely yours,

FREDERICK G. DUTTON.

EXHIBIT D

EVALUATION OF CLIPPINGS FOUND IN CLASSIFIED TRASH BAG OF JUNE 18, 1963

The classified trash bag, recovered on June 18, 1963, was searched in Room 3811 by me and in the presence of Terence J. Shea and Joseph E. Rosetti. After emptying the contents of the bag we noted various xeroxed clippings stamped with the security classification of "CONFIDENTIAL." A number of the clippings also contained the names of the originator and the date drafted, plus other identifying words or sentences.

Inasmuch as one of the thermofaxed copies recovered pertained to the Staffing of International Organizations, I immediately called for the SY file on that subject. In addition, one of the clippings contained the originating symbol of: "ARA/RPA: JMBarta:jjr 5/20/63". We then removed the copy of Mr. Barta's memorandum, classified CONFIDENTIAL, from the above cited file. The originating designator on this memorandum was the same as that found on the clipping.

We also obtained from the file a copy of a CONFIDENTIAL memorandum from Messrs. F. W. Traband and R. P. Levy to Otto F. Otepka dated 5-23-63. The identifying data on the clippings were the same as on the memorandum. The same is also true of memorandum prepared on May 3, 1963 by Mr. John Noonan for Mr. Belisle which matched up with thermofax clippings found in the bag.

We then compared the xeroxed clippings that read "Problems of Communism on Staffs of International Organizations dealing with Inter-American Affairs—ARA/RPA:GNMonsma/md 1/23/63", with a memorandum prepared for Mr. McGeorge Bundy, The White House from W. H. Brubeck drafted by GNMonsma and entitled "The President's Inquiry Concerning Communists on the Staffs of International Organizations dealing with Inter-American Affairs".

We were able to identify them as the same.

DAVID I. BELISLE.
TERENCE J. SHEA.
JOSEPH E. ROSETTI.

EXHIBIT E

DETAILS CONCERNING OBTAINING OF CLASSIFIED TRASH BAG ON MARCH 19, 1963

On March 19, 1963, Mr. Frederick W. Traband notified me that Mr. Otepka's burn bag was being delivered to the mail room by Mrs. Schmelzer. I immediately retrieved the burn bag having a red "X" (crayon pencil mark) on the exterior of the bag, and placed it in a briefcase, which I personally delivered to Mr. Reilly in Room 3811. Upon opening the briefcase, Mr. Reilly and I initialed and dated the bag.

JOSEPH E. ROSETTI, *General Investigator.*

EXHIBIT F

STATEMENT CONCERNING INSPECTION OF CLASSIFIED TRASH BAG ON MARCH 19, 1963

On March 19, 1963 I received a classified trash bag enclosed in a brief case from Mr. John F. Reilly and removed it to Room 2612-A for inspection.

The bag was stapled together in the prescribed manner and bore a red "X" mark on the outside. I removed the staples and emptied the contents on to a desk.

I inspected all the carbon paper in the bag and noted that a seven page memorandum was titled "Pertinent extracts from hearings before a subcommittee of the Committee on Appropriations, House of Representatives 87th Congress, 2nd Session re Department of State appropriations for FY 1963—March 2, 1962". The first line of page 2 was "Questions for Reilly re the above".

I returned to Mr. Reilly's office and gave the seven carbon papers to him at which time we affixed our initials and date. At no time was the bag out of my possession and no additional documents were placed in the bag by me or Mr Reilly.

TERENCE J. SHEA, *General Investigator.*

EXHIBIT G

Pertinent extracts from hearings before a subcommittee of the Committee on Appropriations, House of Representatives, 87th Cong., 2nd Sess. re Department of State appropriations for FY 1963—March 2, 1962.

Page 524 (from a prepared statement containing a description of the functions of the Office of Security)

Statement contains 11 lines 4 lines provide as follows:

"It collects, evaluates, and disseminates to responsible areas of the Department and to other agencies information of a *security* and intelligence nature bearing on *espionage; subversive activities, and violations of internal security laws of the United States.*"
(underscoring supplied)

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Notes that there were 26,205 intelligence reports received and 25,851 processed and disseminated by the Office of Security in the FY 1961 (The statistical report does not contain the total disseminated in FY 1962 but shows 14,000 for last 6 months of FY 1962—this indicates that at least equal number disseminated in first 6 months for a total of 28,000).

The above prepared statement describes the intelligence reporting function. That function was transferred out of the Office of Security on February 18, 1963.

Questions for Reilly re the above:

Ask him to explain why the Intelligence reporting function was transferred out of the Office of Security. Did he agree with or contest the transfer out?

He will probably say that the Office of Security was the end user of only about 2% of the reports received. Ask him to explain why the Office of Security then in its description of the Intelligence function to the Rooney Committee stressed that the reports were an espionage, subversion, and violations of internal security laws. Is not the Office of Security *primarily* concerned with such reports?

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State Department received from Congress in FY 1961 for research and development of electronic equipment for use in security activities—\$499,699. For FY 1962 State requested from Congress \$1,373,000; it got \$1,200,000; however only \$583,700 was actually given to the Office of Security by the Department's Bureau of Administration for research and development of equipment.

Question for Reilly:

What was done by the Department with the difference allowed by Congress and the amount received from the Bureau of Administration (Reilly probably may not know because he was not employed in Department during FY 1962 but it may bring out some useful facts)?

—3—

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For FY 1963 the Office of Security asked Congress for \$325,000 to be used for research and development on security equipment.

Questions for Reilly:

How much did the Congress finally allow the Department for the FY 1963 to expend on research and development? How much has been allocated thus far to the Office of Security by the Bureau of Administration for this purpose?

What is the name of the division in the Office of Security which administers the Research and Development Program on security equipment? (Answer should be Division of Technical Services). Who is the head of that Division? (Answer should be Elmer D. Hill).

What is his grade and salary? (Answer should be Foreign Service Reserve Officer, Class 4, Salary, \$12,610).

What is Mr. Hill's background?

Have you had any complaints recently about Mr. Hill's personal misconduct either in the United States or while he was on any assignment abroad?

What was the nature of the allegations? What disposition was made of the allegations about Hill? Who made the complaint? (Answer should be George Pasquale). Is the complainant an employee of the Department now?

—4—

Why was he separated from the Department?

Ask Reilly to describe the uses to which the money allowed by Congress for research and development has been put.

Is the research and development work contracted out to private industry?

Who are the contractors? Have they been security cleared?

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Boswell said the Office of Security was reduced by 25 positions. He stated—
 "One of the positions was my deputy. He is a specialist in personnel security, and in fact for more than a year had been working, not across the board as a deputy, but on personnel security cases. I was of the opinion and remain of the opinion that we could function without that position. Incidentally he is now Chief of our Personnel Security Unit."

Questions for Reilly

Do you agree with Boswell's statement that the Office of Security does not need a deputy? Do you have a deputy now? What is the title and grade of the position occupied by Mr. David Belisle? What is the nature of his duties? Does he function as a deputy?

If Mr. Otepka is, as Boswell indicates, a chief specialist in personnel security why did you need another position on your personnel staff as a GS-16, one grade higher than Mr. Otepka's position, to assist you on personnel security? Was it not the purpose of the reduction in force to eliminate

—5—

unnecessary positions? Is Mr. Belisle's position necessary? Do you use Mr. Belisle more frequently than Mr. Otepka to advise you on personnel security matters? Mr. Boswell and Mr. Jones testified before the Internal Security Subcommittee that Mr. Otepka was very competent in the field of

personnel security and they indicated that the elimination of the position of Deputy Director would enable the Director to deal directly with the Division Chiefs, rather than through an intermediate. If that is true and Mr. Otepka knows the field of personnel security, why did you bring in a GS-16 to act as an intermediate between the chiefs of divisions on personnel security matters?

Pages 544-545

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In response to Representative Lipscomb's questions Belton Bryan admitted that the Office of Security work load still runs heavy and in fact has gone up. Boswell and Assistant Secretary Crockett told Representative Rooney indicated that their original estimates that the work loads of the Office of Security would "drop off" on the basis of which the reduction in force was calculated did not "drop off" and further estimates given to them show no "drop off." Boswell said that on the new estimates he would have no recourse except to ask for additional

—6—

positions. Crockett said that "if there is any possibility of our getting behind to the extent that there might be a temptation to reduce the standards" * * * "there are ways of gaining quick temporary help." Crockett stated "we can always ask the FBI or Civil Service Commission to give us some temporary help. They have always done this on occasions. So, there is a bit of leeway in this business of getting help on security investigations of a quick nature. This would require money. We would have to fund the money, because they do it on a cold-blooded, cash on the barrelhead basis, which is perfectly right." Rooney commented "You would not have to find the money. Give them back the money which the Congress appropriated. Representative Lipscomb commented "but cut some of the unbudgeted expenditures." Crockett agreed.

Questions for Reilly

Did the work loads decrease in FY 1963? To what extent did they decrease or increase?

Ask Reilly how many additional positions did he ask Rooney for (during his recent appearance before Rooney on March 23, 1963) in FY 1964? Why? Is the work load estimate for FY 1964 up or down from FY 1962 and FY 1963?

—7—

How many funded positions does the Office of Security carry for FY 1963? Is this higher or lower than FY 1962? (Note the Department announced in October 1961 (FY 1962) when it ordered a cut of 25 positions in the Office of Security that it had 273 positions). Ask Reilly how many positions were actually cut for FY 1962 and FY 1963. Ask him to explain why the Office of Security is carrying 27½ positions in FY 1963 if there was a reduction in force ordered. Where is the savings? Was there really a reduction in force or was the reduction in force a device to effect a reorganization and reshuffle of personnel?

EXHIBIT H

SEPTEMBER 11, 1963.

I have read and am familiar with the seven page document which commences with "Pertinent extracts from hearings before a subcommittee of the Committee on Appropriations, House of Representatives, 87th Cong., 2nd Sess. re Department of State appropriations for FY 1963-March 2, 1962" and which sets forth by its terms "Questions for Reilly". I recognize this document as a reproduction of seven sheets of carbon paper recovered from the burn trash of Mr. Otto F. Otepka on March 19, 1963.

The questions set forth in this document were subsequently asked of me by the Chief Counsel of the Senate Internal Security Subcommittee during the course of my appearances before that Subcommittee.

JOHN F. REILLY.

EXHIBIT I

DETAILS CONCERNING OBTAINING OF CLASSIFIED TRASH BAG ON JUNE 10, 1963

On June 10, 1963, Mr. Joseph E. Rosetti, after being advised by Mr. Frederick W. Traband, notified me that Mr. Otto F. Otepka's burn bag was being delivered to the Mail Room by Mrs. Schmelzer. I immediately retrieved the burn bag having a red "X" (crayon pencil mark) on the exterior of the bag, and placed it in a briefcase, which I brought to Room 3336.

At that time, the contents of the bag were examined by Mr. Rosetti and myself.

This examination revealed a one time typewriter ribbon which contained 24 questions commencing with "In your present position * * *" and concluding with "Was the conflict * * *". At that time we contacted Mr. David I. Belisle, Special Assistant, advised him of the results of our finding and turned the tapes over to him.

TERENCE J. SHEA.
JOSEPH E. ROSETTI.

EXHIBIT J

1. In your present position are you a Civil Service Officer?
2. In your present position are you a Civil Service Officer, a Foreign Service Officer or a Foreign Service Reserve Officer?
3. What is your present classification, grade and salary?
4. Is your classification higher or lower than that of Mr. Otepka?
5. Is your salary lower or higher than that of Mr. Otepka?
6. Do you have a classified civil service status?
7. Should security officer positions in SY be held by career civil service personnel, by non-career civil service personnel, or by career foreign service officers or by non-career foreign service officers?
8. Do you believe that Security Officer positions should be placed in the non-career schedule A or C categories?
9. Give the reasons for your views?
10. Do you know Terence Shea?
11. Where was he employed before he came to the Department?
12. Were you responsible for bringing him into the Department? Why?
13. Is Mr. Shea a career or non-career employee? What is his personal rank? Is he now or was he ever an FSR officer? Why?
14. Is there any action pending or any proposal been made to give you a higher grade than you now have? If so, to what grade would you be promoted?
15. Have you ever personally approved the security clearance of any applicant with respect to whom a full field appointment investigation had not been completed?
16. What is your policy in permitting applicants who have omitted information or falsified data on personnel security forms or other personal history forms to make corrections or amendments to such forms?
17. Should alterations or erasures be permitted on such forms after the applicant has been investigated or at any stage of the investigation?
18. Mr. Reilly submitted to the Committee's records a testimony given to you by Mr. Klein while you were at NSA. According to investigation by another committee Mr. Klein falsified his own application form for employment with NSA and substituted for it thereafter a newly prepared form. It is understood that the Director of Security at NSA who was your superior, had knowledge of the discrepancies in Klein's application and did not do anything about it. Are you aware of this matter? Did it ever come to your personal attention while you were at NSA? What did you do about it?
19. The records of the other committee disclose that the Dir. of Security at NSA was ordered to resign for misconduct at NSA. Are you familiar with the nature of his misconduct? What action did you take? (It is noted that Reynolds gave Belisle a testimonial regarding Belisle's service at NSA.)
20. It is understood that the Dept. office of Security by your directive is not allowed to furnish investigative reports containing minor suitability information to the Office of Personnel, please define minor suitability information. Please define what is substantial derogatory information. Tell us the difference between security information and suitability information.
21. Should a person be fired as a security risk for personal misconduct which does not involve the national security?

22. It is also understood that by your directive that the Office of Personnel is not to be furnished with investigative reports in clearly favorable cases. Who should be the judge as to what is fairly favorable an investigator or a professionally trained evaluator?

23. Do investigators in the Dept. send clearances on officer personnel directly to the Office of Personnel without review of such cases by professional evaluators?

24. I have been reading the Northern Va. SUN column authored by Allen and Scott. The Committee has information that the person referred to is Seymour JANOW presently Asst. Admin. for the Far Eastern Region Bureau, AID. Some time ago the newspaper announced that Mr. JANOW was confirmed for the above position by the US Senate. Since it is a Presidential appointment probably under jurisdiction of the Dept. of State, would you tell us if you are familiar with the case? Was the conflict of interest ever brought to your attention?

EXHIBIT K

SEPTEMBER 11, 1963.

I have read and am familiar with the contents of the three page document which represents the verbatim text of a one-time typewriter ribbon retrieved from Mr. Otto F. Otepka's burn bag on 10 June 1963. The typewriter ribbon contains twenty-four questions which by their terms were to be directed at me. The questions commence with "In your present position * * *" and conclude with "Was the conflict * * *".

Fifteen of the questions set forth in this typewriter ribbon were subsequently asked of me by the Chief Counsel of the Senate Internal Security Subcommittee during the course of my appearance before that Subcommittee on 29 July 1963.

DAVID I. BELISLE.

(EDITOR'S NOTE.—Mr. Otepka's answer to the charges preferred by the Department was ordered into the record at this point and reads as follows:)

WHEATON, MD., October 14, 1963.

HON. JOHN ORDWAY,
Chief, Personnel Operations Division,
Department of State,
Washington, D.C.

DEAR MR. ORDWAY: This is my answer to the charges preferred against me by your letter of September 23, 1963.

CHARGE 1 AND CHARGE 2

Before turning to the specific charges, a general statement of the background of this entire matter is in order.

I have been an employee of the U.S. Government for 27 years. From 1936 until 1942 I occupied minor positions in the Farm Credit Administration and the Bureau of Internal Revenue, and for 3 years during that period attended law school. In 1942 I was appointed an investigator and security officer with the U.S. Civil Service Commission. I served in that capacity until 1943, when I entered the U.S. Navy as an apprentice seaman. I served in the Navy from 1943 until 1946, being discharged with the grade of petty officer first class. Returning to the Civil Service Commission in 1946, I served there as an investigator and security officer until 1953 when I came to the Department of State as a security officer. I have been with the Department ever since 1953.

My efficiency ratings at the Civil Service Commission for the years 1948-53 were all "excellent," the highest ratings attainable under the system then in effect. During my service in the Department of State, all of my efficiency reports have been highly favorable. For example, for the year 1959-60, when I served as Deputy Director of the Office of Security, my efficiency report contained the following comment by the Director of that office, Mr. Boswell:

"He has had long experience with and has acquired an extremely broad knowledge of laws, regulations, rules, criteria, and procedures in the field of personnel security. He is knowledgeable of communism and of its subversive efforts in

the United States. To this, he adds perspective, balance, and good judgment, presenting his recommendations and decisions in clear, well reasoned, and meticulously drafted documents. He has brought these attributes to bear during periods totaling almost 4 months when he has been Acting Director in my absence and throughout the rating period as the State Department representative on an intragovernmental committee concerned with security matters."

In April 1958 I received a Meritorious Service Award signed by Secretary of State John Foster Dulles for sustained meritorious accomplishment in the discharge of my assigned duties. The justification for this award included the following statement: "He has shown himself consistently to be capable of sound independent judgment, creative work, and the acceptance of unusual responsibility."

It may be noted that I have received no efficiency report since September 1960, although the regulations require that each employee receive such a report annually, and I have on several occasions requested my superiors to give me my efficiency reports. However, until recently none of my superiors ever complained to me about my performance of duty.

Beginning in November 1961 an investigation into certain security practices of the Department of State was conducted by the Internal Security Subcommittee of the Committee on the Judiciary of the U.S. Senate. I first appeared before that committee at its request and with the express permission of the Department of State, together with two other members of the Bureau of Security and Consular Affairs. I responded to the questions of Mr. J. G. Sourwine, the subcommittee's chief counsel, frankly and truthfully to the best of my knowledge and ability. Subsequently, in April 1962 I reappeared before the subcommittee also at the committee's request and with the permission of my superiors. Also appearing at or about that time were my superiors. In October 1962 the committee publicly released the transcripts of my testimony and that of other Department of State personnel, together with a report of the committee containing the committee's conclusions and recommendations with respect to the security practices and procedures of the Department of State.

Beginning in February 1963, and during March 1963, I appeared on four occasions before the same subcommittee in accordance with its request and with the knowledge of my superiors. I was given to understand that the committee was seeking to ascertain from the Department of State whether or not the Department had implemented the committee's recommendations to improve certain security practices found by the committee to be deficient. During April and May 1963 my immediate superior, Mr. John F. Reilly, testified before the committee on five occasions. Prior to his first appearance, and at his request, I obtained from Mr. Sourwine the stenographic transcripts of my testimony of February and March 1963 and I furnished those transcripts to Mr. Reilly. Mr. Reilly indicated to me he had not read my transcripts before. I do not know the reason why, as the transcripts had been available to him through regular Department channels.

Following the appearance of Mr. Reilly, he came to my office and informed me that Senator Thomas J. Dodd, the presiding chairman of the subcommittee, had given him, Mr. Reilly, "a bad time" on that day. Mr. Reilly related to me that he had told the subcommittee that I had voluntarily disqualified myself from the evaluation of the case of William A. Wieland. Mr. Reilly asked if I could "straighten out" Mr. Dodd on this matter. I said I did not know Mr. Dodd but were I to be again questioned by the subcommittee I would be very happy to state for the record what had transpired between me and Mr. Reilly when on a prior occasion he discussed with me, at his request, my future role in the reevaluation of the Wieland case.

Following the conclusion of Mr. Reilly's testimony, Mr. J. G. Sourwine, the chief counsel of the subcommittee, requested that I come to see him, which I did, after working hours on the day of his request. To the best of my recollection this was on May 23, 1963. Mr. Sourwine voluntarily informed me that there were conflicts between my testimony and the testimony of Mr. Reilly. He offered to let me read the stenographic transcripts of Mr. Reilly's testimony and said that when I had done so, I should give him a memorandum that would answer point by point all of those portions of Mr. Reilly's testimony which conflicted with my testimony or which I found inaccurate or untrue. After carefully reading the transcripts of Mr. Reilly's testimony I was both shocked and amazed. I therefore prepared a memorandum consisting of 39 double-spaced pages annotated by exhibits, and I furnished a copy of this memorandum to Mr. Sourwine

together with copies of the exhibits mentioned therein. This memorandum was furnished to Mr. Sourwine as the chief counsel, and authorized representatives of the subcommittee. It was intended to serve as my reference in rebuttal, explanation, or clarification of statements made by Mr. Reilly, in any future appearance I made before the committee. I was told that I would be recalled to testify again before the committee.

I was especially disturbed by two statements made by Mr. Reilly in his testimony which was shown to me by Mr. Sourwine. First, Mr. Reilly testified, concerning eight prospective appointees to the Advisory Committee on International Organizations, that there was no substantial derogatory information respecting any of the prospective appointees, and that the case of only one of them had even been brought to his attention prior to their appointment. This testimony I knew to be incorrect, for on September 10, 1962, before the appointments were made I had submitted to him a memorandum with respect to each of the individuals in question. This memorandum strongly recommended that certain of the prospective appointees not be cleared without further investigation. On September 17, 1962, Mr. Reilly himself directed a memorandum to Mr. George M. Czayo in the office of Mr. Harlan Cleveland with respect to these cases, and this document reflected that Mr. Reilly was familiar with my memorandum of September 10.

I gave to Mr. Sourwine a copy of my memorandum of September 10, 1962 and a copy of Mr. Reilly's memorandum of September 17, 1962. While these documents were classified "Confidential"—the one of September 10 having been classified by me—they contained no investigative data. The only substantive data contained in my memorandum of September 10 consisted of references to certain matters which had been mentioned in published reports or hearings of the Senate Internal Security Subcommittee or which were otherwise in the public domain. The Reilly memorandum of September 17 contained no substantive data whatever with respect to the prospective appointees, but related for the most part to the procedural steps involved in their clearance.

Charge 1 in your letter is based upon my action in giving a copy of my memorandum of September 10, 1962, to Mr. Sourwine. Charge 2 relates to my action in giving Mr. Sourwine a copy of Mr. Reilly's memorandum of September 17, 1962. You allege that my actions were in violation of the Presidential directive of March 13, 1948 (12 Fed. Reg. 1359) which forbids the disclosure, except as required in the efficient conduct of business, of "reports, records, and files relative to the loyalty of employees or prospective employees."

It is a familiar rule that regulations, like statutes, must be interpreted with commonsense, that a thing may be within the letter of a regulation and yet not within the regulation, because not within its spirit, nor within the intention of its makers. This has been the law for centuries. Poffendorf mentions the judgment that the Bolognian law which enacted "that whoever drew blood in the streets should be punished with the utmost severity," did not extend to the surgeon who opened the vein of a person that fell down in a street in a fit. Plowden cites the ruling that the statute of 1st Edward II, which enacts "that a prisoner who breaks prison shall be guilty of a felony," does not extend to a prisoner who breaks out of prison when the prison is on fire "for he is not to be hanged because he would not stay to be burnt." See *Church of the Holy Trinity v. United States* (143 U.S. 457).

Applying this doctrine to the present case, and assuming without conceding that the memoranda of September 10 and September 17, 1962, fell within the letter of the Presidential directive of March 13, 1948, I submit that those memorandums were not within the spirit of the directive, nor within the intention of its author. As President Truman stated in his letter to the Secretary of State, dated April 2, 1952, the purpose of the directive was "to preserve the confidential character and sources of information, to protect Government personnel against the dissemination of unfounded or disproved allegations, and to insure the fair and just disposition of loyalty cases." The memorandums of September 10 and September 17, 1962, referred to no confidential information, disclosed no confidential sources, and made no allegations. My memorandum of September 10, 1962, merely referred to matters of public record and recommended that these matters should be investigated. There was no loyalty case, pending, or contemplated, involving any of the individuals mentioned. In short, in the context of the Presidential directive of March 13, 1948, the two memorandums were completely innocuous and clearly not the kind of papers that the directive was designed to protect.

My interpretation of the Presidential directive of March 13, 1948, is apparently in harmony with the interpretation placed upon the directive by Secretary of State Rusk. Thus, the statement of Senator Thomas J. Dodd, appended to the report of the Senate Subcommittee on Internal Security in the matter of State Department security, published in 1962, contains the following:

"Subsequent to the preparation of this report, I had occasion to discuss the Wieland case with Secretary Rusk and to *examine certain documents which he showed me in confidence.*

"On the basis of these conversations, I am satisfied that, prior to September 15, 1961, Secretary of State Rusk had examined the material pertaining to the Wieland case in considerable detail, including reports of the Federal Bureau of Investigation * * * [Italic supplied.]

See Senate report, State Department security, the case of William Wieland, etc., 87th Congress 2d session—page 197. The intendment of Senator Dodd's statement is that Secretary Rusk disclosed to him documents from the security file of Mr. Wieland, in order to establish that the Secretary did examine this material prior to September 15, 1961. It seems obvious that, in the judgment of Secretary Rusk, a reasonable and commonsense interpretation of the Presidential directive did not prevent the disclosure of the security material to Senator Dodd. If it was proper for Secretary Rusk to show such material to a member of the Internal Security Subcommittee, then it was proper for me to disclose the innocuous memorandums of September 10 and September 17, 1962, to an authorized agent of that subcommittee in order that the committee might know the truth and to refute unwarranted and scandalous charges against me and my record.

Mr. Reilly's testimony that the cases of the prospective appointees had not been brought to his attention seriously disparaged my performance of duty and impugned my integrity. In other words, had I failed to bring such matters to his attention, I would have been guilty of a dereliction of duty. In this context, I submit that I had not only the right but the duty to defend myself, to correct the committee's record, and to support my oral testimony by the memorandums of September 10 and September 17, 1962.

The provisions of the United States Code, title 5, section 652(d) plainly gave me the right to respond to the request of the Senate committee and to answer Mr. Reilly's attacks upon me. That statute provides:

"(d) The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress or to any committee or member thereof, shall not be denied or interfered with. As amended June 10, 1948, c. 447, 62 Stat. 354; 1949 Reorg. Plan No. 5, eff. Aug. 19, 1949, 14 F.R. 5227, 63 Stat. 1067".

If the provisions of the directive are construed to prohibit the disclosure by me of the memorandums here involved, under the circumstances of this case, then I submit the directive is in violation of the statute.

It must be emphasized always that I gave the memorandums in question to Mr. Sourwine, not as an individual, but as the authorized agent of a committee of the U.S. Senate; and I gave them to him only to be used as exhibits in connection with my forthcoming testimony before that committee in executive session.

CHARGE 3

Charge 3 alleges that in violation of the Presidential directive of March 13, 1948, I furnished to Mr. J. G. Sourwine a copy of an investigative report dated May 27, 1960, concerning Joan Mae Fogltanz.

My answer to charges 1 and 2 is in large part applicable to charge 3 and I adopt it as part of my answer to charge 3.

Specifically, the facts relating to and justifying my delivery of a copy of the Fogltanz report to Mr. Sourwine are as follows: In his testimony before the committee Mr. Reilly swore that in a memorandum dated October 29, 1962, I had made certain recommendations for the improvement of the organization and operation of the Division of Evaluations; and that I thereafter complained when the very changes I had recommended were put into effect. He produced a copy of my memorandum of October 29, 1962, introduced it into the committee record, and discussed it in detail. Furthermore, he said that my "recanting" of that memorandum caused him to question my integrity and my emotional balance. This was the second statement by Mr. Reilly that disturbed me.

One specific recommendation which Mr. Reilly claimed I had repudiated was my recommendation that "short-form reporting" be used in the case of certain applicants for employment. By short-form reporting I meant a procedure whereby investigative reports on applicants for minor clerical positions which were entirely favorable would be condensed and summarized, eliminating long and repetitious endorsements and descriptive statements. I recommended that such short-form reporting be used only in cases of applicants for positions in grade GS-4 or lower. After receiving my memorandum and contrary to my recommendation, Mr. Reilly ordered that short-form reporting should be used for all reports of investigation, including reports on prospective appointees to high office in the Department. Since Mr. Reilly's order was not in accordance with my recommendation, I respectfully opposed it.

In view of Mr. Reilly's testimony, it was necessary for me to explain to the committee the matter of short-form reporting and my consistent position on the subject. It was in this connection and for this purpose alone that I gave Mr. Sourvine, as the agent of the subcommittee, the Fogltanz report. This report was marked "Official use only." The report, relating to an applicant for a minor clerical position in the Department of State, consisted of five and a half single-spaced typewritten pages and reflected interviews with a large number of people. All of those interviews attested that Miss Fogltanz was a young lady of splendid character, a loyal American, moral, religious, and in every way suitable and qualified for appointment. In short the report was completely favorable and completely innocuous. I gave the report to the subcommittee as a striking example of the needless repetition and prolixity which my recommendation for short-form reporting was intended to eliminate. Along with this report, I also presented an example of the same material digested in a short-form report. My purpose, and my only purpose, was to explain the recommendation I had made to Mr. Reilly and to make it clear that I had not deviated from that recommendation.

All that I have said in my discussion of charges 1 and 2, to demonstrate that the memorandums involved in these charges were not within the scope of the Presidential directive of March 13, 1948, applied with even greater force to the innocuous Fogltanz report.

CHARGES 4-11

Charge 4 alleges that I was "responsible for the declassification of a classified document" by cutting the classification indicators from the tops and bottoms of the pages of a xeroxed copy of the document.¹ It is alleged that the severed tops and bottoms of the pages were found in my burn bag on June 18, 1963. It is charged that such declassification violated various sections of the Department's Foreign Affairs Manual. Charges 6, 8, and 10 made similar charges with respect to the xeroxed or thermofaxed copies of other documents it being alleged in each instance that the severed tops and the bottoms were recovered from my burn bag.

Charges 5, 7, 9, and 11 relate to the same xeroxed or thermofaxed copies and the same clippings referred to in charges 4, 6, 8, and 10. It is alleged that I was "responsible" for the clipping of these documents, and that such clipping constituted a "mutilation" of the documents in violation of 18 U.S.C. 2071, relating to the mutilation of official documents and records.

By letter of October 4, 1963, my counsel requested you to specify the particular manner in which it is claimed that I failed to follow required declassification procedures as alleged in charges 4, 6, 8, and 10. He also requested you to advise whether or not it is charged that I personally clipped the documents, and if not, then who is alleged to have done the clipping. By your letter of October 8, 1963, you responded to the first question by stating only that "The methods by which the classified documents in question were declassified are not authorized by the above-cited reference" (to the Department's Foreign Affairs Manual). This response of course does not answer the question. Answering the second question you stated that it is not charged that I personally declassified or mutilated the documents. You did not respond at all to the request for specific information as to who is alleged to have done the clipping or mutilation.

In the absence of the specific information requested by my counsel's letter of October 4, 1963, these charges are defective. I do not waive this point.

¹The charge alleges that the document in question was signed by Mr. William H. Brubeck. The document exhibited to me and my counsel by your office, as a copy of the one referred to in the charge, is signed "J. T. Rogers, for William H. Brubeck." The inaccuracy is, of course, unimportant.

Turning to the facts, the allegations contained in charges 4-11 inclusive can be answered in a few words. I did not clip the documents in question. I was not responsible for the clipping, directly, or indirectly. I do not know who did it, or why, or who placed the clippings in my burn bag—assuming that they were there. In short, I had absolutely nothing to do with clipping these papers and know nothing about it.

What has been said is a full and complete answer to the charges of clipping and mutilation. It may be appropriate, however, to point out the flimsy nature of the circumstantial evidence upon which these accusations against me are based. You apparently rely upon the theory of guilt by association with my burn bag. The facts are that there were three burn bags and three secretaries in the reception area where my burn bag was located. The secretaries sat within a few feet of each other and there was a burn bag beside the desk of each secretary. There was no rule or custom that trash from the office of each official would be deposited only in his burn bag; on the contrary, trash might be thrown into whichever burn bag was the most convenient. It follows that even if the clippings here involved were found in my burn bag this does not demonstrate that they came from my office or had any connection with me. In other words, the presence of such clippings in my burn bag is entirely consistent with the hypothesis that they came from one of the other two offices in the suite. It should be added that both Mr. Traband and Mr. Levy had copies of the documents in question.

Further analyzing the circumstantial evidence, it is significant that one page of the four-page document involved in charges 4 and 5 and one page of the two-page document involved in charges 6 and 7 were not clipped at all. If the purpose of whoever clipped the documents was to declassify them by removing the classification indicators, it is singular that the indicators on these pages were left untouched.

As I have said, I do not know who clipped the documents in question. You have not answered the request of my counsel for specific information as to who is alleged to have done the clipping. Were I permitted to examine my burn bags and their contents, referred to in your letter, I might be able to reach some conclusion on this point; however, you have denied my counsel's request, by his letter of October 8, 1963, that we be permitted to examine the burn bags and their contents. I must say, with great respect, that your ruling is puzzling, especially since it is alleged that the contents of the burn bags came from me, and since the Department of State in the case of John Stewart Service permitted him and his counsel to examine all documents and papers in the files which were prepared by him or in connection with the missions on which he served, which might be material to his defense.

Finally, it should be noted that 18 U.S.C. 2071, relating to the mutilation of records and documents, furnished no support for your charges. It is plain on the face of this statute that it is intended to prohibit, and does prohibit, only the mutilation or destruction of record or file copies. The statute by its terms relates to papers "filed or deposited * * * in any public office, or with any * * * public officer of the United States." It has no application to work papers or working copies which of course may be destroyed when they have served their purpose. If this were not so, there would be little need for trash baskets and burn bags. In this connection, you are, of course, familiar with the departmental rule that unneeded copies shall be destroyed by tearing them and depositing them in a burn bag for classified trash.

CHARGE 12 AND CHARGE 13

Charges 12 and 13 allege that I furnished to Mr. Sourwine certain questions, to be asked of Mr. Reilly and Mr. Belisle when they testified before the Senate subcommittee. It is charged that my action in furnishing these questions "is a breach of the standard of conduct expected of an officer of the Department of State."

By his letter of October 4, 1963, my counsel asked that you specify the regulation alleged to have been violated by my conduct, which is the basis of charges 12 and 13. In your letter of October 8, 1963, you responded that "no allegation is made that the conduct of Mr. Otepka referred to in charges (12) and (13) violated a specific Department of State regulation." It thus appears that my conduct is to be judged under some vague and amorphous standard, setting out no objective guidelines, but existing only in the minds of my superiors, and subject to change according to their notions or whims of the moment. Such a stand-

ard, I submit, does not meet the fundamental requirements of fairness and due process, nor does a charge based upon such a standard fulfill those requirements.

The vagueness of the standard of conduct to which you refer and the need for a more precise definition and explanation of that standard are well illustrated by the facts of this case. In addition to the surveillance of my activities disclosed by your letter, I have reason to believe that in recent months employees of the Department of State have secretly employed listening devices to eavesdrop on conversations in my office. I have reason to believe that my office telephone has been tapped and that my desk and my safe have been surreptitiously opened and searched. These things have been done with the knowledge and approval of my superiors, if not by their express direction. They were done in the absence of any effort whatever to secure from me, by direct and open means, the information which was desired and which I would have been glad to furnish. When the Department of State approves such conduct and adopts such methods the meaning of your phrase "the standard of conduct expected of an officer of the Department" becomes lost in obscurity.

Turning to the factual allegations of charges 12 and 13, it is true that I furnished to Mr. Sourwine, as the chief counsel and authorized representative of the Senate subcommittee, questions to be put to Mr. Reilly and Mr. Belisle when they testified before the committee. Some of these questions are reflected in the exhibits attached to your letter, although in many instances they have been garbled in transcription.

My action in furnishing these questions to Mr. Sourwine was clearly within the protection of 5 U.S. Code, section 652(d), quoted above on page 6.

Whatever the standard of conduct expected of an officer of the Department of State may be, it is my conviction that any standard of conduct worthy of the name demands honesty and integrity. Certainly, honesty and integrity are the fundamental tenets of my personal standard of conduct. Consistently with this belief, I hold that when one is called upon to speak he must speak the whole truth; he must not attempt to pervert or suppress the truth by concealment, evasion, half truths, or misleading silence. I believe that every man has the right to defend himself against false accusations. I believe in the Code of Ethics for Government Service, expressed in the House concurrent resolution agreed to on July 11, 1958, and promulgated by the U.S. Civil Service Commission in departmental Circular 982 on December 2, 1958. That code states that "any person in Government service should put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department." When I appeared as a witness before the Senate subcommittee I of course had this credo in mind. I believed then and I believe now that it was my duty to tell the committee the whole truth. By the same token I believed then and I believe now that I would have been derelict in my duty, if by my silence I had permitted untrue and inaccurate statements, of which I had personal knowledge, to remain unchallenged in the committee record, or if I had otherwise failed to give the committee my full cooperation in its search for the truth. It was and is my understanding that it was my duty to assist the committee to develop the truth, and it was for this purpose, and for this purpose alone, that I cooperated with the committee counsel by suggesting to him fair, proper, and impersonal questions designed to bring the truth to light. It is difficult to understand why the Department and the witnesses did not welcome such questions. In any event, I cannot believe that my action was a breach of any standard of conduct properly expected of an officer of the Department of State.

I submit that the charges against me are without foundation and should be dismissed.

Very respectfully,

OTTO F. OTEPKA.

I, Otto F. Otepka, being first duly sworn depose and say that I have read the foregoing answer subscribed by me and know the contents thereof; that the matters and things stated therein as of my personal knowledge are true and those stated upon information and belief I verily believe to be true.

OTTO F. OTEPKA.

Subscribed and sworn to before me this 14th day of October 1963.

CHARLOTTE D. KIMBALL,
Notary Public, District of Columbia.

My commission expires August 14, 1968.

DEPARTMENT OF STATE,
Washington, D.C., November 5, 1963.

Mr. OTTO F. ОТЕРКА,
Office of Security, Department of State.

DEAR MR. ОТЕРКА: On September 23, 1963, you were notified of thirteen charges on the basis of which it was proposed to remove you from your appointment as Supervisory Personnel Security Specialist, GS-15, in the Office of the Deputy Assistant Secretary for Security in the Department of State. Your written reply, dated October 14, 1963, has been carefully considered. As you know, you did not request an opportunity to make an oral reply. I find that you have not refuted the charges set forth in my letter of September 23, 1963.

Charges one and two allege that you gave copies of classified memoranda relating to the loyalty of prospective employees of the Department of State to a person outside the Department without authority and in violation of the Presidential Directive of March 13, 1948. Charge three alleges that you gave a copy of an investigative report concerning a prospective employee of the Department to a person outside of the Department without authority and in violation of the Presidential Directive.

In your reply you admit giving these documents to Mr. J. G. Sourwine, Chief Counsel of the Internal Security Subcommittee of the Senate Judiciary Committee. You argue, in defense, that the Presidential Directive, properly construed, does not apply to the documents in question because the memoranda contained no investigative data and no substantive data that was not in the public domain and the investigative report was completely favorable and innocuous.

The Presidential Directive provides that:

"* * * all reports, records and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies), shall be maintained in confidence, and shall not be transmitted or disclosed except as required in the efficient conduct of business.

"Any * * * request for information, reports, or files of the nature described * * * shall be respectfully declined, on the basis of this directive, and the * * * request shall be referred to the office of the President for such response as the President may determine to be in the public interest in the particular case. There shall be no relaxation of the provisions of this directive except with my express authority."

The Directive recognizes that, because of the nature of the material they contain, reports, records and files relative to loyalty of Government employees and prospective employees must be specially safeguarded. Only in this way can the personnel loyalty-security program be carried out with appropriate regard for both national security and individual rights. The Directive does not prohibit the disclosure of such information absolutely, but provides a special procedure for determining whether it is in the public interest that such information be disclosed. Under the procedure, that determination is made by the President, to assure that all relevant considerations will be taken into account and given proper weight. The Directive thus removes from the purview of the individual employee's judgment the many questions that may arise—whether the source of the information must be protected; whether the information is substantive in character; whether it is innocuous; whether a proposed disclosure is accompanied by adequate safeguards; in sum, whether a particular report or record contains information that should not be disclosed in the circumstances.

Accordingly, the only relevant question is whether the documents were "relative to the loyalty of employees or prospective employees." Of the documents you gave to Mr. Sourwine, the September 10 memorandum specifically deals with the loyalty of prospective employees and, in fact, contains at least two statements clearly based on information contained in investigative reports. The September 17 memorandum specifically refers to loyalty matters with respect to the prospective employees. The third document is an investigative report and is thus of a class expressly named in the Directive. The documents thus fall within the classes of papers protected by the Directive.

You also contend that the memoranda and the investigative report were furnished to Mr. Sourwine to correct inaccurate testimony of your superior, Mr. Reilly, and that under 5 U.S.C. § 652(d), dealing with the right of persons employed in the Civil Service to furnish information to or petition Congress, you were free to give the documents to Mr. Sourwine in spite of the Presidential directive.

I cannot agree with this position. No organization, especially a large one like the Department of State, could function if subordinate officers disregarded

established procedures as they choose. As you know, there are a number of such procedures by which you could have brought your disagreement with Mr. Reilly to the attention of superior officers in the Department. In addition, you could have sought the opportunity to testify again before the Subcommittee to make any necessary clarifications. If you believed disclosure of papers relative to the loyalty of employees or prospective employees was necessary, the procedure prescribed in the Presidential Directive was available.

Title 5 U.S.C. § 652(d) is not designed to permit employees to short cut such procedures. The question of the scope of that Section was raised during the Senate Select Committee Hearings concerning censure charges against the late Senator McCarthy. It was argued that under the statute "no qualifications or restrictions are imposed upon the right of Federal employees to take up matters with and give information to Members and Committees of the Congress of the United States." This interpretation was rejected by the Select Committee. It concluded that the Section does no more than "affirm that Federal employees do not lose or forfeit their rights merely by virtue of their Federal employment." An employee does not forfeit his rights when he complies with reasonable and orderly procedures for the exercise of those rights. The Committee recognized that the President could prescribe reasonable regulations to safeguard information "notwithstanding that the regulations might directly interfere with any secret transmission line between the executive employees and any individual Member of Congress." Senate Report No. 2508, 83d Congress, 2d Session, p. 35.

Accordingly, I find that charges one, two, and three are sustained.

Charges four, six, eight, and ten allege that you were responsible for cutting the classification indicators from the tops and bottoms of certain classified memoranda thus declassifying the documents without complying with prescribed procedures. Charges five, seven, nine and eleven allege that, by the same acts, you were responsible for mutilation of the documents in violation of Section 2071 of Title 18, United States Code.

In reply you deny that you clipped the documents in question, or that you were responsible, directly or indirectly, for the clipping. You argue that the presence of the clippings in your burn bag is consistent with the hypothesis that they came from one of the other two offices in the suite. You also argue that Section 2071 of Title 18, United States Code, has no application to work papers or working papers, which may be destroyed when they have served their purpose.

With respect to Section 2071 of Title 18, United States Code, you are not, of course, charged with destroying the documents, lawfully or unlawfully, but with unlawfully mutilating them. Since only the carefully clipped classification indicators appeared in the burn bag and not the remainder of the documents, the inference arises that you were not seeking to destroy the document in accordance with prescribed procedures or in the ordinary course of business.

Although the documents involved were not originals, they are not thereby exempt from the protection of Section 2071, which covers " * * * any * * * paper, document or other thing, filed or deposited with any * * * public officer of the United States. * * *"

As to the factual issues, each of the other two officers occupying the suite has made a statement denying that he clipped the documents in question, or placed the documents or portions of them in your burn bag, or that he knows who did. Each of the secretaries of these officers as well as your own secretary has made a statement denying that she clipped the documents in question, or placed them or portions of them in your burn bag, or knows who did. The clippings were found in the burn bag available specifically for your use. The documents all dealt with the same specific subject as ten other documents which, in a signed statement dated August 15, 1963, you admitted giving to Mr. Sourwine. In these circumstances, I have concluded that you were responsible for clipping the documents.

I find that these charges are sustained.

Charge twelve alleges that you prepared and gave to a person or persons outside the Department a series of questions for the use of Mr. Sourwine in the interrogation of your superior, Mr. Reilly. Charge thirteen alleges that you prepared and gave to a person or persons outside the Department a series of questions for the use of Mr. Sourwine in the interrogation of another officer of the Department, Mr. Belisle.

In your reply you admit having prepared the questions and given them to Mr. Sourwine to be put to Mr. Reilly and Mr. Belisle when they testified. You

argue that the standard of conduct you are charged with violating is so vague as to be unfair and lacking in due process and that, as with charges one, two and three, your action was justified under 5 U.S.C. § 652(d) and was taken to defend yourself against false testimony. You also state that you considered it your duty, in loyalty to your country and consistent with the Code of Ethics for Government Service, to assist the Committee to develop the truth.

Departmental Regulations (3 FAM 1611) provide:

"The policy of the Department is to protect its employees against arbitrary separation or removal for reasons having no relation to the good of the Service. Employees are required, however, to render honest, efficient and loyal service and shall be separated or removed when necessary to maintain the required discipline and efficiency of the Service."

This standard of service as well as basic concepts of administrative responsibility require that an officer of the Department should first seek to correct asserted deficiencies within the Department in accordance with the procedures provided. Unless this proves impossible the question of a conflict of loyalties cannot arise. As noted above, there were proper ways available to make your views known, and thus there is no deprivation of the rights referred to in 5 U.S.C. § 652(d). The right to free speech and loyalty to country on which you rely do not render meaningless your duty of loyalty to superiors and fellow employees and are not incompatible with that duty.

I find that these charges are sustained.

You are hereby notified that you will be removed from your appointment with the Department of State. The effective date of your removal will be November 15, 1963.

You are hereby notified of your right to appeal this decision to the Department of State or to the Civil Service Commission. If you appeal initially to the Department, the effective date of your removal will be postponed pending the appellate decision. Your attention is directed to the Foreign Affairs Manual of the Department, Volume 3, Section 1840, a copy of which is enclosed, for detailed information concerning an appeal to the Department. Once you have appealed to the Department, you may appeal to the Civil Service Commission only if—

- (1) you request that the appeal to the Department be terminated, or
- (2) an appellate decision has been rendered sustaining this decision.

If you appeal initially to the Civil Service Commission, you cannot appeal to the Department. An appeal to the Department and to the Civil Service Commission may not be pursued concurrently.

Any appeal you wish to make to the Department should be submitted in writing to the Assistant Secretary for Administration. It should set forth, clearly the basis for your appeal and state whether you desire a hearing in connection with your appeal.

In appealing to the Department, you have the right to a full and fair hearing. You may appear in person or through or accompanied by a representative. If you avail yourself of this, the hearing will be held prior to a decision on your appeal. A decision on this appeal would be made only after review of the matter by the Secretary.

If you elect to appeal to the Civil Service Commission from this decision, you should address the Appeals Examining Office, United States Civil Service Commission, Washington 25, D.C. Such an appeal must be in writing, setting forth your reasons for contesting the removal, with any supporting offers of proof or documents. The appeal to the Civil Service Commission must be submitted no later than ten calendar days after the effective date of your removal.

In accordance with the President's statement in his recent news conference, I understand that he will review the matter before any final decision.

Any further information about the appeals procedure may be obtained from Mr. John W. Drew, Jr., of my staff, on extension 6251.

Sincerely yours,

JOHN ORDWAY,
Chief, Personnel Operations Division.

Enclosure: Section 1840 of Volume 3, FAM. (Not reproduced.)

* * * * *

(EDITOR'S NOTE.—Mr. Otepka's appeal from the adverse decision by Mr. John Ordway is printed in this volume beginning on p. 488.)

TESTIMONY OF WILLIAM J. CROCKETT, DEPUTY UNDER SECRETARY FOR ADMINISTRATION, DEPARTMENT OF STATE

MAY 4, 1965

Senator Thomas J. Dodd, vice chairman, presiding.

Present: Senators Dodd and Birch Bayh.

Also present: J. G. Sourwine, chief counsel; Benjamin Mandel, director of research, and Frank W. Schroeder, chief investigator.

(Mr. Crockett was previously sworn.)

* * * * *

Mr. SOURWINE. If Mr. Otepka were being tried in a court of law on an indictment charging him with some offense, he would have a right to have excluded from consideration any evidence improperly or illegally obtained in violation of his rights.

Will he have a similar right in connection with his hearing before the Department?

Mr. CROCKETT. Mr. Otepka's hearing will be handled in accordance with the applicable regulations.

Mr. SOURWINE. Is it true that "a decision on his appeal will be made only after review of the matter by the Secretary of State"?

Mr. CROCKETT. Yes, sir.

Mr. SOURWINE. Will there not be a written decision or recommended decision by the hearing officer?

Mr. CROCKETT. The hearing officer's decision will be handled in accordance with applicable regulations.

Mr. SOURWINE. Will no one consider this case thereafter, except the Secretary of State?

Mr. CROCKETT. I do not know, Mr. Sourwine.

Mr. SOURWINE. Is the Secretary going to dictate how Mr. Otepka's appeal shall be decided?

Mr. CROCKETT. Mr. Sourwine, the Secretary of State has stated many times that Mr. Otepka will receive a fair and impartial hearing.

* * * * *

Mr. SOURWINE. Under what regulations of the Department was Otepka retained on the payroll after his dismissal had been ordered by the Department and he had filed an appeal?

Mr. CROCKETT. May I supply that?

Mr. SOURWINE. Yes, please. May it go into the record at this point, Mr. Chairman?

Senator DODD. Yes.

Mr. SOURWINE. Is that standard procedure?

Mr. CROCKETT. It is now; yes, sir.

Mr. SOURWINE. If it is special procedure, has this special procedure been made applicable to all persons or only to Otepka?

Mr. CROCKETT. The regulations were changed in anticipation, or at the time the Otepka issue came up.

Mr. SOURWINE. Would you supply for the record at this point the pertinent provisions of the old regulations and the new, so as to indicate the change? Show the date.

Mr. CROCKETT. Yes, sir.

(Applicable regulations as of April 14, 1964, follow, with comparative copies of the regulations as of October 17, 1963, July 11, 1963 and on October 5, 1962.

Department of State
Washington, D.C.

Transmittal Letter: PER-1024

Foreign Affairs Manual

Date: April 14, 1964

VOL. 3 - PERSONNEL

1. MATERIAL TRANSMITTED:

Subchapter 1840, Adverse Actions and Appeals from Adverse Actions, pages 1840 through 1845.5 (5 pages).

2. EXPLANATION:

Subchapter 1840, Adverse Actions and Appeals from Adverse Actions, is completely revised and reissued to reflect current Civil Service Commission policies and the proper delegation of authority in accordance with the reorganization of the Office of Personnel.

3. FILING INSTRUCTIONS:

Make the following page changes:

REMOVE OLD PAGES	INSERT NEW PAGES	LAST PAGE OF PRECEDING TEXT
1840 through 1844.4 (4 pages)	1840 through 1845.5 (5 pages)	1826.5

KEEP YOUR MANUAL CURRENT.
FILE THE ATTACHED PAGES IMMEDIATELY.

FILE THIS TRANSMITTAL LETTER IN VOL. 3 FAM

1840 ADVERSE ACTIONS AND APPEALS
FROM ADVERSE DECISIONS

1841 General

1841.1 Authority and Purpose

There is hereby established an adverse action system which shall apply to discharges, suspensions for more than 30 days, furloughs without pay, and reductions in rank or compensation of Civil Service employees of the Department of State. Established as a part of this system is an appeals procedure pursuant to which an employee may seek administrative reconsideration of a decision to take adverse action against him.

a. The authority to take adverse action authorized in these regulations is vested in the Assistant Director for Officer Personnel, Office of Personnel. The Civil Service Commission regulations require that an employee be afforded the right to reply personally to a notice of proposed adverse action to a person authorized to recommend final action.

b. The authority to decide an appeal from an adverse decision made by the Assistant Director for Officer Personnel is vested in the Director or the Deputy Director, Office of Personnel. Appeals from decisions made by officers at the deputy assistant secretary level, and above, shall be decided by the Assistant Secretary for Administration, the Deputy Under Secretary for Administration, or the Secretary of State, as appropriate.

1841.2 Definitions

As used in these regulations, the term:

a. "Adverse Action" means discharge; suspension for more than 30 days; furlough without pay; and reductions in rank or compensation, including those which are taken at the election of the Department after a classification decision by the Department or the Commission.

b. "Appeal" is a written request by an employee for reconsideration of an adverse decision under the Department's appeals system.

c. "Commission" means the United States Civil Service Commission.

d. "Employee" includes a former employee of the Department of State.

1841.3 Employee Coverage

1841.3-1 Employees Covered

These regulations apply (a) to any career, career-conditional, or indefinite employee in a position in the competitive service who is not serving a probationary or trial period, (b) to any employee with competitive status occupying a position in Schedule B under a non-temporary appointment, and (c) any preference eligible employee who has completed one year of current continuous employment in a position outside the competitive service.

1841.3-2 Employees Not Covered

These regulations do not apply to temporary employees, an employee serving a probationary or trial period, a reemployed annuitant, an employee whose appointment is required to be confirmed by the United States Senate, or an employee in a position outside the competitive service, except as provided by section 1841.3-1.

1841.4 Adverse Actions Covered

1841.4-1 Actions Covered

These regulations shall apply to discharge; suspension for more than 30 days; furlough without pay; and reductions in rank or compensation, including those which are taken at the election of the Department after a classification decision by the Department or the Commission.

1841.4-2 Actions Not Covered

These regulations shall not apply to decisions of the Commission; to actions taken pursuant to specific instructions of the Commission; or to actions taken under Public Law 733, 81st Congress (to protect the security of the United States), and any other similar statute which authorizes an agency to take suspension or separation action without regard to Section 6 of the Act of August 24, 1912, as amended, or the provisions of any other law.

1842

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1842 Adverse Action1842.1 Notice of Proposed Adverse Action

An employee against whom adverse action is sought shall be given at least thirty (30) full, calendar days advance written notice stating any and all reasons, specifically and in detail, for any such proposed action.

1842.2 Employee's Answer

A reasonable time shall be allowed an employee for answering charges and a notice of proposed adverse action, and for furnishing affidavits in support of his answer. Normally this will be ten (10) calendar days. However, the facts and circumstances of an individual case may warrant a change in this time limit. If the employee answers, his answer shall be considered by the Assistant Director for Officer Personnel, Office of Personnel, in reaching the decision. The employee may answer personally and/or in writing. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which he believes might affect the final decision on his case. This does not include the right to a trial or formal hearing with examination of witnesses. A supervisory official of the employee will hear the oral reply. This person will recommend what final decision should be made.

1842.3 Exceptions to Notice Period and Opportunity to Prepare Answer

a. Advance written notice and opportunity to answer shall not be necessary in cases of furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

b. In cases where reasonable cause exists to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed, the employee need not be given the full thirty(30) days' advance written notice, but must be given such lesser number of days' advance notice and opportunity to answer as under the circumstances is reasonable and can be justified.

1842.4 Duty Status During Notice Period

Normally an employee against whom adverse action is proposed, shall be retained in an active duty status during the notice period. When circumstances are such that the retention of the employee in an active duty status in his position may result in damage to government property or may be detrimental to the interests of the government or injurious to the employee, his fellow workers, or the general public, the employee may be temporarily assigned to duties in which these conditions will not exist, placed on leave with his consent, or suspended in accordance with section 1842.5.

1842.5 Suspensions During Notice Period

In an emergency case when, because of the circumstances described in section 1842.4, the employee cannot be kept in an active duty status during the notice period, he may be suspended. This suspension is a separate action and must be handled in accordance with Civil Service Regulations, 5 CFR 752.202 (formerly 5 CFR 22.202(e)).

1842.6 Notice of Adverse Decision

An employee shall be notified in writing of any decision to take adverse action against him, and the written notification shall inform him of:

- a. The reasons for the action;
- b. His right to appeal under these regulations;
- c. The time limit for filing appeal;
- d. His right to appeal to the Commission, if any;
- e. The order of processing appeals;
- f. Where to file appeal and to whom it should be addressed;
- g. Where to obtain information on how to pursue his appeal; and
- h. His right to a hearing before a Hearing Officer after the original decision and prior to an appellate decision.

1842.7 Allegations of Discrimination

When an employee alleges that the adverse decision was based in whole or in part on discrimination because of race, creed, color, or national origin, the review of that allegation shall be made under provisions of Executive Order 10925 and the regulations of the President's Committee on Equal Employment Opportunity. An appellate decision shall not be made against the employee until a final determination has been made on the issue of discrimination. Such determination shall be binding with respect to the issue of discrimination.

1843 Appeals from Adverse Actions1843.1 Right to Appeal

Any employee covered by section 1841.3 is entitled to appeal from a decision by the Department to take adverse action against him, and his properly filed appeal will be accepted and processed in accordance with these regulations. If the employee is otherwise entitled to appeal such action to the Commission, he shall have the right to appeal initially to the Department or to the Commission, or first to the Department and then to the Commission, subject to the provisions of section 1845.2. Appeals to the Department shall be addressed to the officer authorized to decide appeals under section 1841.1b.

1843.2 Contents of Appeal

An employee's appeal shall be submitted in writing, shall set forth clearly the grounds on which it is based, and shall include any request he may wish to make for a hearing if it appears that he is entitled thereto under these regulations.

1843.3 Time Limits for Filing Appeal

An employee must file his appeal not later than 10 calendar days after the notice of the adverse decision. In the discretion of the Department, this time limit may be extended upon a showing by the employee that he was not notified of the applicable time limit or that circumstances beyond his control prevented him from filing an appeal within the prescribed limit, or for other reasons deemed sufficient by the Department.

1843.4 Presentation of Appeal

In presenting his appeal, each employee: (1) shall have the right to be accompanied, represented, and advised, by a representative of his choosing; (2) shall be given a reasonable amount of official time without charge to leave, if he is otherwise in active duty status; and (3) shall be assured of freedom from restraint, interference, coercion, discrimination or reprisal. The same principle with respect to official time without charge to leave, and freedom from restraint, interference, coercion, discrimination, or reprisal, shall also apply to any employee of the Department designated as a representative of an appealing employee.

1843.5 Appeals Level

These regulations provide for only one level of review.

1843.6 Appellate Review

The review of an appeal shall include, but shall not be limited to, a review of the issue of fact and of compliance with the procedural requirements of the Department and the Commission for reaching the adverse decision.

1844 Hearing1844.1 Right to a Hearing

The employee shall have an opportunity for a full and fair hearing on the adverse action, personally or through or accompanied by his representative, before a Hearing Officer. The hearing shall be held after the original decision and prior to the appellate decision; and the employee shall be fully informed in advance on this point. An opportunity for a hearing or a request for a hearing shall be denied only (1) when the officer qualified to decide the appeal finds that a hearing is impracticable by reason of unusual location or other extraordinary circumstances, or (2) when the employee fails to request a hearing in accordance with the provisions of section 1843.2. No more than one hearing shall be held unless the officer qualified to decide the appeal determines that newly discovered evidence, or evidence that the first hearing did not result in substantial justice to the employee or the Department, requires a second hearing.

1844.2 Hearing Officer

The hearing shall be conducted by a Hearing Officer. He will be selected by the employee concerned from a list of qualified Hearing Officers furnished by the Office of Personnel. No person is eligible to serve as a Hearing Officer (1) who is responsible or has been responsible for reviewing or acting on the adverse action, (2) who is responsible for reviewing or acting on the report of a Hearing Officer, or (3) who is not an employee of the Department of State. After selection by the employee concerned, the Hearing Officer will be notified in writing by the Director of the Office of Personnel of his designation. The Hearing Officer shall begin the hearing within 5 working days after he has been designated. The hearing shall be completed within 5 working days; however, these time limitations may be extended for a reasonable period by the Director of the Office of Personnel if he finds such action to be necessary. The Hearing Officer shall render a report within 10 working days after the close of the hearing. A decision on the appeal shall be made within 5 working days after completion of the report.

1844.3

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1844.3 Conduct of Hearing

The hearing shall be held whenever practicable near the employee's locality of work, and shall be conducted so as to bring out pertinent facts including the production of pertinent records. The rules of evidence need not be followed, but evidence produced shall be pertinent to the issues, the testimony of witnesses shall be under oath, and the employee or his representative and the Hearing Officer shall both have the right of cross-examination.

1844.4 Witnesses

Insofar as administratively practicable and when requested by the Hearing Officer after consideration of requests by the employee and the Department, employees shall be made available to the Hearing Officer as witnesses. When it is impracticable to comply with the request of the Hearing Officer, the reasons for failure to comply shall be included in the employee's appeal file. Employees of the Department made available as witnesses shall be considered to be in a duty status while serving in that capacity. In presenting their testimony, witnesses shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal of any kind. Whenever an employee is made available as a witness and is unable to appear before the Hearing Officer because of illness or circumstances beyond his control, his sworn statement shall be accepted in lieu of his oral testimony.

1844.5 Record of Hearing

A transcript of the hearing shall be prepared and shall include all pertinent documents submitted to the Hearing Officer for his consideration. The transcript shall be signed by the Hearing Officer and shall be made a part of the appeal file. A copy of the transcript shall also be given to the employee or his representative at the employee's request.

1844.6 Report of Hearing Officer

The Hearing Officer shall make a written report to the officer qualified to decide the appeal under the provisions of section 1841.1. The report shall set forth fully the Hearing Officer's findings of fact, and a copy shall be furnished the employee and his representative.

1845 Processing the Appeal1845.1 Avoidance of Delay

It shall be the duty of all Departmental personnel concerned with appeals under these regulations to give full, impartial and expeditious consideration to each case, and to take whatever steps may be necessary to avoid unreasonable delays.

1845.2 Order of Processing Appeals

Each employee entitled to appeal an adverse action that is appealable to the Commission shall be informed: (1) that if he elects to appeal initially to the Department, he may not appeal to the Commission until after he shall have received notice of the Department's appeal decision, except that he may elect to terminate his appeal to the Department if it is not completed within 60 days after filing; (2) that an appeal to the Department and to the Commission may not be processed concurrently; and (3) that if he elects to appeal initially to the Commission, he forfeits his right to appeal to the Department.

1845.3 Termination of Appeal

An appeal shall be terminated (1) at the request of the employee, (2) when the employee fails to furnish required information or is guilty of unreasonable delay in pursuing his appeal, or (3) when the employee files an appeal to the Commission from the same adverse decision and the Commission accepts the appeal for adjudication. A terminated appeal shall not be reopened except in the discretion of the Department upon a showing by the employee that circumstances beyond his control prevented him from prosecuting his appeal.

1845.4 Death of Employee

A proper appeal filed prior to the death of an employee shall be processed to completion and adjudicated; and, as necessary, a recommendation for corrective action on the appeal may provide for cancellation of the adverse action and for amendment of the Department's records.

1845.5 Appellate Decision

The officer authorized to decide appeals shall consider the entire appellate record, and on that basis he may sustain the previous decision to take adverse action, may modify the previous decision by substituting a less severe action, or may reverse the previous decision.

1845.6 Notice of Appellate Decision

The employee shall be notified promptly in writing of the decision on his appeal or of the termination of his appeal, and of any appeal rights he may have under the Commission's regulations. A copy of the notice shall be furnished to the employee's representative.

1845.7 Employee Appeal File

When an employee files an appeal, the Department shall establish an appeal file which shall contain all pertinent documents relating to the appeal, including copies of notice of proposed adverse action; employee's reply, if any; notice of adverse decision; employee's appeal; the reasons for not granting a hearing when one was requested but not granted; the transcript of the hearing; report of the Hearing Officer and notice of the appellate decision.

Department of State
Washington, D.C.

Transmittal Letter: PER-1022

Foreign Affairs Manual

Date: October 17, 1963

VOL. 3 - PERSONNEL

1. MATERIAL TRANSMITTED:

Portion of Subchapter 1840, Appeals From Adverse Actions, pages 1842.2 and 1843.2.

2. EXPLANATION:

- a. Section 1842.2, Time Limits for Filing Appeal, is revised to provide that an employee must file an appeal not later than 10 days after the notice of adverse action, rather than 10 days after the effective date of the action.
- b. Section 1842.7, Appellate Review, is revised to make clear that appeals from decisions taken by supervisory officers below the Deputy Assistant Secretary level may in some cases be acted upon by officials higher than the Deputy Assistant Secretary for Personnel.
- c. Other changes are made either to reflect current position titles or for editorial reasons.

3. FILING INSTRUCTIONS:

- a. Make the following page changes:

REMOVE OLD PAGES	INSERT NEW PAGES	LAST PAGE OF PRECEDING TEXT
1842.2 and 1843.2	1842.2 and 1843.2	1840 (reverse blank)

- b. Make the following pen-and-ink changes:

SECTION	LINE	NATURE OF CHANGE
1844.4	7 and 8	Place a period after "records" and delete the remainder of the sentence.

KEEP YOUR MANUAL CURRENT.
FILE THE ATTACHED PAGES IMMEDIATELY.

FILE THIS TRANSMITTAL LETTER IN VOL. 3 FAM

1842.2 Notice to Employee

An employee shall be notified in writing of any decision to take adverse action against him, and the written notification shall inform him of:

- a. His right to appeal under these regulations;
- b. The time limit for filing appeal;
- c. His right to appeal to the Commission, if any;
- d. The order of processing appeals;
- e. Where to file appeal;
- f. Where to obtain information on how to pursue his appeal; and
- g. His right to a hearing before a Hearing Officer after the original decision and prior to an appellate decision.

1842.3 Contents of Appeal

An employee's appeal shall be submitted in writing, shall set forth clearly the grounds on which it is based, and shall include any request he may wish to make for a hearing if it appears that he is entitled thereto under these regulations.

1842.4 Time Limits for Filing Appeal

An employee must file his appeal not later than 10 calendar days after the notice of the adverse action. In the discretion of the Department, this time limit may be extended upon a showing by the employee that he was not notified of the applicable time limit or that circumstances beyond his control prevented him from filing an appeal within the prescribed limit, or for other reasons deemed sufficient by the Department.

1842.5 Presentation of Appeal

In presenting his appeal, each employee: (1) shall have the right to be accompanied, represented, and advised, by a representative of his choosing; (2) shall be given a reasonable amount of official time without charge to leave if he is otherwise in active duty status; and (3) shall be assured of freedom from restraint, interference, coercion, discrimination or reprisal. The same principle with respect to official time without charge to leave, and freedom from restraint, interference, coercion, discrimination, or reprisal, shall also apply to any employee of the Department designated as a representative of an appealing employee.

1842.6 Appeals Level

These regulations provide for only one level of review.

1842.7 Appellate Review

The review of an appeal shall include, but shall not be limited to, a review of the issue of fact and of compliance with the procedural requirements of the Department and the Commission for effecting the adverse action. In order to be eligible to decide an appeal a Departmental officer must be serving at a higher administrative level than that of the officer who made the adverse decision, except that the Secretary shall decide the appeal if he made the adverse decision. The Deputy Assistant Secretary for Personnel will normally decide all appeals from decisions to take adverse actions made by officers below his administrative level. Appeals from decisions made by officers at the Deputy Assistant Secretary level, and above, shall be decided by the Assistant Secretary for Administration, the Deputy Under Secretary for Administration, or the Secretary of State, as required by the same principle.

1843 Hearing1843.1 Right to a Hearing

The employee shall have an opportunity for a full and fair hearing on the adverse action, personally or through or accompanied by his representative, before a Hearing Officer. The hearing shall be held after the original decision and prior to the appellate decision; and the employee shall be fully informed in advance on this point. An opportunity for a hearing or a request for a hearing shall be denied only (1) when the officer qualified to decide the appeal finds that a hearing is impracticable by reason of unusual location or other extraordinary circumstances, or (2) when the employee fails to request a hearing in accordance with the provisions of section 1842.3. No more than one hearing shall be held unless the officer qualified to decide the appeal determines that newly discovered evidence, or evidence that the first hearing did not result in substantial justice to the employee or the Department, requires a second hearing.

1843.2

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1843.2 Hearing Officer

The hearing shall be conducted by a Hearing Officer. He will be selected by the employee concerned from a list of qualified Hearing Officers furnished by the Office of Personnel. No person is eligible to serve as a Hearing Officer (1) who is responsible or has been responsible for review or acting on the adverse action, (2) who is responsible for reviewing or acting on the report of a Hearing Officer, or (3) who is not an employee of the Department of State. After selection by the employee concerned, the Hearing Officer will be notified in writing by the Director of the Office of Personnel of his designation. The Hearing Officer shall begin the hearing within 5 working days after he has been designated. The hearing shall be completed within 5 working days; however, these time limitations may be extended for a reasonable period by the Director of the Office of Personnel if he finds such action to be necessary. The Hearing Officer shall render a report within 10 working days after the close of the hearing. A decision on the appeal shall be made within 5 working days after completion of the report.

1843.3 Conduct of Hearing

The hearing shall be held whenever practicable near the employee's locality of work, and shall be conducted so as to bring out pertinent facts including the production of pertinent records. The rules of evidence need not be followed, but evidence produced shall be pertinent to the issues, the testimony of witnesses shall be under oath, and the employee or his representative and the Hearing Officer shall both have the right of cross-examination.

1843.4 Witnesses

Insofar as administratively practicable and when requested by the Hearing Officer after consideration of requests by the employee and the Department, employees shall be made available to the Hearing Officer as witnesses. When it is impracticable to comply with the request of the Hearing Officer, the reasons for failure to comply shall be included in the employee's appeal file. Employees of the Department made available as witnesses shall be considered to be in a duty status while serving in that capacity. In presenting their testimony, witnesses shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal of any kind. Whenever an employee is made available as a witness

and is unable to appear before the Hearing Officer because of illness or circumstances beyond his control, his sworn statement shall be accepted in lieu of his oral testimony.

1843.5 Record of Hearing

A transcript of the hearing shall be prepared and shall include all pertinent documents submitted to the Hearing Officer for his consideration. The transcript shall be signed by the Hearing Officer and shall be made a part of the appeal file. A copy of the transcript shall also be given to the employee or his representative at the employee's request.

1843.6 Report of Hearing Officer

The Hearing Officer shall make a written report to the officer qualified to decide the appeal under the provisions of section 1842.7. The report shall set forth fully the Hearing Officer's findings of fact, and a copy shall be furnished the employee and his representative.

1844 Processing the Appeal1844.1 Avoidance of Delay

It shall be the duty of all Departmental personnel concerned with appeals under these regulations to give full, impartial and expeditious consideration to each case, and to take whatever steps may be necessary to avoid unreasonable delays.

1844.2 Order of Processing Appeals

Each employee entitled to appeal an adverse action that is appealable to the Commission shall be informed: (1) that if he elects to appeal initially to the Department, he may not appeal to the Commission until after he shall have received notice of the Department's appeal decision, except that he may elect to terminate his appeal to the Department if it is not completed within 60 days after filing; (2) that an appeal to the Department and to the Commission may not be processed concurrently; and (3) that if he elects to appeal initially to the Commission, he forfeits his right to appeal to the Department.

1844.3 Termination of Appeal

An appeal shall be terminated (1) at the request of the employee, (2) when the employee fails to furnish required information or is guilty of unreasonable delay in pursuing his appeal, or (3) when the employee files an appeal to the Commission from the same adverse decision and the Commission accepts the appeal for adjudication. A terminated appeal shall not be reopened except in the discretion of the Department upon a showing by the employee that circumstances beyond his control prevented him from prosecuting his appeal.

Department of State
Washington, D.C.

Transmittal Letter: PER-1020
Date: July 11, 1963

Foreign Affairs Manual

VOL. 3 - PERSONNEL

1. MATERIAL TRANSMITTED:

- a. Portion of Table of Contents, pages 17 through 21 (5 pages).
- b. Subchapter 1840, Appeals From Adverse Actions, pages 1840 through 1844.4 (4 pages).

2. EXPLANATION:

Subchapter 1840, Appeals From Adverse Actions, is revised to provide for a Hearing Officer, instead of the previous three-member Hearing Committee, to hear employee appeals from adverse action taken against them by the Department.

3. FILING INSTRUCTIONS:

The enclosed pages must be filed in their correct sequence in your manual in accordance with the instructions in the box below. The instructions entitled "Maintenance of the Foreign Affairs Manual" appearing to the front of 3 FAM (page iv(1)) should be read carefully and must be followed to keep the manual current at all times.

REMOVE OLD PAGES	INSERT NEW PAGES	LAST PAGE OF PRECEDING TEXT
Contents(pp. 17 through 20) (4 pages)	Contents(pp. 17 through 21) (5 pages)	Contents(p. 16)
1840 through 1844.4 (4 pages)	1840 through 1844.4 (4 pages)	1826.5

**KEEP YOUR MANUAL CURRENT.
FILE THE ATTACHED PAGES IMMEDIATELY.**

FILE THIS TRANSMITTAL LETTER IN VOL. 3 FAM

1840 APPEALS FROM ADVERSE ACTIONS1841 General1841.1 Authority and Purpose

There is hereby established an appeals system under authority of Executive Order 10987 of January 17, 1962, and regulations of the Civil Service Commission, pursuant to which an employee may seek administrative reconsideration of a decision to take adverse action against him.

1841.2 Definitions

As used in these regulations, the term:

a. "Adverse Action" means discharge; suspension for more than 30 days; furlough without pay; and reductions in rank or compensation, including those which are taken at the election of the Department after a classification decision by the Department or the Commission.

b. "Appeal" is a written request by an employee for reconsideration of an adverse decision under the Department's appeals system.

c. "Commission" means the United States Civil Service Commission.

d. "Employee" includes a former employee of the Department of State.

1841.3 Employee Coverage1841.3-1 Employees Covered

These regulations apply (a) to any career, career-conditional, or indefinite employee in a position in the competitive service who is not serving a probationary or trial period, and (b) to any employee with competitive status occupying a position in Schedule B under a non-temporary appointment.

1841.3-2 Employees Not Covered

These regulations do not apply to temporary employees, an employee serving a probationary or trial period, a reemployed annuitant, ^{1/} an employee whose appointment is required to be confirmed by the United States Senate, or an employee in a position outside the competitive service except as provided by section 1841.3-1b.

1841.4 Adverse Actions Covered1841.4-1 Actions Covered

These regulations shall apply to discharge; suspension for more than 30 days; furlough without pay; and reductions in rank or compensation, including those which are taken at the election of the Department after a classification decision by the Department or the Commission.

1841.4-2 Actions Not Covered

These regulations shall not apply to decisions of the Commission; to actions taken pursuant to specific instructions of the Commission; or to actions taken under Public Law 733, 81st Congress (to protect the security of the United States), and any other similar statute which authorizes an agency to take suspension or separation action without regard to Section 6 of the Act of August 24, 1912, as amended, or the provisions of any other law.

1841.5 Allegations of Discrimination

When an employee alleges that the adverse decision was based in whole or in part on discrimination because of race, creed, color, or national origin, the review of that allegation shall be made under provisions of Executive Order 10925 and the regulations of the President's Committee on Equal Employment Opportunity. An appellate decision shall not be made against the employee until a final determination has been made on the issue of discrimination. Such determination shall be binding with respect to the issue of discrimination.

1842 General Requirements1842.1 Right to Appeal

Any employee covered by section 1841.3 is entitled to appeal from a decision by the Department to take adverse action against him, and his properly filed appeal will be accepted and processed in accordance with these regulations. If the employee is otherwise entitled to appeal such action to the Commission, he shall have the right to appeal initially to the Department or to the Commission, or first to the Department and then to the Commission, subject to the provisions of section 1844.2. Appeals to the Department shall be addressed to the officer authorized to decide appeals under section 1842.7.

^{1/} A reemployed annuitant is an employee whose annuity under the Civil Service Retirement Act, as amended, was continued after reemployment in an appointive position on or after October 1, 1956.

1842. 2

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1842. 2 Notice to Employee

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- a. His right to appeal under these regulations;
- b. The time limit for filing appeal;
- c. His right to appeal to the Commission, if any;
- d. The order of processing appeals;
- e. Where to file appeal;
- f. Where to obtain information on how to pursue his appeal; and
- g. His right to a hearing before a Hearing*Officer* after the original decision and prior to an appellate decision.

1842. 3 Contents of Appeal

An employee's appeal shall be submitted in writing, shall set forth clearly the grounds on which it is based, and shall include any request he may wish to make for a hearing if it appears that he is entitled thereto under these regulations.

1842. 4 Time Limits for Filing Appeal

An employee may file his appeal at any time after the notice of adverse decision but not later than 10 calendar days after the effective date of the adverse action. In the discretion of the Department, this time limit may be extended upon a showing by the employee that he was not notified of the applicable time limit or that circumstances beyond his control prevented him from filing an appeal within the prescribed limit, or for other reasons deemed sufficient by the Department.

1842. 5 Presentation of Appeal

In presenting his appeal, each employee: (1) shall have the right to be accompanied, represented, and advised, by a representative of his choosing; (2) shall be given a reasonable amount of official time without charge to leave if he is otherwise in active duty status; and (3) shall be assured of freedom from restraint, interference, coercion, discrimination or reprisal. The same principle with respect to official time without charge to leave, and freedom from restraint, interference, coercion, discrimination, or reprisal, shall also apply to any employee of the Department designated as a representative of an appealing employee.

1842. 6 Appeals Level

These regulations provide for only one level of review.

1842. 7 Appellate Review

The review of an appeal shall include, but shall not be limited to, a review of the issue of fact and of compliance with the procedural requirements of the Department and the Commission for effecting the adverse action. In order to be eligible to decide an appeal a Departmental officer must be serving at a higher administrative level than that of the officer who made the adverse decision, except that the Secretary shall decide the appeal if he made the adverse decision. The Deputy Assistant Secretary for Personnel shall decide all appeals from adverse actions made by officers below his administrative level. Appeals from decisions made by officers at the Deputy Assistant Secretary level, and above, shall be decided by the Assistant Secretary for Administration, the Deputy Under Secretary for Administration, or the Secretary of State, as required by the same principle.

1843 Hearing1843. 1 Right to a Hearing

The employee shall have an opportunity for a full and fair hearing on the adverse action, personally or through or accompanied by his representative, before a Hearing *Officer.* The hearing shall be held after the original decision and prior to the appellate decision; and the employee shall be fully informed in advance on this point. An opportunity for a hearing or a request for a hearing shall be denied only (1) when the officer qualified to decide the appeal finds that a hearing is impracticable by reason of unusual location or other extraordinary circumstances, or (2) *when the employee fails to request a hearing in accordance with the provisions of section 1842. 4.* No more than one hearing shall be held unless the officer qualified to decide the appeal determines that newly discovered evidence, or evidence that the first hearing did not result in substantial justice to the employee or the Department, requires a second hearing.

***1843.2 Hearing Officer**

The hearing shall be conducted by a Hearing Officer. He will be selected by the employee concerned from a list of qualified Hearing Officers furnished by the Office of Personnel. No person is eligible to serve as a Hearing Officer (1) who is responsible or has been responsible for review or acting on the adverse action, (2) who is responsible for reviewing or acting on the report of a Hearing Officer, or (3) who is not an employee of the Department of State. After selection by the employee concerned, the Hearing Officer will be notified in writing by the Director of the Office of Personnel of his designation. The Hearing Officer shall begin the hearing within 5 working days after he has been designated. The hearing shall be completed within 5 working days; however, these time limitations may be extended for a reasonable period by the Director of the Office of Personnel if he finds such action to be necessary. The Hearing Officer shall render a report within 10 working days after the close of the hearing. A decision on the appeal shall be made within 5 working days after completion of the report.*

1843.3 Conduct of Hearing

The hearing shall be held whenever practicable near the employee's locality of work, and shall be conducted so as to bring out pertinent facts including the production of pertinent records. The rules of evidence need not be followed, but evidence produced shall be pertinent to the issues, the testimony of witnesses shall be under oath, and the employee or his representative and the Hearing Officer shall both have the right of cross-examination.

1843.4 Witnesses

Insofar as administratively practicable and when requested by the Hearing Officer after consideration of requests by the employee and the Department, employees shall be made available to the Hearing Officer as witnesses. When it is impracticable to comply with the request of the Hearing Officer, the reasons for failure to comply shall be included in the employee's appeal file. Employees of the Department made available as witnesses shall be considered to be in a duty status while serving in that capacity. In presenting their testimony, witnesses shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal of any kind. Whenever an employee is made available as a witness

and is unable to appear before the Hearing Officer because of illness or circumstances beyond his control, his sworn statement shall be accepted in lieu of his oral testimony.

1843.5 Record of Hearing

A transcript of the hearing shall be prepared and shall include all pertinent documents submitted to the Hearing Officer for his consideration. The transcript shall be signed by the Hearing Officer and shall be made a part of the appeal file. A copy of the transcript shall also be given to the employee or his representative at the employee's request.

1843.6 Report of Hearing Officer

The Hearing Officer shall make a written report to the officer qualified to decide the appeal under the provisions of section 1842.7. The report shall set forth fully the Hearing Officer's findings of fact, and a copy shall be furnished the employee and his representative.

1844 Processing the Appeal**1844.1 Avoidance of Delay**

It shall be the duty of all Departmental personnel concerned with appeals under these regulations to give full, impartial and expeditious consideration to each case, and to take whatever steps may be necessary to avoid unreasonable delays.

1844.2 Order of Processing Appeals

Each employee entitled to appeal an adverse action that is appealable to the Commission shall be informed: (1) that if he elects to appeal initially to the Department, he may not appeal to the Commission until after he shall have received notice of the Department's appeal decision, except that he may elect to terminate his appeal to the Department if it is not completed within 60 days after filing; (2) that an appeal to the Department and to the Commission may not be processed concurrently; and (3) that if he elects to appeal initially to the Commission, he forfeits his right to appeal to the Department.

1844.3 Termination of Appeal

An appeal shall be terminated (1) at the request of the employee, (2) when the employee fails to furnish required information or is guilty of unreasonable delay in pursuing his appeal, or (3) when the employee files an appeal to the Commission from the same adverse decision and the Commission accepts the appeal for adjudication. A terminated appeal shall not be reopened except in the discretion of the Department upon a showing by the employee that circumstances beyond his control prevented him from prosecuting his appeal.

1844.4

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The officer authorized by section 1842.7 to decide appeals shall consider the entire appellate record, and on that basis he may sustain the previous decision to take adverse action, may modify the previous decision by substituting a less severe action, or may reverse the previous decision.

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The employee shall be notified promptly in writing of the decision on his appeal or of the termination of his appeal, and of any appeal rights he may have under the Commission's regulations. A copy of the notice shall be furnished to the employee's representative.

1844.7 Employee Appeal File

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1843.2

1843.2 Hearing Committee

The hearing shall be held by a Committee composed of 3 members. One member shall be designated by a Deputy Director of the Office of Personnel, and one shall be designated by the employee concerned. The third member shall be selected by the two designated members and shall serve as Chairman. If the two selected members are unable to agree on the third member within 5 working days, he shall be designated by the Assistant Secretary for Administration. No person shall be eligible to serve as a member of the Committee (1) who is responsible (or has been responsible) for reviewing or acting on the adverse action or on the proposal to take adverse action; (2) who is responsible for reviewing or acting on the report of the Committee; or (3) who is not an employee of the Department of State. The Committee shall begin the hearing within 5 working days after the appointment of a Chairman, and the hearing shall be completed within 5 working days, except that these time limitations may be extended for a reasonable period by a Deputy Director of Personnel if he finds such action to be necessary. The Committee shall render a report within 10 working days after the close of the hearing; and a decision on the appeal shall be made within 5 working days after completion of the report.

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Mr. SOURWINE. In cases like this under the present regulations is there an option in the Department to suspend or continue the employee?

Mr. CROCKETT. No, sir.

Mr. SOURWINE. Was there such an option under the old regulations?

Mr. CROCKETT. I don't know. I would have to check, Mr. Sourwine. I don't think so.

Yes, I am sure there was an option. I said no, but I am sure there was an option in terms of what action could have been taken in the case.

Mr. SOURWINE. And there is not now?

Mr. CROCKETT. There still is the option. I misunderstood you.

Mr. SOURWINE. Just make the record. Let the record show the truth. Under the old regulations and under the present regulations you could have dismissed Otepka and let his appeal be made as a former employee?

Mr. CROCKETT. I don't think so. Under the old regulations?

Mr. SOURWINE. Yes.

Mr. CROCKETT. I don't think "former employee" is the right word. I think sort of an employee without pay. And then there would have been the contemplation of restoration of pay. So I think that all we have done is—in essence, all we have done is make the pay current and not make it a matter of restoration if the employee is upheld.

Mr. SOURWINE. Was it necessary to suspend or change any regulation or issue any special order for the purpose of permitting Mr. Otepka to remain on the payroll of the State Department during dependency of his appeal within the Department from his dismissal notice?

Mr. CROCKETT. The regulation was changed for the benefit of employees of the Department of State. The situation created by Mr. Otepka's case was the occasion rather than the cause for amending the Department's regulation in the interest of effective management.

Mr. SOURWINE. Isn't it true that the Department could have suspended Mr. Otepka if it felt it could meet the procedural requirements for suspension and if it chose to do so?

Mr. CROCKETT. It is not true that we did not suspend him because we did not feel that we could meet the procedural requirements. We chose not to suspend him and to keep him on the rolls out of compassionate considerations for the employee. The Secretary himself stated that if an individual ever needed his income it was during periods of

trial like this, and, therefore, he wanted the employees of the Department of State to have this in most cases at our discretion.

Mr. SOURWINE. That would have involved a hearing?

Mr. CROCKETT. Yes, sir. To have suspended him would have involved a hearing just as the present procedure must involve a hearing.

Mr. SOURWINE. Mr. Otepka is getting, or at least is supposed to get, a hearing under the appeal procedure?

Mr. CROCKETT. Mr. Otepka will get a hearing whenever he and his attorney are willing to bring the matter to issue. We have postponed the hearing several times upon his attorney's request and the hearing is now set for October 11, 1965.

Mr. SOURWINE. Could the Department have suspended or discharged Mr. Otepka as an outgrowth of the charges against him or on the basis of the allegations against him without granting him a hearing?

Mr. CROCKETT. Mr. Sourwine, the point is not what the Department could have done, but what it did do. Under any situation the regulations would be the deciding factor.

Mr. SOURWINE. Could Mr. Otepka have been taken off the payroll of the Department, on the basis of the allegations against him, without compliance by the Department with the procedural requirements for suspension?

Mr. CROCKETT. I believe that you have in mind personnel security regulations based on Executive Order 10450 when you speak about the procedural requirements on suspension before a hearing is held. Mr. Otepka has not been charged under the security regulations but under applicable civil service regulations.

* * * * *

TESTIMONY OF OTTO F. OTEPKA

AUGUST 17, 1964

Senator Roman L. Hruska presiding.

Also present: J. G. Sourwine, chief counsel.

(Mr. Otepka was previously sworn.)

* * * * *

Mr. SOURWINE. In your testimony today about your briefing by Mr. Frank, you stated you were asked by him to observe the third agency rule with respect to the furnishing of information to this subcommittee by State Department witnesses. You indicated you know what the third agency rule is. Can you tell us what its provisions are?

Mr. OTEPKA. The third agency rule is a general term commonly used in reference to a provision in section 9(c), Executive Order 10450, of April 27, 1953, and also in section 7(c), Executive Order 10501, of November 5, 1953. Additional guidance for the executive departments and agencies in implementing section 9(c), Executive Order 10450, appears in chapter 736, subchapter 5-2, of the Federal Personnel Manual issued by the Civil Service Commission.

Executive Order 10501 authorized each department and agency to prescribe its own regulations consistent with the order in protecting its classified information.

Under section 9(c), Executive Order 10450, the agency which has conducted an investigation of an employee or applicant of the Federal Government maintains control over material and information, both classified and unclassified, which resulted from its investigation. If such data is loaned to a second agency that agency may not allow a third agency to have access to it except with the consent of the investigating agency. However, in the interest of time and economy the Civil Service Commission and the FBI have specifically authorized the recipients of their respective reports prepared pursuant to Executive Order 10450 and other personnel security programs, to furnish such reports, material, and information to a third agency without repeated individual requests. In other words, the Commission and the FBI have granted blanket authorization for access to their reports except where further dissemination is specifically prohibited on the face of the report or by other instructions.

Mr. SOURWINE. What provisions are there in the executive regulations regarding the disclosure of, or access to, information by a third agency through oral conversations?

Mr. ОТЕРКА. Neither Executive Order 10450 nor Executive Order 10501 contain any specific guidance on this point. However, it is generally understood in the security community that permission must be obtained from the originating agency before a receiving agency may disclose orally to a third agency investigative information in reports loaned or given to it by the originating agency.

Mr. SOURWINE. Is there any regulation in the Department absolutely prohibiting Congress from receiving classified or administratively controlled information from the Department?

Mr. ОТЕРКА. No; there is not. The Department has regulations which it has issued pursuant to Executive Order 10501. Section 954 of the Foreign Affairs Manual covers, in this respect, the furnishing of both classified and administratively controlled information to congressional committees by Department employees in connection with their testimony. An employee may not testify except with the permission of the Secretary of State. If permission is granted, the employee's testimony, according to the regulation, must be under such conditions as the Secretary may prescribe.

Mr. SOURWINE. Mr. Otepka, I do not know if you would regard an instruction from the Secretary, or his designee, that you should tell the truth and the whole truth, as a condition precedent to your testimony. Perhaps this should more properly be regarded as information respecting departmental policy, unless there is a direct conveyance of a condition imposed by the Secretary under 954 FAM. Surely mere advice from the Legal Division cannot be construed as an imposed condition under 954 FAM. But you have told us that Mr. Frank told you to tell the truth relative to your appearance today. The committee's record shows that Mr. Reilly also told you to tell the truth, when you testified here in 1963. Would you think it proper for your employers to punish you because you told the truth to refute the falsehoods of others, or to allege that you violated a regulation by doing so?

Mr. ОТЕРКА. Mr. Sourwine, I deem such a reprisal a travesty on justice. I know the Department's regulations regarding the protection of classified information, or any information whether classified or not in the security files of Department employees. If an employee

uses those regulations to conceal wrongdoing, or if he lies about information in the Department's files, it is he who should be punished.

Mr. SOURWINE. Could you tell us about the Department's regulations respecting the reproduction of documents loaned to the Department by another agency?

Mr. ОТЕРКА. The regulations prohibit the reproduction of classified or administratively controlled material which originated in another Government agency without the written approval of the originating agency.

Mr. SOURWINE. These regulations, of course, are under an Executive order that would not apply to Congress. Would you feel that, in principle, the Department of State, for example, should not reproduce, without the express consent of this subcommittee, transcripts of its executive sessions that are loaned to the Department primarily for review by the witnesses who testified?

Mr. ОТЕРКА. I think the Department would violate not only the principle of its own regulations, but also the trust expected by the committee in safeguarding the committee's information before it has been fully evaluated by the committee.

Mr. SOURWINE. The Department's regulations and the other regulations you have cited and discussed are in the public domain. Do you have the full text of these regulations in that mass of material you brought with you?

Mr. ОТЕРКА. I do.

Mr. SOURWINE. Would you submit them for the record?

Mr. ОТЕРКА. Yes, sir. I offer for the record a typewritten text of the regulations mentioned. This text does not include the regulation about testifying before Congress. I recall that such a regulation has already been submitted and is in the committee record.

Mr. SOURWINE. Very well. May this go into the record at this point?

Senator HRUSKA. It may be admitted.

(The material referred to is as follows:)

The following regulations govern the reproduction and dissemination of documents or other information originated by one Government agency which may be in the custody of a second Government agency.

SECTION 9(c), EXECUTIVE ORDER 10450 OF APRIL 27, 1953

"The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in Section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business."

CHAPTER 736, SUBCHAPTER 5-2, OF FEDERAL PERSONNEL MANUAL

"a. Reports remain the property of the investigative agency. Reports and other investigative material and information developed by investigation remain the property of the investigative agency concerned, although they may be retained by the employing department or agency while the employee is still on its rolls. No access outside the employing agency to such reports may be given without the consent of the investigative agency concerned.

"b. Safeguarding investigative information. Classified information must be safeguarded in accordance with the provisions of Executive Order 10501. Other investigative information which is not classified must be kept in confidence in accordance with section 9(c) of Executive Order 10450. Such material may be returned to the Commission as soon as it has served its purpose in the agency and while the employee is still on its rolls. Investigative reports and material will not be made a part of the Official Personnel Folder, nor included in any files disposal schedule of the agency, and may be recalled by the Commission at any time. Therefore, they should be maintained by the agency where they are readily available for return to the Commission upon request."

SECTION 7 (B) AND (C), EXECUTIVE ORDER 10501 OF NOVEMBER 1953

"(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.

"(c) Information originating in another Department or Agency. Except as otherwise provided by section 102 of the National Security Act of July 26, 1947, Ch. 343, 61 Stat. 498, as amended, 50 U.S.C. sec. 403, classified defense information originating in another department or agency shall not be disseminated outside the receiving department or agency without the consent of the originating department or agency. Documents and material containing defense information which are classified Top Secret or Secret shall not be reproduced without the consent of the originating department or agency."

SECTION 1968.1, VOLUME 5, DEPARTMENT OF STATE FOREIGN AFFAIRS MANUAL

"Reproduction of a document, as used in these regulations, includes the making of a copy either of the entire document or any part of it, regardless of how made; i.e., by writing or typing, or through hectograph, printing, mimeograph, multilith, ozalid, microfilm, photostat, or other processes. Classified or administratively controlled material which originated in another Government agency and is provided to the Department shall not be reproduced or communicated to a third agency without written approval of the official of the originating agency who has authority to approve such reproduction or communication. Oral approval later confirmed in writing will be acceptable. When further dissemination is authorized by the originating agency, it shall be handled in accordance with the classification or control designation assigned by that agency, and, if requested, information regarding reproduction and distribution shall be furnished the originating agency. The Historical Office, which compiles the official record of American diplomacy for publication, may, after a suitable lapse of time determined by the Historical Office and with the approval of the Office of Security, reproduce classified or administratively controlled material as part of the regular preliminary compiling process without the necessity of obtaining consent of originating offices, other agencies, or other governments."

SECTION 1962.4, VOLUME 5, DEPARTMENT OF STATE FOREIGN AFFAIRS MANUAL

"DISTRIBUTION TO OTHER AGENCIES

"Classified or administratively controlled material which originated in the Department of State or Foreign Service shall not be sent to other Federal departments or agencies or to officials and committees of Congress or to individuals therein, except by an officially signed or initialed transmitting communication or through the liaison of the Department which will keep records of the material distributed. Top secret material shall be disseminated only to those officers who are known to be qualified to receive it. Classified or administratively controlled material originating in another department or agency and furnished to the Department of State shall not be communicated to a third department or agency without consent of the originating agency."

* * * * *

WHEATON, Md., November 14, 1963.

HON. DWIGHT PORTER,
*Assistant Secretary for Administration,
 Department of State, Washington, D.C.*

DEAR MR. PORTER: Pursuant to the Foreign Affairs Manual of the Department of State, volume 3, section 1840, I hereby appeal from the decision of Hon. John Ordway, Chief, Personnel Operations Division, sustaining the charges against me contained in his letter of September 23, 1963. Mr. Ordway's decision was conveyed to me by his letter dated November 5, 1963.

I desire a hearing in connection with my appeal. I request that the following employees of the Department of State be made available to the hearing officer as witnesses, subject to examination and cross-examination by my counsel: John F. Reilly, David I. Belisle, Frederick W. Traband, Raymond Levy, Elmer Dewey Hill, Joseph Rosetti, Terence Shea, Robert McCarthy, John W. Drew, Jr., Mrs. Joyce M. Schmelzer, Mrs. Eunice Powers, Joseph Sabin, Carl Bock, Harry Hite, Clarence J. Schneider, Raymond Loughton, Norman Doe, Mrs. Joanne Healey, Miss Andrea Long, Billy Hughes, John R. Norpel, Stanley Holden, Russell Waller, Louis Kachulis, Robert Berry, Donald Daley, John Noonan, Francis Gardner, Edwin Burkhardt, Joseph McNulty, Frank Macak, Mrs. Marie Catucci, Raymond Laugel, George L. Warren, Russell Edwards, and Elmer Hipsley.

The grounds of my appeal are as follows:

(1) I reassert the matters set out in my letter of October 14, 1963, answering the charges preferred against me by Mr. Ordway's letter of September 23, 1963. A copy of my letter of October 14, 1963 is attached and I request that it be read and considered as a part of this letter.

(2) The case against me was to a large extent built by John F. Reilly, either personally or through others under his immediate direction and control. Prosecution of the charges was instigated by Reilly and the charges are in substantial part based upon Reilly's statements and those of his special assistant, David I. Belisle. Charges so conceived and so founded, I submit should not receive serious consideration. It has now been established that in his overzealous attempts to build a case against me Reilly was guilty of serious misconduct, and that he thereafter testified untruthfully under oath when questioned about his improper activities. Specifically, in a letter dated November 6, 1963, and addressed to the chairman of the Subcommittee on Internal Security of the Senate Committee on the Judiciary, Reilly admitted that he directed a subordinate to tap my telephone—a breach of departmental regulations¹ and a violation of a Federal statute² and that he testified untruthfully about the matter before the subcommittee. Reilly's assistant Belisle has made similar admissions of untruthfulness, although he disclaims any active participation in the tapping operations. A copy of the Senate subcommittee document relating to this matter is attached. As you know, Reilly's misconduct is now being investigated by the Department.

In view of the circumstances I respectfully submit that Reilly and Belisle are unworthy of belief and that any finding against me based upon their testimony or upon evidence produced by them cannot and should not stand. I submit further that this entire proceeding is tainted and vitiated by the improper activities and the untruthfulness of these men, so that prosecution of any charges in which they are involved would deny me due process of law.

(3) The facts and circumstances of this case demonstrate that in instigating the charges against me John F. Reilly did not act in good faith; on the contrary, his action was prompted by personal bias, prejudice and malice and by a desire to punish me for telling the truth to the Senate subcommittee, and thereby embarrassing Mr. Reilly. The purpose of the charges was not to protect the interest of the Government, but rather to shield Mr. Reilly.

(4) In his letter of November 5, 1963, finding that the charges against me are sustained, Mr. Ordway states that "there are a number of * * * procedures by

¹ Department of State memorandum dated Dec. 15, 1961, reads as follows:
 "Memorandum to all executive and administrative officers.

"Subject: Monitoring of telephone calls.

"Effective immediately, monitoring of telephone calls will be held to a minimum. When it is necessary to monitor telephone calls, the following practices will be observed.

"(a) Telephone conversations shall not be recorded by recording devices unless advance notice is given to the other party and the device is connected in accordance with the Federal Communications Commission regulations.

"(b) Advance notice must be given whenever a secretary or any other person is placed on the line for any purpose whatsoever."

² 47 USCA 605.

which you could have brought your disagreement with Mr. Reilly to the attention of superior officers in the Department." Mr. Ordway is apparently laboring under a misapprehension. It was not my disagreement with Reilly that concerned me, but rather Mr. Reilly's disagreement with the truth. Furthermore, it is plain that bringing this matter to the attention of superior officers in the Department would have been unavailing under the circumstances. If this were not so, then disciplinary action against Reilly would have been taken long ago.

In his letter of November 5, Mr. Ordway also states that I "could have sought the opportunity to testify again before the subcommittee to make any necessary clarifications." Mr. Ordway overlooks the fact that on August 12, 1963, I did in fact testify again before the subcommittee and that my appearance on this occasion was authorized by the Department of State; in fact, I was notified by Mr. Reilly's office on August 9, 1963, that I was to appear before the subcommittee on August 12. In my appearance before the subcommittee on August 12, I made "necessary clarifications" by telling the truth.

(5) In his letter of November 5, 1963, Mr. Ordway finds that I was responsible for clipping the documents mentioned in charges 4 to 11, inclusive. In support of this finding Mr. Ordway states that the other two officers and the secretaries occupying my suite have made statements denying that they clipped the documents in question or placed the clippings in my burn bag or that they know who did. From these circumstances, Mr. Ordway concludes that I was responsible for clipping the documents. Mr. Ordway's reasoning is illogical and self-contradictory. By his letter of October 8, 1963, he advised my counsel that it was not charged that I personally clipped the documents; in other words, it was alleged that someone else did the clipping. In the light of this statement by Mr. Ordway it is difficult to understand his summary rejection of my sworn denial of responsibility and his unquestioning acceptance of the statements of the other occupants of my suite that they had nothing to do with the clipping. If I did not make the clippings found in my burn bag, then the reasonable and logical inference would seem to be that one of the other occupants of my suite did so. It should be noted that Mr. Ordway's letter of November 5, 1963, does not indicate that the statements of the other occupants, upon which he relies, were under oath.

In connection with the clipped documents, Mr. Ordway states also that "only the carefully clipped classification indicators appeared in the burn bag." Examination of the clippings, however, will disclose that in some cases, at least, the clipping was by no means careful. It may be noted again, as pointed out in my letter of October 14, 1963, that my counsel and I have been refused permission to examine the "burn bags" and their contents, except for the clippings.

Mr. Ordway further states that the "documents all dealt with the same specific subject as 10 other documents which, in a signed statement dated August 15, 1963, you admitted giving to Mr. Sourwine." Mr. Ordway thus insinuates that I turned the clipped documents over to Mr. Sourwine. I did not turn the clipped documents over to Mr. Sourwine, or anyone else, nor has the Department charged me with doing so. Mr. Ordway's insinuation is both contrary to fact and in conflict with his own letter of charges.

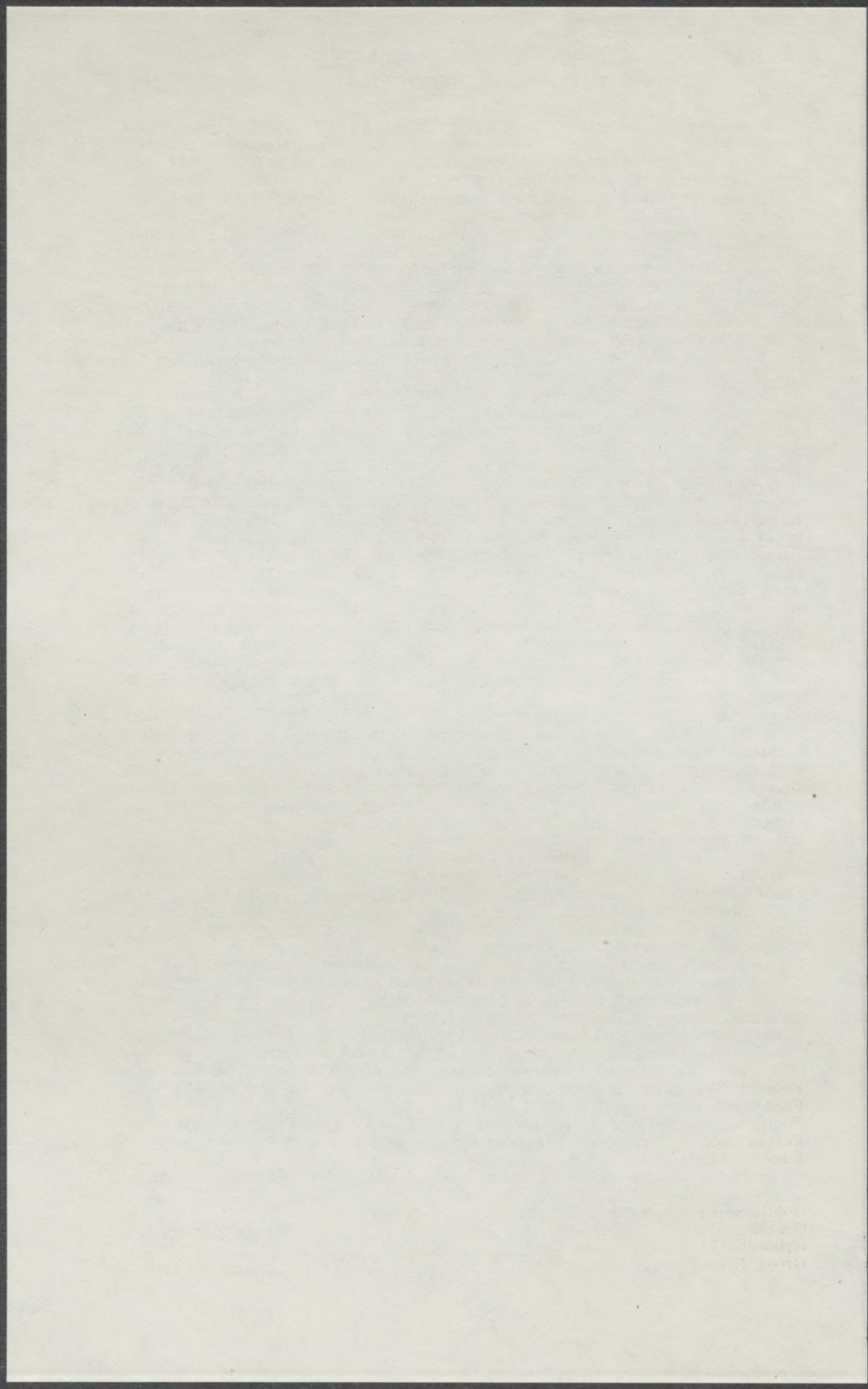
I respectfully suggest that to assist in the resolution of this matter of the clipped documents all of the individuals who had access to the document should submit to a polygraph test, to be administered by a competent and impartial examiner. I shall be glad to submit to such a test.

(6) By his letter of October 8, 1963, to my counsel, Mr. Ordway stated that "no allegation is made that the conduct of Mr. Otepka referred to in charges (12) and (13) violated a specific Department of State regulation." In his letter of November 5, 1963, however, Mr. Ordway for the first time invokes departmental regulations (3 FAM 1611) in support of these two charges. While I emphatically deny that my conduct was in violation of the regulation cited by Mr. Ordway, I respectfully submit that his belated resort to that regulation is improper.

For the foregoing reasons I submit that Mr. Ordway's findings should be set aside.

Very respectfully,

OTTO F. OTEPKA.

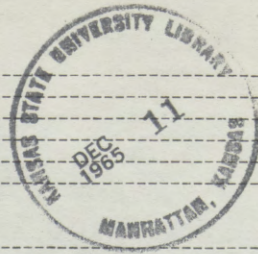


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