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STATE DEPARTMENT SECURITY—1963-65

GOVERNMENT BUREAU OF SECURITY AND CONSULAR AFFAIRS

Storage

HEARINGS
BEFORE THE
SUBCOMMITTEE TO INVESTIGATE THE
ADMINISTRATION OF THE INTERNAL SECURITY
ACT AND OTHER INTERNAL SECURITY LAWS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-NINTH CONGRESS
SECOND SESSION

PART 4

Printed for the use of the Committee on the Judiciary



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STATE DEPARTMENT SECURITY—1963-65
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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
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HUGH SCOTT.

Approved October 28, 1964.

RESOLUTIONS—Continued

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 volume is a continuation of an extensive series of hearings held during 1963, 1964, and part of 1965 on "State Department Security." This volume, subtitled "Bureau of Security and Consular Affairs," is the fourth dealing primarily with the work of this Bureau and related matters.

As in the "Otepka Case" series, which was the first published under the general title of "State Department Security," all the testimony taken will be released except for a few instances of deletions for security reasons. (Any such deletion will be indicated in the printed record.)

The subject matter of these hearings included many varied subjects, which still were intertwined. There were a number of clearly defined areas of testimony which could be presented separately and other instances in which testimony covering two or more subjects could be combined with satisfactory coherency. Because of the great volume of this hearing record, it has been necessary to organize the testimony respecting the Bureau of Security and Consular Affairs into longer volumes, each covering more subjects or areas than any of the "Otepka Case" volumes.

Whenever any testimony has been excerpted for publication in another place in these series, this is indicated by a row of asterisks. Special care has been taken to avoid use of any item out of context.

FOREWORD

This volume is a collection of the evidence in the case of the ...
... part of the ...
... subject of ...
... with the ...

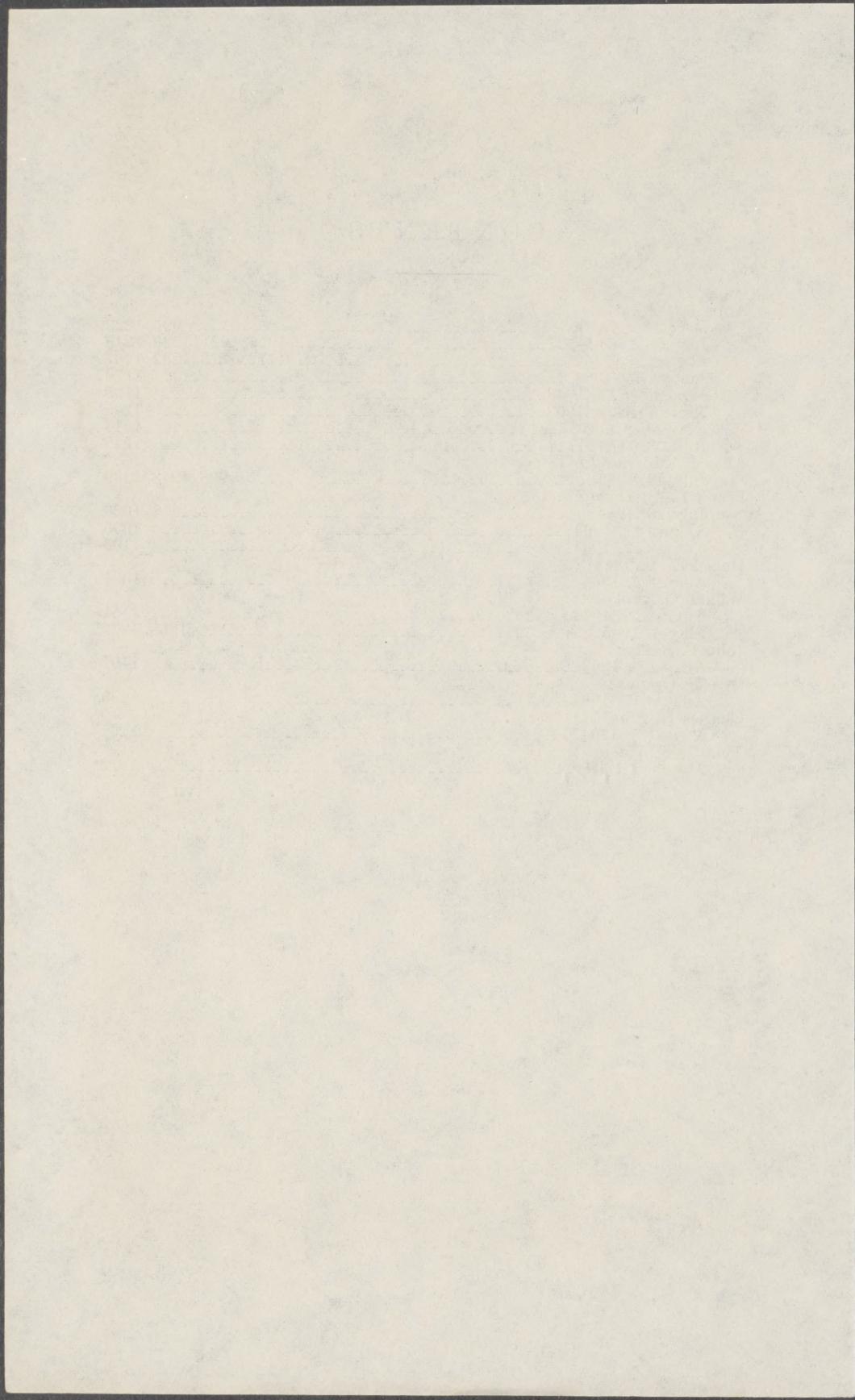
As in the "Coke Case" series, which was the first published under
the general title of "State Department Security," all the testimony
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volume of the hearing record it has been necessary to organize the
testimony regarding the Bureau of Security and Consular Affairs
into four separate parts covering more subjects or areas than any
of the "Coke Case" volumes.

Wherever any testimony has been omitted for publication in an
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STATE DEPARTMENT SECURITY—1963-65

Bureau of Security and Consular Affairs

TESTIMONY OF ABBA P. SCHWARTZ, ADMINISTRATOR, BUREAU OF
SECURITY AND CONSULAR AFFAIRS, DEPARTMENT OF STATE

FRIDAY, DECEMBER 6, 1963

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.

Senator Thomas J. Dodd presiding.

Present: Senators Dodd, and Everett McKinley Dirksen.

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

For the Department: Lawrence H. Hoover, Jr., observer.

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Schwartz, have you had occasion since the first of this year to make any changes in the procedures in the visa division?

(At this point of the proceedings, Senator Dirksen left the committee room.)

Mr. SCHWARTZ. Procedures since the first of January 1963? There are some changes that have taken place. I think I may have described to this committee or another the procedures involved in the determination whether or not to recommend waiver to the Attorney General on 212(a) 28 cases. I can't recall now whether I described that change or not. It may have been before another committee.

Mr. Moreland has instituted—there are some other procedures which Mr. Moreland has worked on. He is the Director of the Visa Office, in the area of the security relating to the lookout system, a new system on the lookout book which affects the general area of the visa security angle.

Mr. SOURWINE. Is the lookout system in the Visa Office in a book?

Mr. SCHWARTZ. This is the Lookout Book which is used as a handbook by the consulates abroad and by INS. It has just been consolidated with INS, and I would like if I may, Mr. Chairman, to say that this has just come out, and I have intended and do intend to send one to the committee.¹ I thought this committee would be interested

¹ Up to press time on this volume of the book referred to here had not been furnished to the subcommittee.

in this new lookout book system which is a new IBM system of up-to-date business, and if you are interested, I would be glad to furnish it.

Mr. SOURWINE. I am sure the committee would be interested. What I am trying to ascertain is whether the lookout system in the Visa Office contains information about specific cases, or whether this book you are talking about is simply general instructions or rules.

Mr. SCHWARTZ. No; this book contains names of people who, on the surface, are ineligible. We have recompiled it. It is kept up to date and is a much better system for use by the consular officers abroad. It is a handy guide.

Mr. SOURWINE. Is that a looseleaf book?

Mr. SCHWARTZ. No; it is not. It is worked out with an IBM card system. They can do the whole thing at very, very small cost.

Mr. SOURWINE. They republish?

Mr. SCHWARTZ. That is right.

Mr. SOURWINE. From cards?

Mr. SCHWARTZ. That is right.

Mr. SOURWINE. But there is a master file of cards?

Mr. SCHWARTZ. Of course there are master files on all of these people, but this is quick—the consular officers can look up and see if Mr. So and So is ineligible.

Mr. SOURWINE. Do you know how many cards there are in this master file, this IBM system?

Mr. SCHWARTZ. I don't, but I can easily get that answer.

Mr. SOURWINE. Is the same system used in the Passport Office?

Mr. SCHWARTZ. I am unaware of a lookout book of this nature in the passport field. I would assume, and I will be glad to check on this, that ineligibility would include questionable citizenships. But I must check to see whether there is such a so-called lookout book.

Mr. SOURWINE. There is a lookout system in the Passport Office?

Mr. SCHWARTZ. Oh, yes, of course.

Mr. SOURWINE. Do they have a file of cards?

Mr. SCHWARTZ. Oh, yes. We have the lookout cards.

Mr. SOURWINE. Are they IBM cards?

Mr. SCHWARTZ. Yes; they are IBM cards.

Mr. SOURWINE. Do you know how many cards there are?

Mr. SCHWARTZ. Approximately 250,000 is my recollection.

Mr. SOURWINE. Is that a relatively small number or a large number for the problem that they deal with?

Mr. SCHWARTZ. I think it suffices for their purpose. I am told by the Passport Office that, at one time, there were as many as 23 million cards. I asked whether they were still around. They said they are still stored there. There were once 23 million.

Mr. SOURWINE. They have reduced it from 23 million to 250,000?

Mr. SCHWARTZ. Yes.

Senator DODD. I want to be sure I understand this—23 million cards of what?

Mr. SOURWINE. On the individuals concerning whom there were lookouts or flags with respect to passport applications; is that correct?

Senator DODD. It is astonishing. I wanted to be sure that I understood it correctly.

Mr. SCHWARTZ. Yes. I was astonished, too. But some years back there were that many.³

Mr. SOURWINE. Do you think this total of 250,000 cards could be still further reduced with proper attention to it, putting the proper clerical work on it?

Mr. SCHWARTZ. I couldn't answer that without further consultation with the Passport Office. I understand that they do go through what they call regular purges of the cards. We may be adding a few handfulls in relation to the person who may have defected once, and so forth. But I would have to consult with them. They are much more certain on that. I am sure it must serve their purpose. Otherwise they would be expanding or retracting.

Mr. SOURWINE. Do you think adequate attention has been given to this lookout file in the Passport Office?

Mr. SCHWARTZ. I am quite sure that very careful attention has been given to this. I was told just the other day that it had periodic purges of the file.

Mr. SOURWINE. Do you know anything about efforts in the Passport Office over a period of years to get additional personnel to work on this file?

Mr. SCHWARTZ. I do not know on the lookout, no, sir, but I would be glad to check into that. I do know of the need for personnel in certain areas, but as to the lookout cards, I am not aware of that—I don't recall anything in our budget presentation last year on that specifically.

Mr. SOURWINE. I doubt if it has gone as far as the budget presentation, but the committee is informed that the Passport Office has repeatedly and repetitively sought additional personnel to work on that file, and that is has always been denied.

Mr. SCHWARTZ. I have no such recollection since I have been there. The reason I mention the budget presentation is that we give a very detailed presentation showing what positions are required to do what, and I do not recall that in that presentation. I could be wrong.

Mr. SOURWINE. If the Department had decided to reject the Passport Office's request for new personnel, then there wouldn't have been anything on it in the budget presentation, would there?

Mr. SCHWARTZ. I can only say again, Mr. Chairman, that I have no recollection of ever having any indication from the Passport Office of lack of personnel on the lookout file.

Mr. SOURWINE. I understood that, but I am just getting to the one point. An office can't make a budget presentation on its own.

Mr. SCHWARTZ. No; they make requests.

Mr. SOURWINE. To the Department?

Mr. SCHWARTZ. To us.

³ Mr. Schwartz, by letter to the Chairman on Mar. 25, 1964, asked that the following statement be printed at this point in the record:

"Further examination of the question of the number of lookout cards formerly maintained by the Passport Office revealed that the 23 million figure included all ordinary issuances of passports and renewals, as well as cards bearing upon the questionable entitlement of a person to passport services. The Passport Office estimates that at that time the 23 million cards included approximately 500,000 lookout cards. In recent years the lookout cards have been separated from all other cards and now total approximately 250,000 to 300,000."

To clarify this statement: the 23 million cards referred to were not "lookout cards," but included index cards of applications (for either a new passport or a renewal), memorandums, letters, reports, etc., relating to all new and renewal passport applications. The 250,000 "flag" cards were culled out of this master index.

Mr. SOURWINE. If the Department rejects the request, then there is nothing on it in the budget presentation.

Mr. SCHWARTZ. No, sir; but may I say I do not recall any request ever coming to me or my office relating to the lookout system that has been rejected.

Mr. SOURWINE. It would surprise you to learn there had been such requests?

Mr. SCHWARTZ. For personnel for the lookout security system?

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. It would surprise me, yes. My recollection—I know there is the general need, but I do not have any recollection of the need specified toward the—

Senator DODD. I take it those requests would be made in writing?

Mr. SCHWARTZ. I would assume, yes, they are made in writing to the Executive Office.

Senator DODD. You assume. Don't you know? Aren't they made in writing?

Mr. SCHWARTZ. Of course they are. They are made in writing.

Senator DODD. I wish you would try to be direct.

Mr. SCHWARTZ. I will try, Senator.

Senator DODD. If you know something, say so, and if you don't, please say you do not. You say you assume, the best you recall. Your testimony is fraught with this. You know very well whether it is in writing or not, or you should.

Mr. SCHWARTZ. If I may just answer that, Senator, it could well be that there are discussions between—

Senator DODD. I didn't ask you that. I asked if they were normally put in writing.

Mr. SCHWARTZ. Yes, sir.

Senator DODD. I wish you would be direct, and I don't feel that you are being direct. And we have a long way to go here and we have a lot of things to do. Let's get on with it.

* * * * *

TESTIMONY OF ALLEN B. MORELAND, DIRECTOR, VISA OFFICE
DEPARTMENT OF STATE

WEDNESDAY, JULY 22, 1964

The subcommittee met, pursuant to notice, at 9:15 a.m., in room 2300, New Senate Office Building, Senator Roman L. Hruska presiding.

Present: Senators Hruska and Thomas J. Dodd.

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

For the Department: Lawrence H. Hoover, Jr., Office of Legal Counsel, observer.

* * * * *

Mr. SOURWINE. Senator Hruska, Senator Dodd is on his way here. Shall we await his arrival—what is your wish, Senator?

Senator HRUSKA. Well, I see no harm in opening now.

Would you rise, sir? Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MORELAND. I do.

Senator HRUSKA. Proceed, Counsel.

Mr. SOURWINE. Mr. Moreland, you have testified here before, but would you give the reporter your full name and position in the State Department?

Mr. MORELAND. My name is Allen B. Moreland, and I am Director of the Visa Office, Department of State.

Mr. SOURWINE. You are a Foreign Service officer?

Mr. MORELAND. That is right.

Mr. SOURWINE. Class what?

Mr. MORELAND. One.

Mr. SOURWINE. Class 1, I see. Now, first a general question, sir. Do Foreign Service officers have any obligation to the Foreign Service as such which are not governmental obligations, that is, which are not a part of their official duties?

Mr. MORELAND. Not to my knowledge.

* * * * *

Mr. SOURWINE. Sir, do you have any knowledge respecting any policy in the State Department requiring persons employed for policy-making positions to become Foreign Service officers or Foreign Service Reserve officers, or reserving such positions for members of the Foreign Service?

Mr. MORELAND. I do not have any official or direct knowledge of that.

Mr. SOURWINE. Do you know of any such instance? That is, do you know of any instance in which such a rule has been applied or such a requirement has been made?

Mr. MORELAND. I cannot recall any at this particular time.

Mr. SOURWINE. Either in relation to the Visa Division or any other division?

Mr. MORELAND. I don't have any direct knowledge. I do know that there has been a vacancy in the Visa Office and that we were thinking in terms of employing, or making an offer of employment to a civil service person in another agency, but for budgetary or personnel reasons we were not able to go through with it. That is the extent of my knowledge.

Mr. SOURWINE. Isn't it a fact that the person who had been selected for employment or appointment was a woman attorney from the Department of Justice?

Mr. MORELAND. That is right.

Mr. SOURWINE. And who was quite well qualified for the position?

Mr. MORELAND. That is right.

Mr. SOURWINE. And the position was that of Deputy Chief of the Regulations Division or branch of the Visa Office?

Mr. MORELAND. That is right.

Mr. SOURWINE. And this is a position of a type where it would be desirable to have permanency in the position, would it not?

Mr. MORELAND. Well, yes; in this sense—it depends on the number of persons that there are in this particular Division. This particular Division has the responsibility for promulgating—or initiating, per-

haps, is a better word—regulations and note materials for the use of Foreign Service officers abroad.

Mr. SOURWINE. You say "Division." Is it a Division or is it a branch, technically speaking?

Mr. MORELAND. It is a Division.

Mr. SOURWINE. A Division. The Regulations Division?

Mr. MORELAND. That is right.

Mr. SOURWINE. Of the Visa Office?

Mr. MORELAND. Of the Visa Office, yes. Now, if you are going to have regulations and note materials for the use of Foreign Service officers, it is most useful to have at least some Foreign Service field experience in there and—

Mr. SOURWINE. This is understandable, sir, but isn't the primary requirement for the best performance of the duties of that Division, a very high degree of familiarity with the regulations that have been written and what went into them, their background, and with the running operation of the Division?

Mr. MORELAND. I would say it depends more on the person and the breadth of experience of the person in the job, rather than—

Mr. SOURWINE. Yes, obviously. But this lady, and I am not going to try to get her name in the record, was considered very well qualified?

Mr. MORELAND. That is right.

Mr. SOURWINE. Or she would not have been about to be appointed?

Mr. MORELAND. To be sure.

Mr. SOURWINE. Now, isn't it true that this woman was told that in order to get this appointment she would have to take either an FSS or FSF appointment?

Mr. MORELAND. I am informed that is the fact. I did not—

Mr. SOURWINE. And she turned it down then—although she had been previously desirous of coming to the Department—because she had a family to take care of and did not want to go overseas?

Mr. MORELAND. Well, that detail I did not know.

Mr. SOURWINE. You did know that she had indicated that she could not, for personal reasons, take an appointment in the—

Mr. MORELAND. That is right.

Mr. SOURWINE (continuing). —Foreign Service Reserve?

Mr. MORELAND. That is right.

(At this point Senator Thomas J. Dodd entered the committee room.)

Mr. SOURWINE. Senator Dodd, we are discussing the case of a woman who was considered for appointment and had been offered an appointment in an important job in the Visa Division; specifically, Deputy Chief of the Regulations Division of that office.

Senator DODD. Yes.

Mr. SOURWINE. And the lady was a civil service attorney. She was told, according to the testimony Mr. Moreland has just given, that in order to take this policymaking position in the State Department she would have to accept an appointment as a Foreign Service officer or Foreign Service Reserve officer and—

Mr. MORELAND. Foreign Service staff.

Mr. SOURWINE. Yes; Foreign Service staff or Foreign Service Reserve, and she declined because, for personal reasons, she could not

obligate herself to go overseas as a Foreign Service officer would have to do.

Senator DODD. I see. Thank you.

Mr. SOURWINE. Now, when she would not take the Foreign Service appointment, isn't it true that the Visa Office was told that the position would be filled by the assignment of a Foreign Service officer?

Mr. MORELAND. Yes.

Mr. SOURWINE. And it was not a question of saying, "Well, go out and find another one who will take it"?

Mr. MORELAND. No.

Mr. SOURWINE. In other words, it was taken out of your hands and someone was assigned. Has that assignment been made?

Mr. MORELAND. The assignment has not been made.

Mr. SOURWINE. It is still pending?

Mr. MORELAND. It is still pending, yes.

Mr. SOURWINE. And who will appoint the—

Mr. MORELAND. The Personnel Office.

Mr. SOURWINE. Is that separate in any way from the office which handles civil service personnel or does one office handle both?

Mr. MORELAND. One office handles both.

Mr. SOURWINE. There is nobody in the Foreign Service as such that has control over the movement of Foreign Service officers?

Mr. MORELAND. There is—would you mind repeating that question?

Mr. SOURWINE. Well, I will ask it in another way. Is there someone who, as a top-ranking Foreign Service officer, has a degree of control over the movement of other Foreign Service officers?

Mr. MORELAND. Well, Mr. Crockett is, of course, the Deputy Under Secretary for Administration and he has supervision over the entire personnel machinery.

Mr. SOURWINE. And, of course, he happens to be a Foreign Service officer?

Mr. MORELAND. That is right.

Mr. SOURWINE. But he does get his authority, does he not, by virtue of his position as Deputy Assistant Secretary?

Mr. MORELAND. Deputy Under Secretary.

Mr. SOURWINE. Deputy Under Secretary, I beg your pardon. I mean, there is no one who performs the function in the Foreign Service of controlling or monitoring the movement of Foreign Service officers?

Mr. MORELAND. Not to my knowledge.

Mr. SOURWINE. So it will be up to Mr. Crockett's office to appoint someone?

Mr. MORELAND. Well, people working under him in the Personnel Office, over which he has supervision.

Mr. SOURWINE. Now, sir, have you been advised of a directive from the Personnel Office that once a civil service position or positions at the policy level becomes or become vacant, the position or positions will be filled by Foreign Service officers or Foreign Service Reserve officers?

Mr. MORELAND. I have been told that informally. I have not seen any directive.

Mr. SOURWINE. Nothing in writing?

Mr. MORELAND. No.

Mr. SOURWINE. And who has told you, Mr. Moreland?

Mr. MORELAND. Mr. Whitaker in the Personnel Office.

Mr. SOURWINE. What is his position?

Mr. MORELAND. He is the Personnel Management Officer, or Consular Specialist.

Mr. SOURWINE. Were you told or given to understand whether this policy applied only to the Visa Division or across-the-board, or a policy that is applied to certain other divisions?

Mr. MORELAND. Well, my understanding is that it had general application and specifically in the Visa Office and SCA.

Mr. SOURWINE. How about passports?

Mr. MORELAND. That would be part of SCA.

Mr. SOURWINE. Then it applies through SCA, as you understand it. Do you know whether it applies also in any other areas in the Department?

Mr. MORELAND. I don't know that of direct knowledge, but I would assume it would have a general application.

Mr. SOURWINE. Your understanding is that it applies elsewhere but has not yet been formulated in a departmentwide memorandum?

Mr. MORELAND. Not to my knowledge.

Mr. SOURWINE. Do you know of an instance in which this policy has been applied to the Passport Office?

Mr. MORELAND. No, I do not.

Mr. SOURWINE. Or to any other office in SCA?

Mr. MORELAND. I have no direct knowledge, no.

Mr. SOURWINE. Just for the record, by "SCA" I mean the Bureau of Security and Consular Affairs.

It is true, is it not, that Foreign Service or Foreign Service Reserve officers would be subject to reassignment periodically?

Mr. MORELAND. Oh, yes.

Mr. SOURWINE. And that rotation is required?

Mr. MORELAND. Well, whether or not it is a statutory requirement, it is the fundamental principle of the administration of the Foreign Service, yes.

Mr. SOURWINE. Of course, there is some leeway; it might be a matter of 2 or 3 years or less, but if he is in the Foreign Service, he knows that within a relatively short time, compared with his total span of employment, he is going to be rotated out to another spot?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. Therefore, isn't it true that any position filled by a Foreign Service officer could not maintain regular personnel year after year indefinitely?

Mr. MORELAND. There would be rotation, to be sure.

Mr. SOURWINE. So that, if this policy is applied to any area where it is a desirable consideration to have permanency, that consideration is necessarily overridden by the application of this policy?

Mr. MORELAND. Unless there is a modification of the principle of rotation to the point that certain categories of people may remain for an indefinite period of time at a particular assignment.

Mr. SOURWINE. Have you had any indication that such a modification is even under consideration?

Mr. MORELAND. I have, informally, understood that there would be a modification insofar as it applied to Foreign Service staff.

Mr. SOURWINE. And who told you that?

Mr. MORELAND. From the same source. You could be given a Foreign Service staff assignment and there would be no necessary obligation to go overseas. To be sure, you could be rotated within the Department.

Mr. SOURWINE. You say from the "same source." Would you just mention the name?

Mr. MORELAND. Mr. Whitaker.

Mr. SOURWINE. And I would take it that you had a bit of discussion with Mr. Whitaker about this matter? Is that correct?

Mr. MORELAND. A brief conversation.

Mr. SOURWINE. You must have asked him some questions about this matter?

(No response.)

Mr. SOURWINE. I am not trying to get you to recall exactly what you said or what he said—

Mr. MORELAND. Yes, we had a general conversation.

Mr. SOURWINE. Did you understand, as a result of that conversation, that this policy would eventually be put into writing and made formally a policy of the Department?

Mr. MORELAND. That was unclear. He didn't know.

Mr. SOURWINE. As head of the Visa Division you are, of course, familiar with visa security procedures?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. Would you describe them briefly for this committee?

Mr. MORELAND. Well, there are various elements of security in effect in the Visa Office. If you are interested primarily in the security that is applied to each individual applicant who makes application for a visa—

Mr. SOURWINE. Only if that differs in any way from the security that is applied to any Department officer in a comparable position.

Mr. MORELAND. Oh, you mean the personnel that are assigned to the Visa Office?

Mr. SOURWINE. No, I do not. I am referring to the security procedures which apply specifically to the work that is done by the Visa Division.

Mr. MORELAND. That is a rather broad question.

Mr. SOURWINE. Well, all right, let me come narrower. Can you describe particularly the visa procedures which are designed to protect the United States from infiltration by subversive elements?

Mr. MORELAND. That also is broad. I will do the best I can.

Mr. SOURWINE. All right.

Mr. MORELAND. When a person makes application for a visa, there are various and sundry sources of information that you check and clear up before the person is approved for a visa—

Mr. SOURWINE. Pardon me at this point. "Various and sundry," you say. Well, there are not too many such sources, are there?

Mr. MORELAND. Well, there are some few that—

Mr. SOURWINE. Well, you have, first, the Lookout Book?

Mr. MORELAND. Yes, we have the Lookout Book.

Mr. SOURWINE. And the Lookout Book contains the names of those persons who had previously been named as having been determined to

be possible security risks, and also the names of persons concerning whom there is a warning of this nature without a prior determination—

Mr. MORELAND. And also the names of persons who have been excluded for medical or other kinds of grounds.

Mr. SOURWINE. Yes.

Mr. MORELAND. The Lookout Book does not consist wholly of names of security risks.

Mr. SOURWINE. No, I understand.

Mr. MORELAND. But there are persons who should be questioned in detail, and the basic file, wherever it is stored, should be referred to in the interview of the person before the visa is granted.

Mr. SOURWINE. In theory, at least, the Lookout Book contains the names and identification of all the persons—or should, in a state of perfection—contain the names of all of the persons the State Department knows about who would apply for a visa that should be questioned or are thought to be ineligible.

Mr. MORELAND. That is right.

Mr. SOURWINE. And the putting of a name in the Lookout Book is not necessarily a determination that—

Mr. MORELAND. Absolutely—

Mr. SOURWINE. —does not “absolutely” reflect a determination that the person may not be eligible for a visa?

Mr. MORELAND. That is fundamental because it is possible that the file will not support an ineligibility determination.

Mr. SOURWINE. So then, there are security files in the posts abroad, are there not?

Mr. MORELAND. That is right, and they are referred to, invariably.

Mr. SOURWINE. Now, in visa cases, if the question is not resolved by reference to the Lookout Book and to the security file, then what is the next step? Is the person checked further in the country in which application is made or is there reference to Washington?

Mr. MORELAND. If there are facilities for further investigation in the country, they are checked there and if there is still doubt it is referred to Washington for check.

Mr. SOURWINE. I want to be sure that the record speaks clearly on this. I am not talking about cases where there is doubt on the basis of the Lookout Book or the security files at the post or station, but cases in which these files do not provide a clear resolution. The difference is that this would include a case where there was nothing in the Lookout Book and nothing in the station file that would bar—

Mr. MORELAND. That is right.

Mr. SOURWINE. Or would identify the person as definitely barred.

Mr. MORELAND. That is right.

Mr. SOURWINE. In this case, is there any further investigation made in the field abroad or is the visa simply granted?

Mr. MORELAND. Unless suspicions on the part of the consular officer have been aroused, and provided the alien does not hold a passport of a Communist country—

Mr. SOURWINE. Or any other travel document of a Communist country?

Mr. MORELAND. You are right. Then it is—

Mr. SOURWINE. For instance, an exit permit granted by the Soviet Union or an Iron Curtain country is itself a sufficient circumstance, at least to the extent there should be some inquiry; isn't that true?

Mr. MORELAND. Well, not really, because no person can travel outside of Russia unless he does have an exit permit.

Mr. SOURWINE. That is true, but isn't it also true that the Russians never grant them unless they feel either that the travel is safe or that it will serve some purpose of the Soviet State?

Mr. MORELAND. Well, there have been some—well, I just cannot generalize on that, but I assure you that in every case behind the Iron Curtain, there is a Washington check.

Mr. SOURWINE. Well, that is what I am trying to get at.

Senator DODD. I have missed part of that. I gathered that this has to do with the handling of the visa.

Mr. SOURWINE. Yes, sir.

Senator DODD. And I gather from what I heard that it is normally handled with the exception of a Communist citizen, that it is normally handled in—

Mr. MORELAND. Well, in a standard way.

Senator DODD. And that is what?

Mr. MORELAND. There is a standard procedure.

Senator DODD. Now, do you know anything about Mr. (Michel) Struelens' application for extension of his visa?

Mr. MORELAND. Yes, sir.

Senator DODD. Why does it take him about 3 or 4 months every time he applies for an extension? Why does he have to apply every 3 months? He is not a Communist, is he?

Mr. MORELAND. Not to my knowledge; no, sir.

Senator DODD. Why does he have to go through all of this? Who ordered this?

Mr. MORELAND. Well, in regard to certain categories of visa applicants, or those on whom there has been some—well, I don't know a better word than "controversy" at the time of the original application—

Senator DODD. "Controversy?"

Mr. MORELAND. Well, in the sense that there is a difference of opinion as to whether or not he should have a normal 4-year visa or a shorter visa.

Senator DODD. And who determines that, whether someone is controversial or not?

Mr. MORELAND. Well, it is where there are different points of view reflected in regard to the merits of his application and—

Senator DODD. Are you familiar with this matter that I have brought up?

Mr. MORELAND. I am generally familiar with it; yes, sir.

Senator DODD. Well, you should be, I hope you are. Isn't it rather outrageous to keep after this man? I understand it takes on the average 30 days but it takes him about 3 months to get the application to be considered. And I am told that it is an outrage and that it is a terrible situation and—

Mr. MORELAND. Every time he applies for a visa it is referred to Washington.

Senator DODD. Yes, sir; but why?

Mr. MORELAND. General instructions of the Department.

Senator DODD. Because he disagreed with the Department's policy about the Congo?

Mr. MORELAND. Well, I am not qualified to go into the merits of just why.

Senator DODD. Did you ever ask anybody why a man should be dogged this way and given all of this trouble? He is a good citizen, as far as we know, or a good person, a citizen of the United States—

Mr. MORELAND. Well, the Visa Office is not a free agent to pass on this type of an application and we have to rely on the political desk and higher authority in regard to such a visa application.

Mr. SOURWINE. Mr. Chairman, may I speak to this question with regard to this?

Senator DODD. Yes.

Mr. SOURWINE. First, preliminarily, would the order or the instruction on Mr. Struelens' applications be referred to Washington from Mr. Schwartz?

Mr. MORELAND. I cannot say—I am relatively confident that Mr. Schwartz is not the originator of the idea, but it may very well have—

Mr. SOURWINE. Would it have come to you in any other way than through Mr. Schwartz?

Mr. MORELAND. No, it would be through—

Mr. SOURWINE. It would be under higher authority in the Department?

Mr. MORELAND. I would assume it would originate higher.

Mr. SOURWINE. Well, it is true, is it not, that there is a category of persons ineligible for a visa, which would consist of those persons as to whom the Secretary of State has made a finding that their entry into or presence in the United States would be contrary to the national interest?

Mr. MORELAND. That is right.

Mr. SOURWINE. And this is a visa category which is wholly subjective. When he makes this determination it is discretionary with him and, having made it, the person automatically becomes ineligible, isn't that right?

Mr. MORELAND. Usually, for that particular application, yes.

Mr. SOURWINE. Has the Secretary ever made such a determination with respect to Mr. Struelens?

Mr. MORELAND. Not to my knowledge.

Mr. SOURWINE. All of the other categories of visa eligibility or ineligibility are objective standards, are they not?

Mr. MORELAND. More or less; yes, sir.

Mr. SOURWINE. Well, there may be some discretion in the evaluation of the facts, let us grant that, but dependent upon the determination of the facts—

Mr. MORELAND. The determination is not a subjective standard—

Mr. SOURWINE. Well, it is wholly a subjective standard, isn't it, since the Secretary is not required to explain and it rests entirely upon his discretion whether he will make that finding upon such an individual, is that a fair statement?

Mr. MORELAND. That is a fair statement.

Mr. SOURWINE. And it would be understandable, if Mr. Struelens had some trouble, that such finding had ever been made, but since that ruling exists, that is, since the Secretary could make that finding, it would be overall, and he would be out, kept out. Why is it necessary to have this lesser and, as the Senator has put it, harassing rule with regard to Mr. Struelens or, for that matter, anyone else?

Mr. MORELAND. There is discretion insofar as the Secretary is concerned—insofar as his powers are concerned—as to the length of time that a visa will be made valid, and this is perhaps another subjective area.

The normal situation is that the validity of the visa is based on the reciprocal treatment accorded to Americans applying for visas in the country from which that applicant comes.

Mr. SOURWINE. Well, I want to make a suggestion to you and ask if you think there is any merit in it or if it is true. The suggestion is that perhaps the block on Mr. Struelens does not stem from the Secretary who could achieve exclusion by making a discretionary finding, but with someone below the Secretary in the Department that does not have that discretion except as it is made in the Secretary's name, but who does have enough power to throw stumbling blocks in his way and make it tough for him?

Mr. MORELAND. Well, every determination is not made by the Secretary, that's for sure.

Mr. SOURWINE. If the Secretary wants to keep a man out, he can do it, can't he?

Mr. MORELAND. I would say he can.

Mr. SOURWINE. Now, in the Struelens case, do you know of any determination made in the Secretary's name? You have already said that there was none by him, but do you know of any made in the Secretary's name, that Mr. Struelens' presence in the country or entry into this country would be contrary to the interests of the United States?

Mr. MORELAND. No, I do not.

Mr. SOURWINE. Now, one other thing. We have always been told, and there has been very extensive testimony to this effect by State Department officials, including, and quite recently, Mr. Schwartz, that, under the law, visa officers have autonomy with regard to the issuance of or the denial of visas. The visa officer on the spot is the man who controls it, we are told, or that is the way that we read the act. Now, is that the way you read it?

Mr. MORELAND. That is the way I read it; yes, sir.

Mr. SOURWINE. Well, whence comes the authority to require that an application by Struelens or anybody else always be submitted to Washington before there is any action?

Mr. MORELAND. Insofar as the consular officer's responsibility in the field is concerned, he has authority to act except in the case of those categories of cases or those individual cases where it is required that it be referred to Washington, and then—

Mr. SOURWINE. That requirement does not stem from the law, does it?

Mr. MORELAND. Well, the normal situation, which I think would be authorized by the law, is if the consular officer has any doubt about the case, he should refer it to Washington.

Mr. SOURWINE. For an advisory opinion?

Mr. MORELAND. That is right, an advisory opinion and when the advisory opinion is rendered the consular officer is bound by the legal interpretation of the law in the consideration of that particular case.

Mr. SOURWINE. So that in practice, although the statute says the consular officer has discretion and is the boss, he is not the boss at all?

Mr. MORELAND. Not as to the interpretation of the law.

Mr. SOURWINE. Who was it who said, "I don't care who writes the laws, as long as I can interpret them"?

Mr. MORELAND. I have heard that quotation but I cannot give you the source of it. But, insofar as the facts relating to the Department's interpretation of the law, as to whether the facts put the person within the range of the departmental interpretation—

Mr. SOURWINE. Well, isn't that putting the cart before the horse? When it is submitted for an advisory opinion all of the facts known to the consular officer are submitted along with it?

Mr. MORELAND. That is right.

Mr. SOURWINE. And then you have a decision from the Department which, I believe, never simply says that the law is so and so, or states a hypothetical case and says that the law is so and so. The advisory opinion always says that, under the facts in this case, the law excludes him or that the law admits him, isn't that right?

Mr. MORELAND. Well, that is a possibility, but many times the consular officer makes a statement of the facts and the Department cannot wholly rely on the statement of fact. The Department can say that, if on the basis of a further conversation with the applicant such and such a fact is determined, then a certain interpretation of the law would prevail.

Mr. SOURWINE. Of course, that is hypothetically possible, but how many times does it happen?

Mr. MORELAND. Not frequently.

Mr. SOURWINE. Ten percent of the time? Five percent?

Mr. MORELAND. Well, it just happens, but I—

Mr. SOURWINE. Once in a while?

Mr. MORELAND. Once in a while.

Mr. SOURWINE. Yes, but you would not say as much as 5 percent?

Mr. MORELAND. It is not the general practice.

Senator DODD. What bothers me is that while the Streulens case is an individual case, the case is indicative of what is going on in the State Department. Now, Streulens is a professor on the faculty of a university in Canada and he is a respected faculty member there. I am informed that Streulens has applied for a visa from our consular officer in Canada, and he says that it is outrageous the way the State Department handles him. He is required to ask for an extension every 3 months and then, when he applies, it takes another 3 months before he gets an answer. He has business trips and pleasure trips to New York City and it just seems to me that he is being punished because he has differed with somebody in the Department over policy with respect to the Congo. No one would allege that he is not a man of good character or that he is a Communist or a subversive.

Mr. MORELAND. As I understand it, he now has a multiple entry visa which is good for several months.

Senator DODD. But he has to apply—

Mr. MORELAND. He currently is in possession of a visa. But it was not given for the full duration, that is right.

Mr. SOURWINE. And he is subjected to delay and, besides the delay, to harassment. Now, does the same policy apply to Madam Nhu, concerning her visa? She is not of a bad character nor subversive nor Communist. But she has had a difference of opinion with people in the State Department—

Mr. MORELAND. She was held to be ineligible for the particular application that she made on the basis of section (27)—

Mr. SOURWINE. This was one of the cases where the Secretary exercised his discretion to make, and did make, a finding that her entry into the United States or her presence in the United States would be contrary to the interests of the country.

Mr. MORELAND. Well, I don't know who made the final determination, but certainly it wasn't under the—

Mr. SOURWINE. But under the Secretary's name.

Senator DODD. Was there a communication from our Embassy in Saigon on her application for the visa and, if there was a recommendation, who made the recommendation?

Mr. MORELAND. Well, Senator, I would have to refer to the files.

Senator DODD. Yes, do so, and let us know as soon as you can.*

Mr. SOURWINE. Was Madam Nhu's application for a visa referred to Washington for an advisory opinion at the sole discretion of the consular officer with whom the application was made?

Mr. MORELAND. It is my understanding it was.

Mr. SOURWINE. In other words, what you are saying is that there was no instruction from Washington that it be so submitted?

Mr. MORELAND. It is my recollection there was no specific or particular instruction saying that if Madam Nhu applied for a visa it should be submitted for advisory opinion.

Mr. SOURWINE. On the basis of your testimony, then, isn't it true that the Department received no notification from the consular officer with regard to his view of the case? That is, whether the visa should or should not be given?

Mr. MORELAND. Would you—the last part of that question, I am sorry—

Mr. SOURWINE. All right, I will put it another way. Was the Department advised that the consular officer intended to grant the visa unless the Department had reasons why he should not do it?

Mr. MORELAND. Not to my knowledge. It was the kind of a case where no consular officer would dare to take it upon himself to pass upon this without Washington concurrence. That is the way I interpret it.

Mr. SOURWINE. I see.

Senator DODD. I would want to know if there is a recommendation from anyone in our Embassy or our consular officer with regard to Madam Nhu's application and, if so, who it was and what the recommendation was.

Mr. MORELAND. I would have to refer to the Department for that.

*The requested information has not been supplied.

Mr. SOURWINE. This is not a matter that you feel under your duties and instructions you must refer to a superior, I take it; it is rather a matter on which you do not have currently the knowledge?

Mr. MORELAND. I don't have the knowledge right now.

Mr. SOURWINE. But you can look it up and furnish the committee with that information for the record?*

Mr. MORELAND. Well, may I—

Mr. SOURWINE. Let me ask you one more question before you consult—you may consult on this question, too, if you wish.

Mr. MORELAND. Yes.

Mr. SOURWINE. Certainly you should know if you had all the information right now, that you could tell us right now—wouldn't you tell us if you knew?

Mr. MORELAND. I would tell you, yes.

Mr. SOURWINE. Without consulting with your counsel—

Mr. MORELAND. No, no—

Mr. HOOVER. If the Chairman will pardon me, I do not want it to appear in the record that I am his counsel because I am not here in that capacity.

Mr. MORELAND. No.

Mr. HOOVER. I am sure that he would not want that inference in the record, either.

Senator HRUSKA. Well, what is your capacity?

Mr. HOOVER. Observer.

Mr. MORELAND. No, Mr. Hoover is not my counsel.

Mr. SOURWINE. I think I may respectfully suggest, though, that to maintain some degree of uniformity, questions have come up in the past in regard to State Department observers that have been resolved previously by asking the witness if he desires to have present, if he says yes, then there is no further question, but a State Department observer as such has no standing before the committee and he is here, if at all, by leave of the committee, and I would ask you now: Do you desire to have Mr. Hoover leave?

Mr. MORELAND. Well, I certainly have no objection to—

Mr. SOURWINE. You have no objection. Mr. Chairman, do you have objection to him staying?

Senator DODD. No.

Mr. SOURWINE. Mr. Moreland, do you favor abolition of visas?

Mr. MORELAND. No, I do not favor the abolition of visas. You are aware that there was an administration proposal of about 2 years ago, in July of 1962, to get legislation to provide a waiver of passports and visas for visitors from nationals of countries with normally under-subscribed quotas.

Mr. SOURWINE. Who made that policy?

Mr. MORELAND. The administration—

Senator DODD. It was a Presidential proposal?

Mr. MORELAND. A Presidential proposal.

Senator HRUSKA. In the form of a Presidential message?

Mr. MORELAND. I think that the bill was introduced on the House side by Congressman Celler.

*The requested information has not been supplied.

Mr. SOURWINE. Through what channels did this proposal come up from the White House?

Mr. MORELAND. I understand it came up through the Secretary of Commerce. President Kennedy appointed the Secretary of Commerce, the Attorney General, and the Secretary of State to come up with a proposal that would have the effect of broadening the waiver of passports and visas and this was submitted. The chairman of the group for this purpose was the Secretary of Commerce.

Mr. SOURWINE. Was the Visa Division given an opportunity to express an opinion with respect to that proposal before it was submitted to the Congress?

Mr. MORELAND. This happened before I arrived but I understand that the Department of State and the Visa Office were given opportunity.

Mr. SOURWINE. What position did the Department and Visa Office take?

Mr. MORELAND. If the security factor could be met by INS applying the normal standards of eligibility to the people at the port of entry, or in the future be permitted to send INS personnel abroad to make the inspection at the terminal just before they departed, it would have been acceptable in the State Department's view.

Mr. SOURWINE. In other words, the State Department did not recommend it, but simply posed a condition under which they would assent to it?

Mr. MORELAND. There was 1 day of testimony before the Subcommittee No. 1 on the House side and the bill was tabled.

Mr. SOURWINE. And did the State Department express before the House committee any approval of the proposal?

Mr. MORELAND. Under those conditions.

Mr. SOURWINE. But only under those conditions?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. And those conditions would have involved a transfer to the Immigration and Naturalization Service of some functions now performed by the Visa Office, would it not?

Mr. MORELAND. Well, not really, but would have cut out one element of the so-called double check.

Mr. SOURWINE. You would have a single check but instead of a single check here, it would have moved to the other side—

Mr. MORELAND. That was possible and it was recognized that it would not be possible in all instances and that the job would be done at the port of entry.

Mr. SOURWINE. Do you presently, Mr. Moreland, favor relaxation of visa procedures in any particular respect?

Mr. MORELAND. Not relaxation of the visa procedures. I am very much in favor of cutting out the mechanical steps that are taken in the name of security and in the name of—well, other things that really bear no relationship to—

Mr. SOURWINE. What mechanical steps taken in the name of security are there that you would like to cut off?

Mr. MORELAND. Well, we have done various and sundry of these. One of the main things is that we have eliminated some of the mandatory advisory opinions that were heretofore required where the con-

sular officer had all the authority and all the facts on which to make a decision, but—

Mr. SOURWINE. Well, I want to make two points—excuse me. Finish, please. You said “but.”

Mr. MORELAND. But he had sufficient facts to make a decision, so we just told him to go ahead and make the decision if he felt he had sufficient facts and if he didn't have, to come in for an advisory opinion.

Mr. SOURWINE. All right. First, I would like to point out that your answer is not directly responsive to the question, since the question was on what you now favor and you are talking about something that was done.

Mr. MORELAND. No, I have no ideas of reducing it any further, no.

Mr. SOURWINE. And secondly, you tell us that some of the mandatory referrals for advisory opinions have been cut out which necessarily implies that there were a number of cases or instances or classes in which referrals for advisory opinions were mandatory and that there are still some, isn't that right?

Mr. MORELAND. That is right.

Mr. SOURWINE. Well now, how does that jibe with the statement that the visa officer always has the final say, that is, final discretion?

Mr. MORELAND. It was because there was an inconsistency that I felt we should cut out some of these mandatory referrals—there was no need—

Mr. SOURWINE. It was your proposal, then?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. And it is carried out today in part and then you say there are some mandatory referral cases.

Mr. MORELAND. Definitely.

Mr. SOURWINE. What are those areas and how are they justified or justifiable under the law?

Mr. MORELAND. Well, if there has been a previous adverse finding under an advisory opinion, it is to be referred back, so the consular officer then would have the benefit of any further Washington information and—

Mr. SOURWINE. Pardon me, sir, at that point. How can an advisory opinion be an adverse finding? We are told that advisory opinions are only expositions or interpretations of the law.

Mr. MORELAND. Well, on the basis of an advisory opinion the person may be ineligible on the set of facts as given. If the consular officer develops a different set of facts, the applicant might not be ineligible—

Mr. SOURWINE. But if you have a different set of facts, then you do not—

Mr. MORELAND. Well, no, they come back—

Mr. SOURWINE. They come back so that the Department will have a chance to see if they can interpret the law again so as to do right?

Mr. MORELAND. That is right.

Senator HRUSKA. It would be an advisory opinion?

Mr. MORELAND. The legal aspects are.

Senator HRUSKA. The legal aspects are confined to a given set of facts?

Mr. MORELAND. That is right.

Senator HRUSKA. If those set of facts are not changed?

Mr. MORELAND. Yes, sir.

Senator HRUSKA. Why is it called advisory, then? It is on the basis of the facts set out in adjudication—is it not?

Mr. MORELAND. An adjudication, yes, sir.

Mr. SOURWINE. Actually, isn't it true that where there is a mandatory referral for an advisory, or a mandatory advisory, the case is taken out of the hands of the consular officer right at the beginning, if he knows that this man, whenever he applies, must have his case referred to Washington, there is nothing for him to rule on, it automatically comes to Washington, isn't that the practical effect?

Mr. MORELAND. Also, where the consular officer has doubts about a given case. You have a human element there.

Mr. SOURWINE. If it is a mandatory advisory—what the consular officer thinks or feels has nothing to do with it?

Mr. MORELAND. Sometimes an advisory opinion can come up because the applicant has a Communist passport, this is one of the categories where the consular officer has to come in for an advisory opinion and a check.

Mr. SOURWINE. Is that because the Department does not want the consular officer ever to grant a visa to a man with a Communist passport, or wants to be sure it can decide the case should be turned down and the case should be permitted to come in?

Mr. MORELAND. No, the theory is there may be Washington information that may have a bearing on the situation.

Mr. SOURWINE. Now, getting back to the question of mandatory advisory opinions on a particular person, you indicated there were some—one criterion was if he ever had been turned down before when he previously applied, whenever he applied again it had to come into the Department?

Mr. MORELAND. That is right, sir.

Mr. SOURWINE. This is a personal thing and it is just the same as a blacklist?

Mr. MORELAND. Well, no—well—I don't like to use that term.

Mr. SOURWINE. Well, what's wrong with that term? I know it is a term of approbrium, sometimes improperly applied. What is wrong with it, said of an instruction with regard to a man preventing him from ever getting a favorable determination at the consular level—it does that?

Mr. MORELAND. That is right, it does that.

Mr. SOURWINE. Then, why isn't it a blacklist?

Mr. MORELAND. Well, he certainly doesn't get a visa without referring it to Washington, that's for sure.

Mr. SOURWINE. No, and if the Department were interested only in the interpretation of the law, isn't it quite true that the Department would set forth as many interpretations as it knew or could think of in the terms of hypothetical cases which should be referred to the Department but that it would never by name say that "every time this man wants to come in, the consular officer may not exercise any discretion, give it to us, we will settle it"?

Mr. MORELAND. Well, you could not anticipate all of the circumstances. Therefore, we asked them to come in so they can get the

additional information that is needed to form a basis for a judgment of the eligibility of the applicant. Any name on the Lookout Book showing a file in the Department comes to Washington; that is also mandatory, the case is referred to Washington before visa issuance so the consular officer may have the benefit of the information relating to the background of the applicant.

Now, on the basis of the information submitted, the consular officer may or may not determine that the particular applicant is eligible.

Mr. SOURWINE. Well, that is only technically true, isn't it? You told us when the Department makes a holding or adjudication of the law in this particular case it is binding?

Mr. MORELAND. If the facts, the set of facts as given by the consular officer are maintained, it is binding, yes, sir.

Mr. SOURWINE. Well, actually, since it is his duty to give the Department the full facts as he knows them, when the Department makes the decision regarding the application of the law to this particular man that is binding, isn't it, in practical effect?

Mr. MORELAND. It is binding, yes.

Mr. SOURWINE. Do you know of any case in which the Department made such a determination and the consular officer thereafter granted a visa? Do you know of any?

Mr. MORELAND. No, I don't.

Mr. SOURWINE. It is unthinkable that it would happen, isn't it?

Mr. MORELAND. That is right.

Mr. SOURWINE. It would be pretty rough on the consular officer, wouldn't it?

Mr. MORELAND. If the facts had changed as submitted—

Mr. SOURWINE. But he would have to submit it, it is out of his hands?

Mr. MORELAND. That is right.

Mr. SOURWINE. I don't mean to labor this, Senator, but I wanted to cover that point.

Mr. Moreland, were you in your present position at the time that the appropriations bill for fiscal year 1963 was under consideration?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. Can you tell us why there was such a big increase in the estimated nonquota visas in your budget estimate?

Mr. MORELAND. Yes, sir; and that estimate has been fully realized. I don't have all the figures.

Mr. SOURWINE. What is the basis for the big increase?

Mr. MORELAND. Because of the fact, one, the continuing increase of prosperity abroad which has served to broaden the base of the traveling public. Airline rates in particular have been reduced, especially across the Atlantic. The jet planes can get persons from Europe here so quickly that it is now feasible from a financial and time standpoint for people to make short trips to the United States. The travel promotion engaged in by the Department of Commerce and other travel agencies have all conspired to give a tremendous increase—

Mr. SOURWINE. Aren't you talking mainly about nonimmigrant visas?

Mr. MORELAND. Yes; nonimmigrant visas wholly.

Mr. SOURWINE. Well, I am talking about nonquota visas.

Mr. MORELAND. Oh, I misunderstood you. I understood nonimmigrant visas.

Mr. SOURWINE. I said nonquota visas or at least intended to and I am asking about your estimate for a large increase in nonquota visas, what was the basis for it?

Mr. MORELAND. Well, I am not aware that we estimated a tremendous increase in nonquota visas.

Mr. SOURWINE. I did not say "tremendous." I said "large." You are not aware there was a large increase?

Mr. MORELAND. Not a large increase; there has been a gradual increase in the nonquota area over the last 10 years, to be sure.

Mr. SOURWINE. A running—a normal rise?

Mr. MORELAND. Normal rise, but consistent rise.

Mr. SOURWINE. Straight curve?

Mr. MORELAND. Straight curve; yes, sir.

Mr. SOURWINE. Then, you think you didn't recommend the large increase, you didn't estimate a large increase in nonquota visas?

Mr. MORELAND. I wasn't aware—

Mr. SOURWINE. And you are saying there has been no large increase?

Mr. MORELAND. No large increase; no.

Mr. SOURWINE. All right.

Mr. MORELAND. I misunderstood you. I understood nonimmigrant visas. There has been tremendous increase in that category.

Mr. SOURWINE. Mr. Chairman, may the order be there be inserted in the record the figures respecting entries for nonquota visas for the the fiscal years 1961, 1962, 1963, and 1964?

Senator DODD. Yes, sir.

Mr. SOURWINE. And you can supply us with the total number of nonquota visas for each of those 4 years?

Mr. MORELAND. 1961, 1962, and 1963?

Mr. SOURWINE. And 1964.

Mr. MORELAND. 1964—the figures will not be available for 2 or 3 weeks yet.

Mr. SOURWINE. You can supply them when they are available?

Mr. MORELAND. We will be glad to.

Mr. SOURWINE. May that be the order, Mr. Chairman?

Senator DODD. Yes, sir.¹

Mr. SOURWINE. Sir, you do recall an increased estimate for visas refused in the 1963 budget?

Mr. MORELAND. Well, I wasn't aware there was—I mean, I don't recall the exact figure. These are statistical data that are prepared for submission in the budget document.

Mr. SOURWINE. I understand.

Mr. MORELAND. I have examined them but I don't recall the details.

Mr. SOURWINE. Mr. Chairman, may I have the same order with respect to this case, that the committee staff be instructed to insert the figures with respect to the estimates for those 4 years and Mr. Moreland will furnish for the record the actual figures?

Senator DODD. Yes, sir.²

¹ See chart printed on p. 1270 and data at p. 1178.

² See data in Lee letter on p. 1270.

Mr. SOURWINE. Has there been any change in the last 3 years, or from year to year within the last 3 years in your estimates of Cuban waivers in lieu of visa waivers for Cubans?

Mr. MORELAND. The visa waiver letters have dribbled down to practically nothing.

Mr. SOURWINE. There has been a great decrease?

Mr. MORELAND. There has been a great decrease.

Mr. SOURWINE. Is this reflected in your current budget estimate?

Mr. MORELAND. Yes; the estimates were dropped substantially.

Mr. SOURWINE. May I have the same request and order, that the figures be put in for the 4 years and that he will furnish the actual number?¹

Senator DODD. Yes, sir.

Mr. MORELAND. They are the estimates—

Mr. SOURWINE. We will put in the estimates although, Mr. Chairman, I would be entirely satisfied if Mr. Moreland would furnish a chart showing both the estimates and the total.

Senator DODD. Very well.

Mr. SOURWINE. Perhaps they would be in the same form and, therefore, comparable.

Senator DODD. Very well.

Mr. SOURWINE. Can you do that, in each instance, furnish both the estimate and the actual number?

Mr. MORELAND. Yes, sir.²

Mr. SOURWINE. Are you familiar with the so-called crew list visas?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. Do they, or does this practice of crew list visas present any security problems?

Mr. MORELAND. Well, no; they have the same kind of security checks that any other nonimmigrant applicant would have.

Mr. SOURWINE. You mean they are investigated as carefully?

Mr. MORELAND. Yes; through the standard resources we have.

Mr. SOURWINE. Crew list visas—in the first place, he does not have to apply for it abroad, does he?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. He does?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. By name of the individual?

Mr. MORELAND. Yes; the crew list is submitted with the individual names of the crew.

Mr. SOURWINE. Abroad?

Mr. MORELAND. Abroad.

Mr. SOURWINE. And is each of those names subjected to the same investigation that may be given an individual visa applicant?

Mr. MORELAND. That is right.

Mr. SOURWINE. So there is no security problem there?

Mr. MORELAND. I don't see any problem.

Mr. SOURWINE. All right. Do you see any security problem in the practice with respect to waivers in lieu of visas?

¹ The requested information was not supplied.

² The subject is discussed in the testimony of Mr. Frank L. Auerbach beginning on p. 1041.

Mr. MORELAND. Section 212(d)(3) of the Immigration and Nationality Act authorizes the Attorney General on the recommendation of the consular officer or Secretary of State to issue a waiver of ineligibility in certain cases, and if it is carefully administered there is no risk of security, or minimum risk.

Mr. SOURWINE. These visas—these waivers, rather, are actually granted by the Attorney General; are they not?

Mr. MORELAND. That is right.

Mr. SOURWINE. Or recommended by the Attorney General?

Mr. MORELAND. The consular officer or the Secretary of State.

Mr. SOURWINE. The consular officer.

Turning to another subject, Mr. Moreland, since Mr. Schwartz became Administrator of SCA, what contacts have you had with him?

Mr. MORELAND. Well, you might say the normal of supervisor and supervised.

Mr. SOURWINE. How often do you have an opportunity to talk with him?

Mr. MORELAND. It varies. Well, we have a once-a-week schedule. I am supposed to see him on Tuesday mornings at 10 o'clock, that is the normal schedule.

Mr. SOURWINE. Is that a private interview, just you and him?

Mr. MORELAND. Well, generally, my deputy or one of my deputies goes with me, and it is either with Mr. Mace or Mr. Schwartz.

Mr. SOURWINE. For the purposes of discussing the problems of your position?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. Do you see him oftener than these once-a-week meetings?

Mr. MORELAND. Yes; I guess you can say I see him oftener. There are some weeks I don't see him and some weeks I do.

Mr. SOURWINE. How many of these weekly meetings are attended by Mr. Schwartz?

Mr. MORELAND. Well, since it has been in effect, I would say 50 percent.

Mr. SOURWINE. And how long has it been in effect?

Mr. MORELAND. From memory, about a year.

Mr. SOURWINE. So that for the past year you have seen Mr. Schwartz twice a month, roughly, in connection with these visas?

Mr. MORELAND. That is right.

Mr. SOURWINE. How long do they usually last?

Mr. MORELAND. Twenty minutes to an hour and a half.

Mr. SOURWINE. And how many occasions in the month on the average do you have opportunity to talk with Mr. Schwartz?

Mr. MORELAND. Well, it would vary with the month. Perhaps one or two times would be a fair average.

Mr. SOURWINE. Does he seek you out usually or do you seek him out?

Mr. MORELAND. Most of the time he calls me. Occasionally I, if something comes up that I feel he should be informed, then I see him.

Mr. SOURWINE. Do you have any problem of access to the Administrator?

Mr. MORELAND. Not really; not really.

Mr. SOURWINE. What do you mean, "not really"?

Mr. MORELAND. If it is something important enough and I wait long enough, I can get him—

Mr. SOURWINE. How long a wait would you usually anticipate?

Mr. MORELAND. Well, I would keep in touch with the Secretary to find out when he is available.

Mr. SOURWINE. What is the longest waiting you can remember when trying to see Mr. Schwartz?

Mr. MORELAND. Well, I get in—I don't hang around if it is going to be useless—

Mr. SOURWINE. I don't mean physically sitting down and waiting on him in the reception room. I am talking about the time between when you think it would be desirable to see him and the time you do see him.

Mr. MORELAND. Many times, where we can get the matter resolved with Mr. Mace, who is readily available—

Mr. SOURWINE. I understand, but on occasions when you want to see Mr. Schwartz, what is the longest wait?

Mr. MORELAND. There is no one that sticks in my mind.

Mr. SOURWINE. Have you ever tried to reach him and could not reach him?

Mr. MORELAND. No; I cannot say I have, because by that time I would inform Mr. Mace and considered that I had performed my responsibility.

Mr. SOURWINE. Yes. That is routine, if you can't get him, you take it up with Mace?

Mr. MORELAND. That is the general situation.

Mr. SOURWINE. How do you receive your orders, Mr. Moreland?

Mr. MORELAND. Primarily in writing.

Mr. SOURWINE. By memo?

Mr. MORELAND. Yes.

Mr. SOURWINE. Who usually signs the memo?

Mr. MORELAND. Mr. Schwartz or Mr. Mace.

Mr. SOURWINE. Who signs the majority of the memos?

Mr. MORELAND. Mr. Schwartz.

Mr. SOURWINE. From how many persons in the Administrator's office do you receive orders?

Mr. MORELAND. Mr. Mace and Mr. Schwartz.

Mr. SOURWINE. Not from Mr. Lyerly?

Mr. MORELAND. No.

Mr. SOURWINE. Mr. Moreland, has the work of your office ever been hampered by requirements imposed by the Administrator's office?

Mr. MORELAND. Well, the word "hampered" bothers me. There have been times when Mr. Schwartz required something be submitted to him before action can be taken, which I admit is inconvenient, but it rests within his authority—

Mr. SOURWINE. I am not asking you to tell us whose authority. Of course he is your superior and I am quite sure that you would abide by any decisions he makes or instructions he conveys to you, or those that reach you in his name. I am talking about the slowing up or hindering of the work of the office or even failure to facilitate it. I gather from what you said this has happened, there has been a slow-

ing up or failure to facilitate because of the requirement of Mr. Schwartz's office for reporting and for clearances and for restrictions on correspondence and other areas; is that a fair statement?

Mr. MORELAND. That is a fair statement.

Mr. SOURWINE. Have you ever protested this or tried to get the situation changed?

Mr. MORELAND. Well, there was one time when Mr. Schwartz required practically all advisory opinions to come through his office before final action was taken, especially those where the net effect of the advisory opinion would be that the person was ineligible for a visa. This was in effect for about 6 months and the volume of work caused him to redelegate it back to the Visa Office.

Mr. SOURWINE. During that period of time was there a very substantial and noticeable slowing up as the result of that requirement?

Mr. MORELAND. Well, there was a very noticeable and substantial increase in the volume of his work.

Mr. SOURWINE. There was a piling up—

Mr. MORELAND. It was an additional step—

Mr. SOURWINE. The stuff piled up?

Mr. MORELAND. It piled up.

Mr. SOURWINE. The stuff did pile up and didn't you think you had a longer delay than before that time?

Mr. MORELAND. It took longer to process.

Mr. SOURWINE. Yes; did you get a memorandum from Mr. Schwartz forbidding the personnel of the Visa Office to attend meetings outside of SCA without special permission?

Mr. MORELAND. Yes; but that was rescinded.

Mr. SOURWINE. Did you object to that memorandum?

Mr. MORELAND. I objected to that memorandum and it was rescinded.

Mr. SOURWINE. You protested to Mr. Schwartz?

Mr. MORELAND. To Mr. Mace.

Mr. SOURWINE. And thereafter, as the result of the protest, it was rescinded?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. There is no question in your mind that you are competent to control meetings of the personnel outside that office?

Mr. MORELAND. There is no doubt.

Mr. SOURWINE. And no doubt that you are competent to control all of the affairs of the Visa Office subject only to general policy guidance, isn't that true?

Mr. MORELAND. That is a subjective judgment, but I subscribe to it.

Mr. SOURWINE. Well, this is the way things were run in the Visa Office prior to Mr. Schwartz' entry into the department, isn't it?

Mr. MORELAND. Yes.

Mr. SOURWINE. Your work is now substantially duplicated in Mr. Schwartz' office, isn't it?

Mr. MORELAND. Well, a lot of these things he has drawn up for himself have been returned gradually, so it is less that way than it was a year ago.

Mr. SOURWINE. Still pretty bad, isn't it?

(No response from Mr. Moreland.)

Mr. SOURWINE. I will withdraw the word "bad." There is still a substantial volume or a substantial area, rather, in which the work of the Visa Office is slowed up by the requirements of clearance and other requirements imposed?

Mr. MORELAND. There are still steps in effect that were not in effect 2 years ago.

* * * * *

Mr. SOURWINE. Has Mr. Schwartz made any effort to curtail your contacts or the contacts of your office with the press?

Mr. MORELAND. No, not really. There are individual cases where it is suggested, and I think properly so, that if you have any press inquiries with respect to a certain case, it should be referred to his office or to the public affairs office, where the basic facts are, so the press would get the proper story.

Mr. SOURWINE. Well now, as a matter of fact, Mr. Schwartz recently stated Miss Christine Camp had been assigned as public information officer in SCA, didn't he?

Mr. MORELAND. That is right.

Mr. SOURWINE. Do you know who assigned her?

Mr. MORELAND. No; I do not.

Mr. SOURWINE. If was not at your request?

Mr. MORELAND. No.

* * * * *

Mr. SOURWINE. Mr. Moreland, are you aware of any shift in policy with respect to the issuance of visas since Mr. Schwartz became Administrator?

Mr. MORELAND. No, there has been no policy shift to my knowledge.

Mr. SOURWINE. Has there been a shift in orientation by visa officers on the question of their general duties and responsibilities?

Mr. MORELAND. No, not any basic reorientation. I came into the Visa Office from the Inspection Corps and I had been impressed with the overworked condition of the people in the field; and most of my efforts since I have been in the Visa Office have been directed toward trying to streamline the operation and make for a more productive set of working circumstances for the field posts.

Now, a great deal of emphasis has been placed by me on procedural matters on the theory that it is necessary to streamline the operation as much as possible so that the consular officers can keep ahead of the ever-increasing workload.

Mr. SOURWINE. Let us get back to the point which apparently I have not been getting across and perhaps I will by this question. Isn't it true that over a number of years the Visa Office has been given to understand and, as far as you know, did understand their primary job was to enforce laws of the United States with regard to whom might come into the United States?

Mr. MORELAND. If that is not still the situation, I am badly mistaken.

Mr. SOURWINE. Hasn't the Visa Office been given to understand by Mr. Schwartz' office, or because of his instructions, that a primary duty of the visa officers is to serve the nationals of the country in which they are stationed who may desire to come into the United States?

Mr. MORELAND. I would not say that is the exact situation. There has been—

Mr. SOURWINE. You know what I am driving at. If I have not stated it correctly, now, state it correctly.

Mr. MORELAND. Well, the consular officer abroad is the only point of contact that literally millions of aliens have with official or American personnel. Since I have been in the Visa Office I have emphasized to the junior officers who are going through the training course that the consular officers are at the front line of the representational effort of the United States abroad. I have told them, "It is not so much what you do as how you do it." In that sense, the consular officers have been reoriented. That is perhaps a strong word. That it has been stressed to junior officers that they are supposed to administer the law in a reasonable and prudent manner. How they administer the law in making denials or servicing the public has an important impact upon the local population.

Mr. SOURWINE. In other words, you feel that they are ambassadors in the sense of the people that deal with people of the foreign country and that they should make a good impression?

Mr. MORELAND. That is right, but—

Mr. SOURWINE. In their contacts?

Mr. MORELAND. There has been no reduction in the security concern we have for the United States and there has been no reduction in the qualitative and quantitative standards to be applied in carrying out the Immigration and Nationality Act.

Mr. SOURWINE. All right. And I take it this stress on reorientation, as you refer to it, is something which has been initiated by you rather than by Mr. Schwartz?

Mr. MORELAND. I am responsible for that; that is right.

Mr. SOURWINE. Mr. Moreland, would it be more economical and efficient to have visas issued by the same authority and insofar as possible by the same personnel that handles the admissions of aliens?

Mr. MORELAND. Did you say more economical?

Mr. SOURWINE. Economical and efficient.

Mr. MORELAND. It would be more economical. I am not so sure it would be more efficient because—well, let me put it this way. I am very well satisfied with the so-called double check where the consular officer abroad issues the visa and investigates the applicant through all the standards we employ, and then have the INS apply its standards at the port of entry.

Mr. SOURWINE. There are those in the Department who feel and have stated it would be more economical and efficient to have visas issued by the same authority and insofar as possible by the same personnel that handles admissions.

Mr. MORELAND. I don't think that is a general feeling within the Department. A few individuals may be so disposed.

Mr. SOURWINE. Do you know Mr. Schwartz' view on this?

Mr. MORELAND. No, I do not. I would be surprised if he would be for the INS taking over the visa issuance function.

Mr. SOURWINE. Well, would he be for the State Department taking over the admissions function?

Mr. MORELAND. I am not aware of that.

Mr. SOURWINE. Are you for it?

Mr. MORELAND. No, I am not.

Mr. SOURWINE. As a matter of fact, does not a person's view on efficiency in this respect depend upon what he considers to be the major objective, if security is the major objective he would say it is more efficient than the way it is now?

Mr. MORELAND. That is right.

Mr. SOURWINE. And if it facilitates the entry of larger numbers of aliens it would be more economical?

Mr. MORELAND. And if the number of dollars you are going to spend on the operation is the criterion.

Mr. SOURWINE. Because, of course, you could cut personnel out if you do it all in one office.

Mr. Chayes, while he was in the Department, had a number of his men spotted around in different places in the State Department. Are you familiar with this situation?

Mr. MORELAND. Well, I am familiar with the general organization of the Office of the Legal Adviser, yes.

Mr. SOURWINE. Well, hasn't there been and didn't it occur under Mr. Chayes, a substantial expansion in the number of people from Legal who were assigned various spots in the Department?

Mr. MORELAND. Well, there has recently been created an Assistant Legal Adviser for the Bureau of Security and Consular Affairs. Whether or not there has been a substantial number of increases or not, I don't know.

Senator DODD. Who was this Legal Adviser that you referred to?

Mr. MORELAND. Mr. Smith is the Assistant Legal Adviser now for the Bureau of Security and Consular Affairs.

Mr. SOURWINE. Another point, Mr. Moreland, and I am almost through, as far as I know.

Mr. Moreland, as far as you know, is the State Department today run in accordance with the rules and regulations of the Department?

Mr. MORELAND. As far as I am aware.

Mr. SOURWINE. Do you know of any instances in which the rules and regulations are overridden or overlooked?

Mr. MORELAND. No, I am not aware.

Mr. SOURWINE. We talked earlier about visa waiver cases. Does the Department maintain complete files on visa waiver cases?

Mr. MORELAND. Yes, sir.

Mr. SOURWINE. Is a file in such a case completed before the case is brought to you?

Mr. MORELAND. That hinges on the definition of "completed."

Mr. SOURWINE. Well, of course, it is never in a sense completed until final action and disposition.

Mr. MORELAND. That is right.

Mr. SOURWINE. But, I mean, is all the necessary information compiled and put in a single file before—

Mr. MORELAND. Normally. I think there are certain cases where in the development—

Mr. SOURWINE. When a case comes in, do you get the file?

Mr. MORELAND. Eventually it comes to my desk.

Mr. SOURWINE. Comes with the case?

Mr. MORELAND. That is right.

Mr. SOURWINE. You don't have to send for it?

Mr. MORELAND. No, sir.

Mr. SOURWINE. What material has to be put in one of these files as a minimum?

Mr. MORELAND. The recommendation from the field post, the result of the checks that are applied at Washington, at a minimum.

Mr. SOURWINE. And that is all?

Mr. MORELAND. No. Also, there is one other thing, one other step. The geographic area must make a statement in regard to the recommendations of the field post.

Mr. SOURWINE. And if there is any security information on the applicant that has to be in the file, isn't that right?

Mr. MORELAND. That is right.

Mr. SOURWINE. In summary or detail?

Mr. MORELAND. In detail.

Mr. SOURWINE. Completed?

Mr. MORELAND. Completed.

Mr. SOURWINE. How thick do these files run as an average?

Mr. MORELAND. Well, they vary in degree from 10 pages to several hundred.

Mr. SOURWINE. You have handled a great many of these, haven't you?

Mr. MORELAND. That is right.

Mr. SOURWINE. How long does it take one to read one—I mean, carefully, all the way through?

Mr. MORELAND. The average one could be analyzed in 5 or 10 minutes.

Mr. SOURWINE. By a person who is trained for that?

Mr. MORELAND. That is right.

Mr. SOURWINE. Even a file of several hundred pages?

Mr. MORELAND. No, that would take longer.

Mr. SOURWINE. What is your average? You say it runs anywhere from 10 to several hundred.

Mr. MORELAND. Most are very thin.

Mr. SOURWINE. Most of them are what—would they average 10, 12, 15 pages?

Mr. MORELAND. Fifteen or twenty pages.

Mr. SOURWINE. How many of these waiver cases have been handled by SCA since you have been there—not the precise number but just an approximation?

Mr. MORELAND. Oh, in the neighborhood of 1,000 a year come to Washington.

Mr. SOURWINE. Has that number increased or decreased substantially recently?

Mr. MORELAND. Not—there is a tendency to—maybe there is a slight increase, it does vary. Of course, the summer has the travel months and it depends to a large extent on the scheduling of international or other conferences that people want to visit where it is felt in the national interest it should be made possible for certain visa ineligible to visit. Most of them happen in the summertime and I think there as been a slight increase in recent years.

Mr. SOURWINE. How many of these cases come to you—all of them?

Mr. MORELAND. All of them.

Mr. SOURWINE. How many go to Mr. Schwartz?

Mr. MORELAND. Up until about a month or 6 weeks ago, all of them.

Mr. SOURWINE. And there has been a change since then?

Mr. MORELAND. He has now redelegated that back to the Visa Office, all except the more—what you would call the public relations or the more complicated cases.

Mr. SOURWINE. Who decides which cases are to go to him and which ones are not to go?

Mr. MORELAND. I do, now.

Mr. SOURWINE. On the basis of standards he has fixed?

Mr. MORELAND. Yes—primarily my judgment.

Mr. SOURWINE. Yes. Now, in the instance of visa waiver cases, when it goes to Mr. Schwartz, do you read it and analyze it first?

Mr. MORELAND. Yes.

Mr. SOURWINE. And send it up with recommendation?

Mr. MORELAND. Yes.

Mr. SOURWINE. And presumably he or someone in his office reads it and analyzes it?

Mr. MORELAND. That is right.

Mr. SOURWINE. Are there any substantial proportion of these cases in which your recommendation is overturned?

Mr. MORELAND. Not a substantial proportion, no.

Mr. SOURWINE. Do you know of any waivers of normal visa procedures granted to alien Communists to facilitate their admission into the United States?

Mr. MORELAND. Would you restate that?

Mr. SOURWINE. Do you know of any waivers of normal visa procedures that have been granted to alien Communists to facilitate their admission or which did facilitate their admission to the United States?

Mr. MORELAND. Other than 212(d) (3) type of waivers?

Mr. SOURWINE. Well, these are granted to Communists along with others?

Mr. MORELAND. That is right.

Mr. SOURWINE. Yes, other than those.

Mr. MORELAND. No.

Mr. SOURWINE. Do you know of any paroles of Communists into the United States?

Mr. MORELAND. No, I don't.

Mr. SOURWINE. Are you familiar with the case of the group of Spanish-born persons who came in from Cuba, some refugees—do you know what I am talking about?

Mr. MORELAND. It doesn't ring a particular bell.

Mr. SOURWINE. Do you know of any large group or relatively large group of persons who, having acquired Cuban nationality after coming to Cuba from Spain, came into the United States as Cuban refugees?

Mr. MORELAND. Not any large number. There are individual cases where there are unusual humanitarian circumstances and INS has paroled some of those, but never with any security factors involved.

Mr. SOURWINE. Do you know that any substantial groups of 50 or more of this category have come in all at the same time?

Mr. MORELAND. It surprises me. I was not aware of it.

Mr. SOURWINE. In the case of refugees who were coming in from Cuba, was there any requirement of a relative or a friend in the United States or an organization to vouch for them individually?

Mr. MORELAND. Are you talking about the visa waiver program?

Mr. SOURWINE. Yes.

Mr. MORELAND. Yes, that was a standard requirement, that there had to be some relative or there had to be some humanitarian reason, those were the primary criteria.

Mr. SOURWINE. Or there could be an organization to vouch for them, couldn't there?

Mr. MORELAND. No; unless the aliens had relatives here at the time or there was some humanitarian aspect to the case that was overriding.

Mr. SOURWINE. You don't have, I take it then, any knowledge respecting that factor as applied to any group of Cuban refugees that had originally been Spanish nationals?

Mr. MORELAND. No, sir; I am not aware of it.

Mr. SOURWINE. All right.

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TESTIMONY OF ABBA P. SCHWARTZ

WEDNESDAY, JULY 22, 1964

Senator Roman L. Hruska presiding.

Present: Senators Hruska and Thomas J. Dodd.

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

For the Department: Lawrence H. Hoover, Jr.; observer.

(Mr. Schwartz was previously sworn.)

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Mr. SOURWINE. Turning to another subject, do you remember sending a memorandum to Mr. Allen Moreland, forbidding personnel of the Visa Office to attend meetings outside SCA without special permission?

Mr. SCHWARTZ. Mr. Chairman, that question was raised previously and I said I had no recollection. As I recall, I think it was referred to in a letter from the Chairman, or the question came up in another hearing and no such memorandum was ever produced.

Mr. SOURWINE. You mean produced by you?

Mr. SCHWARTZ. I haven't seen any such memorandum. As I recall, a request came either by phone or in writing. I recall asking my office for that after I had testified before.

Mr. SOURWINE. You have nothing in your file?

Mr. SCHWARTZ. I have nothing in my file and, as I recall, my office has checked with Mr. Moreland's office and I was told there was no such memorandum.

Mr. SOURWINE. No oral instruction that you can remember or that you can find any record of?

Mr. SCHWARTZ. As I said previously with respect to the meeting with the voluntary agencies in New York City, I had indicated to Mr. Moreland I would like to know when people went up to New York to discuss immigration matters.

Mr. SOURWINE. You trust Mr. Moreland, do you not?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. And you trust him to regulate the travel of people in his office?

Mr. SCHWARTZ. Yes, sir; and this question of being informed what transpired—

Mr. SOURWINE. Do you remember having seen any similar memorandum or instructions to any other office than SCA, that is, instructions forbidding personnel to attend meetings outside SCA without your permission?

Mr. SCHWARTZ. Well, no one attends meetings without a travel authorization. Whether any other office—I would have to check that.

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TESTIMONY OF FRANK L. AUERBACH, DEPUTY DIRECTOR FOR VISA POLICIES AND SPECIAL PROGRAMS, VISA OFFICE, DEPARTMENT OF STATE

THURSDAY, JULY 23, 1964

The subcommittee met, pursuant to notice, at 9:27 a.m., in room 2300, New Senate Office Building, Senator Thomas J. Dodd presiding.

Also present: J. G. Sourwine, chief counsel; Benjamin Mandel, research director; and David Martin, investigations analyst.

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Mr. SOURWINE. Mr. Auerbach, have you been sworn before this committee in this proceeding earlier?

Mr. AUERBACH. Not in this proceeding, sir.

Mr. SOURWINE. I am sorry. I was mistaken.

Senator DODD. Raise your right hand. Do you solemnly swear the testimony you give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. AUERBACH. I do.

Senator DODD. Be seated.

Mr. SOURWINE. Give the reporter your full name and official position, if any.

Mr. AUERBACH. Frank L. Auerbach, Deputy Director for Visa Policies and Special Programs, Visa Office, Department of State.

Mr. SOURWINE. Mr. Auerbach, have you held this position for some time?

Mr. AUERBACH. This particular position, Mr. Sourwine—

Senator DODD. Excuse me. I was not listening. What is your position?

Mr. SOURWINE. I was asking about his position with the Department. Tell us what positions you have held with the Department of State.

Mr. AUERBACH. Well, my first connection with the Department of State began in 1948 when Mr. L'Heureux, the then Director of the Visa Office, invited me to be a consultant to the Visa Office.

In 1951 Mr. L'Heureux invited me to join the Department on a permanent basis. At that time I joined the Department as a Foreign Affairs officer. In 1954 I became special assistant to the Director of the Visa Office. In 1955 I became Assistant Director of the Visa Office. I held this position from 1955 to 1962. In 1960, Mr. John

W. Hanes, Jr., the then Administrator of the Bureau of Security and Consular Affairs appointed me Chairman of the Department's Policy Committee on Immigration and Naturalization. Previously, in 1959, Mr. Hanes had appointed me, in addition to my other positions, adviser to the Administrator on Immigration Affairs.

Mr. SOURWINE. Mr. Auerbach, with deference to your modesty, I want you to admit the fact that you are recognized as an authority on the immigration—and naturalization—laws of the United States

Mr. AUERBACH. Mr. Chairman, it is difficult for me to make such an admission.

Senator DODD. That is all right.

Mr. AUERBACH. I appreciate the question, Mr. Sourwine.

Mr. SOURWINE. You have authored a standard work on the subject, and you have recently published a revision on it.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. I want to say to you that I do not want you to feel that the question this morning covers everything that the committee wishes to learn from you. We have a few points here which it is necessary to clear up in order to complete the record in certain areas, but that is all I am going to bother you with this morning.

Mr. AUERBACH. Right.

Mr. SOURWINE. Are you familiar with the details of the case of the vessel *Bahia de Nipe*? That was the Cuban vessel whose crew brought it here into the U.S. port seeking asylum?

Mr. AUERBACH. No, Mr. Sourwine. I am not. May I complete my earlier statement because this may explain why I may not be familiar with some of the questions you want to ask me.

In 1962 a reorganization of the Visa Office took place and while I had responsibility before that time for many problems of adjudications of individual cases, I was relieved at that time of this responsibility and since 1962 I have held the title of Deputy Director for Visa Policies and Special Programs.

Mr. SOURWINE. Are you familiar with the principles of international law in the case of a vessel of foreign registration whose crew brings her into a U.S. port seeking asylum?

Mr. AUERBACH. I am not.

Mr. SOURWINE. Mr. Auerbach, are you generally familiar with the appropriations estimates as they concern your office?

Mr. AUERBACH. I have read them at the time they were prepared, but I could not rely on my memory now to reconstruct details.

Mr. SOURWINE. All right. If you cannot answer these questions, you simply say, "I do not know," if that is the reason.

Do you know why there was in the estimates for fiscal 1963 a large increase in the estimated number of nonquota visas?

Mr. AUERBACH. No, I do not.

Mr. SOURWINE. All right.

Since Mr. Schwartz became Administrator of SCA, what contacts have you had with him?

Mr. AUERBACH. I have had very few contacts with Mr. Schwartz. After Mr. Schwartz took office, I was advised that my relationship to the Administrator as his adviser on immigration affairs had terminated.

Mr. SOURWINE. How often do you have an opportunity to talk with Mr. Schwartz?

Mr. AUERBACH. Mr. Schwartz has called for my services on a limited number of occasions for specific assignments. I have not seen Mr. Schwartz on business or otherwise, I would estimate, for at least 6 months.

Mr. SOURWINE. Does he ever come into your office?

Mr. AUERBACH. He has never come to my office.

Mr. SOURWINE. Does he ever give you oral instructions?

Mr. AUERBACH. At the time he called for my services in connection with special assignments he did give me oral instructions.

Mr. SOURWINE. How about the normal conduct of the office? Does he supervise your work in any way?

Mr. AUERBACH. He does not.

Mr. SOURWINE. How do you get your orders from the top side?

Mr. AUERBACH. I get my orders through Mr. Moreland, the Director of the Visa Office.

Mr. SOURWINE. You never get even any memorandums directed from Mr. Schwartz.

Mr. AUERBACH. I do not.

Mr. SOURWINE. Aren't there any staff meetings in your shop? I mean with the Administrator or to which he comes?

Mr. AUERBACH. There are to my knowledge meetings in the office of the Administrator for the directors, and I understand that Mr. Moreland and the Deputy Director for Operations attend these meetings weekly, either with Mr. Schwartz or with his deputy, but I have never been asked to participate.

Mr. SOURWINE. Do you know whether these meetings have been held in recent weeks?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Has the work of your office been hampered by requirements imposed by Mr. Schwartz or by his service since he became Administrator?

Mr. AUERBACH. It is difficult to answer that question because my work as it is now circumscribed is entirely controlled by Mr. Moreland.

Mr. SOURWINE. Well, has Mr. Schwartz imposed requirements with respect to reporting, with respect to clearances of proposed actions, with respect to revisions on correspondence which are more onerous than those of prior administrators?

Mr. AUERBACH. Well, the only instruction which comes to my mind in this connection, Mr. Sourwine, is one of relatively recent date of which Mr. Moreland informed me; namely, to the effect that any amendments to notes to the Visa Handbook or Visa Manual must be cleared by the Administrator.

Mr. SOURWINE. It is your custom to keep that manual up to date; has been over the years?

Mr. AUERBACH. That manual has been kept up to date very carefully. It was subject to a complete revision I believe in 1959 and 1960 and has been, of course, kept up to date. I am not sure whether you are familiar with its details. It consists actually of regulations and notes. The notes are of an explanatory character; they are annotations to the regulations.

Mr. SOURWINE. Yes, sir. They are intended to keep the people in the field current with regard to what they should know of developments, and court decisions, and interpretations—

Mr. AUERBACH. And what they should do.

Mr. SOURWINE (continuing). —and what they should do.

Mr. AUERBACH. Indeed.

Mr. SOURWINE. And that handbook is still being kept up to date today?

Mr. AUERBACH. Indeed. And I do remember that in 1960 the then Administrator presented a copy of the new edition to Senator Eastland and Congressman Walter.

Mr. SOURWINE. Did you see a memorandum from Mr. Schwartz forbidding personnel of the Visa Office to attend any meetings outside SCA without special permission?

Mr. AUERBACH. I did not.

Mr. SOURWINE. Have you had any instructions on this point through Mr. Moreland?

Mr. AUERBACH. I remember faintly that this at one point was a subject of discussion, but I believe it was rescinded, if it was in effect for any length of time.

Mr. SOURWINE. Sir, since Mr. Schwartz became Administrator, has there been any slowdown in the handling of matters required to be cleared through the Administrator's office?

Mr. AUERBACH. This is difficult to answer, Mr. Sourwine, because I, as I indicated, do not handle cases. I do understand that certain additional clearances have become necessary. I could not give you first-hand information of the delays which—

Mr. SOURWINE. All right, sir.

Do you have any information respecting the alleged desire or intent of Mr. Schwartz to discharge personnel under his jurisdiction, especially top personnel?

Mr. AUERBACH. I am sorry. Would you repeat that?

Mr. SOURWINE. Yes. Whether you have any information or knowledge respecting the alleged desire or intent of Mr. Schwartz to discharge personnel under his jurisdiction, especially top personnel.

Mr. AUERBACH. There have been rumors to this effect. I would not be able to evaluate the accuracy of these rumors, but there have been rumors to that effect.

Mr. SOURWINE. Do you know a man named Richard Brown?

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. Is he a Foreign Service officer?

Mr. AUERBACH. If you speak of Richard Brown who was in charge of the Office of Refugee Migration Affairs—

Mr. SOURWINE. That is the man.

Mr. AUERBACH (continuing). —I believe he is a Foreign Service Reserve officer, but I am not entirely certain of that.

Mr. SOURWINE. Are you familiar with the character of Mr. Brown's work? Would you say he is a good and competent man?

Mr. AUERBACH. All dealings I had with Mr. Brown when he was in charge of that office were highly satisfactory.

Mr. SOURWINE. Mr. Auerbach, are you aware of any shift in policy with respect to the issuance of visas since Mr. Schwartz became Administrator?

Mr. AUERBACH. Could you elaborate on this? In what sense?

Mr. SOURWINE. Not without leading you, and I do not desire to try to do that at this time. I just want to know if anything comes to your mind in that area when I asked that question. Do you have the question in mind?

Mr. AUERBACH. Would you mind repeating it?

Mr. SOURWINE. I asked you if you were aware of any shift in policy with respect to the issuance of visas since Mr. Schwartz became Administrator of SCA.

Mr. AUERBACH. I would like to answer that in this way, Mr. Sourwine, that it is very difficult to pinpoint shifts in policy. There is, however, to be recognized the fact that there are certain objectives in the entire field of visa work which sometimes are given more or less emphasis.

Mr. SOURWINE. All right. What objectives do you have in mind that have been given more or less emphasis since Mr. Schwartz came in?

Mr. AUERBACH. I would like to, if I may, disassociate my observations at this point from Mr. Schwartz.

Mr. SOURWINE. We do not want to disassociate Mr. Schwartz. The question is about what has happened that Mr. Schwartz is responsible for. If you do not have anything of that kind in mind, then we will move to the next question.

Mr. AUERBACH. I cannot pinpoint any specific instructions.

Mr. SOURWINE. All right, sir. Do you know of any case in which an individual who could not have entered the United States under other circumstances was allowed to come in by action or order of Mr. Schwartz?

Mr. AUERBACH. I remember one case while I was in charge of the handling of this type of case, this person at that particular point was barred from admission. I understand that this particular person—

Mr. SOURWINE. Under the law?

Mr. AUERBACH. I am sorry.

Mr. SOURWINE. Barred by the law?

Mr. AUERBACH. Well, by finding of ineligibility under the law.

Mr. SOURWINE. All right.

Mr. AUERBACH. I understand that this particular person subsequently was permitted to enter under a waiver of inadmissibility.

Now, I do not know who authorized that waiver.

Mr. SOURWINE. I see.

Mr. AUERBACH. I do not know.

Mr. SOURWINE. Who is the person you have in mind that was permitted to enter?

Mr. AUERBACH. The name of this person as I recall is Natalia Drohojowska.

Mr. SOURWINE. Mr. Auerbach, what was the basis of the original finding of ineligibility in this case? Under what section?

Mr. AUERBACH. The section was section 212(a)(28).

Mr. SOURWINE. Which means—

Mr. AUERBACH. Which means affiliation with subversive organizations.

Mr. SOURWINE. And you are not familiar with the full details of the case?

Mr. AUERBACH. I am not familiar with the action taken subsequent to the date when this person was held ineligible while the case was handled under my jurisdiction.

Mr. SOURWINE. While it was handled under your jurisdiction, what were the principal facts which led to the declaration of ineligibility? Was she a Communist?

Mr. AUERBACH. May I make a comment first off the record since this is classified information and ask the chairman then to decide whether this should be made on the record?

Senator DODD. Yes.

Mr. SOURWINE. Mr. Chairman, may I respectfully suggest that we follow the procedure we have used in other cases of this kind and instruct the reporter that the material during this particular segment of the hearing be separately transcribed, that only one copy be submitted to the committee, that the notes and tape on this copy be sent with it, putting the matter entirely within the jurisdiction of the Chair whether it shall be included or not.

Senator DODD. All right. That is the way we do it here.

Mr. SOURWINE. Also I think our rule on that is that it carries a top secret classification.

Senator DODD. Yes.

(Whereupon, at 9:45 a.m., the committee proceeded into top secret session following which it resumed in executive session.)

Senator DODD. The committee will be in order.

Mr. SOURWINE. I have no more questions to ask of this witness, Mr. Chairman. I ask that he be excused for now subject to recall.

Senator DODD. Very well.

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**TESTIMONY OF HESSEL E. YNTEMA, JR., SPECIAL ASSISTANT TO
THE DEPUTY ADMINISTRATOR, BUREAU OF SECURITY AND
CONSULAR AFFAIRS, DEPARTMENT OF STATE**

THURSDAY, AUGUST 6, 1964

Senator Thomas J. Dodd presiding.

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

For the Department: Richard A. Frank, observer.

(Mr. Yntema was previously sworn.)

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Mr. SOURWINE. Mr. Yntema, you believe in keeping the Foreign Affairs Manual up to date, do you not, so far as it concerns offices within your Bureau?

Mr. YNTEMA. Yes, sir.

Mr. SOURWINE. Have you ever taken action or postponed action with a view to preventing the Foreign Affairs Manual from currently being revised, or with the result of the current revision being delayed?

Mr. YNTEMA. Could I say in response to that—

Mr. SOURWINE. Surely.

Mr. YNTEMA. In my opinion, the Foreign Affairs Manual and the basic passport regulations, as well as the Executive order underlying

both the manual and the passport regulations, are a package together, and in order to do the Foreign Affairs Manual, you should really do the basic regulation first.

As far as keeping the field people up to date on the current operations of the Passport Office, we do do that now. Whenever we have a change in the regulations that would require notice to the field, it is sent out in a circular airgram or an operations memorandum. So in a real sense, the field is kept up to date. Changes are not put in a manual, but the field is kept abreast and kept up to date.

Mr. SOURWINE. What is the function of the Foreign Affairs Manual?

Mr. YNTEMA. The Foreign Affairs Manual, as I understand it, is to give the people in the posts a working, day-to-day book to use.

Mr. SOURWINE. It is desirable, is it not, that this manual should reflect, as currently as possible, changes in policy, court decisions, new laws, new regulations—

Mr. YNTEMA. Positively, yes, sir.

Mr. SOURWINE. Anything that comes along?

Mr. YNTEMA. Yes, sir.

Mr. SOURWINE. Now, since it is desirable to keep this current why should it be tied to a possibly needed regulation change?

I'll explain that. Assume that there has been a change in the law or a court decision which appears to perhaps require a change in the regulations. Should not the field be advised, through revision of the Foreign Affairs Manual, of the current situation immediately, and then advised again when and if there is a change in the regulations?

Mr. YNTEMA. Sir, could I comment in this way on that? Taking a case in hand, the *Schneider* decision, when that came out, the field was advised through a circular airgram, not through a modification in the FAM, but through a circular airgram. In other words, the field is being kept up to date on these things.

Mr. SOURWINE. You think, then, do you, that it is not important that the Foreign Affairs Manual be kept right up to date as closely as possible?

Mr. YNTEMA. No, sir; I feel it is very important. But I do feel it should be done hand in hand with these other regulations.

Mr. SOURWINE. Do you know whether Mr. Schwartz shares this view or holds this view?

Mr. YNTEMA. My particular view?

Mr. SOURWINE. Yes; that you just expressed.

Mr. YNTEMA. I believe, sir, that—well, I don't have an answer to that, sir.

Mr. SOURWINE. You have never talked with him about it?

Mr. YNTEMA. We have talked in terms of getting the whole package out. That is the basis of our discussions.

Mr. SOURWINE. Well, he has concurred in what you want to do in that regard, the way you wanted to handle it?

Mr. YNTEMA. Yes, sir.

Could I comment on that? I have only been in on the regulations for a brief period of time. I'm not the man in charge of the regulations or in charge of the FAM's at the present time.

Mr. SOURWINE. I see. Do you know of any dissatisfaction on the part of Mr. Schwartz with delay in revising the Foreign Affairs Manual, or with failure to keep it up to date?

Mr. YNTEMA. I know for a fact he is as anxious as I am to get the thing out, get it up to date and get the basic regulations up to date.

Mr. SOURWINE. But he concurred in the idea that the Foreign Affairs Manual need not be revised except in connection with changes in regulations?

Mr. YNTEMA. No, sir; I don't believe I said that, sir.

Mr. SOURWINE. Perhaps I misunderstood you.

Mr. YNTEMA. No, it is my belief that the basic regulations should be changed concurrently with the Foreign Affairs Manual. It was on that basis that I initially got into the thing. Then I worked for a period on the regulations and the FAM. Since that time, we have been trying to get the FAM out separately, but trying to work it in so it doesn't conflict with anything in the basic regulations.

Mr. SOURWINE. It is frequent, is it not, that a change is called for which involves a situation that could be reported immediately by a revision of the Foreign Affairs Manual, but where the preparation of a change in regulations will take a certain amount of time to draft and get approval?

Mr. YNTEMA. Yes, sir, either reporting it through a change in the FAM or through a circular airgram or an operations memorandum, which we do now.

Mr. SOURWINE. What you do now in such a case is to report the situation in what?

Mr. YNTEMA. In a circular airgram or an operations memorandum going out to the field.

Mr. SOURWINE. Then the revision of the Foreign Affairs Manual is held up until the regulations have been changed?

Mr. YNTEMA. No, sir, we are working night and day attempting at this point to put out the Foreign Affairs Manual.

Mr. SOURWINE. All right, sir.

To give a specific example: Were you not, on January 23, 1964, furnished with a memorandum respecting a needed revision of the Foreign Affairs Manual with regard to certain matters affecting the Passport Office?

Mr. YNTEMA. I'll say yes to that.

Mr. SOURWINE. You were furnished with a similar memorandum on January 9—

Mr. YNTEMA. Was that addressed to me or addressed to Mr. Schwartz?

Mr. SOURWINE. I am unable to say. I was asking you.

Senator DODD. I heard you say, "I'll say yes to that," but don't say yes if you don't know.

Mr. YNTEMA. Well, I don't know, sir.

Mr. SOURWINE. Let me state it this way. It is the committee's information that you, and by that I mean the Administrator's Office—and it is our understanding that the matter was handled by you—were furnished with a memorandum of January 23, 1964, with respect to a needed revision in the Foreign Affairs Manual in regard to certain matters affecting the Patent Office, that there had been similar memorandums—

Senator DODD. The Patent Office?

Mr. SOURWINE. The Passport Office, sir.

Senator DODD. I thought I heard you say Patent Office.

Mr. SOURWINE. I do apologize. My tongue must have gotten twisted.

Senator DODD. Very well.

Mr. SOURWINE. But there had been similar memorandums with respect to needed changes furnished on January 9, 1963, on March 14, 1963—Those dates were before you were with the Department—

Mr. YNTEMA. Right.

Mr. SOURWINE (continuing). —that in spite of repeated inquiries respecting the status of these proposed revisions, they were still being held in the Administrator's Office without action in mid-May of 1963, and the committee's information is that, in the case of these three recommendations of January 9, 1963, March 14, 1963, and January 23, 1964, none of the revisions had actually been made in the Foreign Affairs Manual as of the end of April 1964. And if this is incorrect, I think we would like to have a statement showing what the fact is.

Mr. YNTEMA. Well, sir, could I comment in this fashion on that? Shortly after the first of the year, I did get into work on not only the FAM, but the passport regulations. I held meetings with the Passport Office, as I remember, on the basic passport regulations. Concurrently, I asked the Legal Adviser's Office to study not only the passport regulations but the FAM in an effort to—so we could have a full package come out. As I recall, in May, I had hearings, or had meetings with Mr. Frank of the Legal Office and the Passport Office on the FAM themselves.

That is the status of my knowledge of it so far. So far as I am concerned, I have contributed my share to both the regulations and to the FAM, and the thing is out of my hands, so to speak.

Mr. SOURWINE. All right, sir. I have just one more question.

Can you think of anything better calculated to contribute to inefficiency in the handling of the work of the Passport Office, especially overseas, than failure to keep the Foreign Affairs Manual up to date and currently reflecting judicial decisions and opinions of the Attorney General?

Mr. YNTEMA. Sir, if I could comment in this way on that, I believe, as I said before, the field is being kept up to date by these circular airgrams and, operations memorandums which are sent out.

Mr. SOURWINE. You think they are a satisfactory substitute for revisions of the manual?

Mr. YNTEMA. Sir, there is no satisfactory substitute for the revision. That is the optimum state to reach. But if I could comment, in an aside on my previous history, when I was with Mr. Hester, I spent a number of years—3 years to be exact—working on regulations which would govern the operation of breweries. We spent, as I say, 3 years on a regulation governing the day-to-day operation of the breweries, which, of course, is not anywhere near as important as these regulations are.

Senator DODD. I don't get your point.

Mr. YNTEMA. I wanted to make a point of the time element. We spent a number of years doing this.

Senator DODD. I can see where it might take more time to regulate a brewery.

Mr. YNTEMA. But it was something the brewers needed for their day-to-day operation. In this way, it is very similar to our present situation.

Mr. SOURWINE. I have no more questions, sir. We can take the next witness, if you wish.

Senator DODD. Very well.

Thank you, Mr. Yntema. You are excused.

TESTIMONY OF FRANK L. AUERBACH

TUESDAY, AUGUST 11, 1964

Senator Thomas J. Dodd presiding.

Present: Senators Dodd, Everett McKinley Dirksen, and Kenneth B. Keating.

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

For the Department: Richard A. Frank and Lawrence H. Hoover, Jr., observers.

(Mr. Auerbach was previously sworn.)

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Mr. SOURWINE. Mr. Auerbach, you have testified before the committee before?

Mr. AUERBACH. I have.

Mr. SOURWINE. Just to place you, what is your position in the Department of State?

Mr. AUERBACH. I am at this time Deputy Director for Visa Policies and Special Programs of the Visa Office.

Mr. SOURWINE. Mr. Auerbach, were you briefed by an official of the State Department with respect to this particular hearing before you came up here?

Mr. AUERBACH. I was briefed before I came the last time, yes, indeed.

Mr. SOURWINE. But nothing before you came this time?

Mr. AUERBACH. Not today.

Mr. SOURWINE. Have you told us fully about your briefing before you came the last time?

Mr. AUERBACH. No, I was not asked.

Mr. SOURWINE. Who briefed you?

Mr. AUERBACH. At that time, Mr. Frank and Mr. Hoover.

Mr. SOURWINE. Were you told not to testify with respect to any particular matters or in any specified areas?

Mr. AUERBACH. No, I was not.

Mr. SOURWINE. Were you instructed about any requests of the committee for documents?

Mr. AUERBACH. Yes.

Mr. SOURWINE. What were your instructions?

Mr. AUERBACH. The instructions were that any documents should be requested of the Department.

Mr. SOURWINE. Any documents at all, or only State Department documents?

Mr. AUERBACH. State Department documents.

Mr. SOURWINE. Whether or not classified?

Mr. AUERBACH. I believe that the instruction related to all documents other than routine documents.

Mr. SOURWINE. Were you given any instructions about the production of documents that belonged to you or belonged to some other person outside the State Department?

Mr. AUERBACH. No, I was not.

Mr. SOURWINE. You were not told that you should avoid answering or should refuse to answer any particular questions?

Mr. AUERBACH. No, I was not. I was reminded of the third agency rules, which, of course, is known to us.

Mr. SOURWINE. Were you given any instructions respecting expression of views about Mr. Schwartz or of his work?

Mr. AUERBACH. I was not.

Mr. SOURWINE. Did you receive any instructions about how to answer questions which might appear to call for an answer from you that would be critical of the operations of the Visa Division or of some other segment of the Bureau of Security and Consular Affairs?

Mr. AUERBACH. No, I was not.

Mr. SOURWINE. Mr. Auerbach, I think the record already shows this, but I would like to have it in here: Are you thoroughly familiar with the policies and practices of the Visa Division, both at the present time and with respect to differences which may have existed at a prior time while you have been with the Department?

Mr. AUERBACH. I am fully aware of the general policies, as I believe I pointed out when I appeared before the subcommittee last time. At the time of the reorganization of the Visa Office 2 years ago, I was relieved of all case responsibility, so that I am not aware, necessarily, of changes in trends in case policy.

Mr. SOURWINE. That matter can come up if and when we ask you about particular cases. Are you familiar with the security aspects of the work of the Visa Office?

Mr. AUERBACH. Again, I was fully aware of the procedures up to 2 years ago. Now I am familiar with them in general terms.

Mr. SOURWINE. Well, have visa security procedures changed, to your knowledge, since 2 years ago, or about 2 years ago?

Mr. AUERBACH. This is a question which I cannot answer "Yes" or "No." There are always certain tendencies and trends. There is the objective of facilitation of tourism on the one hand; there is internal security on the other hand. I think the trend has been more pointed in terms of facilitation of tourism.

Mr. SOURWINE. We'll get to that point in detail in just a moment. Do you understand proper security procedures in visa cases?

Mr. AUERBACH. This is a qualitative evaluation of the term "proper." I think security procedures always present a balance between the national interest in internal security on the one hand and other considerations on the other hand.

Does that answer your question?

Mr. SOURWINE. No, it doesn't, quite. You have been there long enough to become intimately familiar with security procedures, haven't you?

Mr. AUERBACH. Yes.

Mr. SOURWINE. And you have had enough experience to know over a number of years what were considered the proper security procedures?

Mr. AUERBACH. Yes.

Mr. SOURWINE. And you have a view of your own with respect to what are the proper security procedures?

Mr. AUERBACH. Yes.

Mr. SOURWINE. You are not a person unknowledgeable in this area?

Mr. AUERBACH. Indeed not.

Mr. SOURWINE. Now, when I ask you if there have been any changes in security procedures or the application of security measures in connection with the granting of visas since Mr. Schwartz became Administrator, you can answer that question, can't you?

Mr. AUERBACH. If you take the visa process as a whole, then I say what I said before, without evading your question, that the emphasis in recent years has been on the facilitation, and this is by necessity to some extent at the expense of the more cautious approach from the security point of view.

Mr. SOURWINE. Well, this is a very general statement. Now, specifically are there less or more comprehensive security checks now in visa cases than there were prior to Mr. Schwartz becoming Administrator?

Mr. AUERBACH. Let me give you an example.

Mr. SOURWINE. Don't you know the answer to that question without an example? I would be glad to have the example, but answer the question first. Answer the question first and then give your example. The example is either going to show less or more or no change, so which is it?

Mr. AUERBACH. Again, I mean the emphasis on facilitation, to give the example, and then I would be glad to try to answer your question.

We are now issuing visas to visitors for pleasure without personal appearances. These visas are issued under certain circumstances for 4 years.

Mr. SOURWINE. What circumstances?

Mr. AUERBACH. On the basis of reciprocity. In other words, if the country of which the visitor is a national issues to Americans visas of equivalent validity, or requires no visa at all.

Mr. SOURWINE. Are there many countries which do this?

Mr. AUERBACH. There are a considerable number, particularly in Western Europe.

Mr. SOURWINE. What are they, principally?

Mr. AUERBACH. For example, Great Britain; France, I believe; Germany, I believe. I don't have the entire list, but there are a considerable number. Consequently, we will then issue visas, possibly without personal appearance, valid for 4 years.

We also revalidate these visas without personal appearance repetitively.

Mr. SOURWINE. Prior to 2 years ago, were any visas issued without a personal appearance?

Mr. AUERBACH. Only in cases of foreign government officials, international organization aliens, children under a certain age, as far as I recall, but not to the public in general.

Mr. SOURWINE. Not the so-called pleasure visas?

Mr. AUERBACH. No.

Mr. SOURWINE. Those are nonimmigrant visas, are they?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. When a person gets into this country on one of those nonimmigrant visas, can he have his status adjusted to that of permanent resident?

Mr. AUERBACH. Yes, he can, in many cases.

Mr. SOURWINE. Is that done in many cases?

Mr. AUERBACH. In relation to the total number on nonimmigrants that come, I would say no, but it is done in a considerable number of cases.

Mr. SOURWINE. Do you wish us to stop while you are gone, Mr. Frank?

Mr. FRANK. Why don't you take a minute and I can speak right here?

I am sorry, Mr. Sourwine. I wanted to say that calling the Department was a formality which I did want to go through because of the fact that I think they should know which witnesses are testifying. I indicated that I did think I should testify this morning, and I do now have permission to do so.

Mr. SOURWINE. Mr. Chairman, would you care to continue with Mr. Auerbach or excuse him for 15 minutes and take Mr. Frank?

Senator DODD. I have no feeling about it at all. Whatever you want to do.

Mr. SOURWINE. Then if it is agreeable with you and if Mr. Auerbach does not object, let us excuse him for 15 minutes and get Mr. Frank's testimony.

Senator DODD. All right. (Witness temporarily excused.)

* * * * *

Mr. SOURWINE. Did you have something you wanted to say, Mr. Auerbach?

Mr. AUERBACH. If I may add to one statement I made, I think it would clarify the record.

I should like to point out that the statement I made about the issuance of visas without personal appearance was not related to any personality within the Department of State. This program was initiated at the suggestion of the late Representative Walter in connection with a then pending administration bill, when Representative Walter recommended that we explore the possibility of issuing visas by mail. This took place in two steps: on a more limited basis, I believe in August of 1962; and on a broader base in October of 1962. I wanted to make it clear that the statement I made earlier is unrelated to any particular personality in the Department.

Mr. SOURWINE. Yes, sir.

Do you wish to stand in recess, Senator Dirksen?

Senator DIRKSEN. Yes.

(Whereupon at 10 a.m., the hearing recessed until 2 p.m. the same day.)

AFTERNOON SESSION

Mr. SOURWINE. We have Mr. Auerbach, sir, from the morning session. I think you know Mr. Auerbach and Mr. Hoover of the State Department.

Senator KEATING (presiding). All right.

Mr. SOURWINE. Mr. Auerbach, we had discussed, I believe this morning, the matter of the issuance of visas without personal appearances, and you had just told us in conclusion that this was a matter which you thought had first been suggested by Mr. Walter, or at least he had made such a suggestion?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. And that it involved the issuance of visas by mail?

Mr. AUERBACH. By mail or by submission through channels other than by personal appearance.

Mr. SOURWINE. Is there any security factor involved, to your knowledge, in the issuance of visas by mail or without personal appearance?

Mr. AUERBACH. I think it depends, Mr. Sourwine, on the way you define security. In other words, I could visualize that a question of identity might arise where there is no personal appearance. On the other hand, it is possible that certain name checks are made more thoroughly if the alien is not present, because there is not the pressure of the alien's presence. I think the entire program has to be evaluated after it has been in effect for some time to see whether it does involve security risks.

Mr. SOURWINE. Mr. Auerbach, were you finished there?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Are there any security checks which are required which need the presence or appearance of the visa applicant in order to facilitate those checks?

Mr. AUERBACH. The alien makes an application, a written application, and the data on his application are the basis for the security checks which are made.

Mr. SOURWINE. What is the basis for the reason for personal appearance in visa cases?

Mr. AUERBACH. To go back one step back, the personal appearance was necessary until Congress removed the requirement of fingerprinting. As long as fingerprinting was a statutory requirement—I think it was until 1957—the alien had to appear in person with a few exceptions such as in the case of foreign government officials and international organization aliens. However, we did not take any steps to eliminate the requirement of personal appearance until, in the course of hearings on an administration bill, Representative Walter raised that issue. He asked why we do not issue visas without personal appearance, or by mail, similar to the issuance of passports? About 2 years ago this suggestion was actually put to the test.

Mr. SOURWINE. How could you be even reasonably sure of the identity of the person applying for the visa if there were no personal appearance? Would you have to rely solely upon the signature to the application and if so, how would you check its validity?

Mr. AUERBACH. Well, this is a very good question. You would have to rely on the veracity of the statement submitted in writing.

Mr. SOURWINE. Well, you see, sir, isn't it true that if an application comes in for a visa and it has a name signed to it and the visa is sent to an address by mail, there is no way at all to tell whether it is a forgery unless you have the signature of the authentic person of that name and are able to make a signature comparison, whereas, if an individual comes in in person, and represents himself as a particular person, you have your hands on a man who is either the person he says he is or is merely a fraud.

Mr. AUERBACH. Yes. Now, of course, with the mailed application or with the application without personal appearance will be submitted a travel document, a passport or a document in lieu of a passport. This might be a basis for comparison of signatures to some extent.

Mr. SOURWINE. Yes, of course, it would be.

Mr. AUERBACH. Yes.

Mr. SOURWINE. But if that travel document were presented by the person himself, you could then compare him with the picture on the travel document or passport, couldn't you?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Whereas you can't otherwise.

Mr. AUERBACH. That is right.

Mr. SOURWINE. This does lessen the possibility for a security check?

Mr. AUERBACH. To that extent, yes.

Mr. SOURWINE. In the case of a written signature on an application, if it were determined it were a forgery, you still wouldn't have any criminal until you had determined who put that signature on that application. If it was a Communist drop, you might never know. Whereas, if an individual comes in and passes himself off as a certain person, if you establish that it is fraudulent, you know who your criminal is.

Mr. AUERBACH. If he is the person he represents himself to be.

Mr. SOURWINE. Well, I mean if he is not.

Mr. AUERBACH. Yes. If he is not, then of course, he has committed a criminal act.

Senator KEATING. How do other countries handle that?

Mr. AUERBACH. I cannot give you a firm answer, Senator. I think many countries issue visas without personal appearance. The significant difference is, of course, that most countries have their controls within their country.

As you well know from your own travel, when you arrive in certain countries, your passport is lifted, even if you travel on a diplomatic passport. Later it is returned to you; you have to report any change of address, you are subject to certain internal controls which you are not subject to in this country. Our immigration law, as I understand it, is based upon controls abroad and freedom once you are admitted. Most countries make it relatively simple to get a visa to get into their territory, but then apply internal controls.

Mr. SOURWINE. Have we concluded discussing any changes in visa security procedures or practices which you know about and which have occurred in the last 2 years?

Mr. AUERBACH. One other change, which I cannot pin down exactly by date, but it happened within the last 2 years, has been the further delegation of authority to consular officers to seek waivers of ineligibility from Immigration Service officers stationed abroad. This has been a matter of development and began quite a number of years ago. This was further developed in recent years. So that—

Mr. SOURWINE. I thought that the further granting—excuse me. So that what?

Mr. AUERBACH. So that only a limited number of cases have to come to the Department for a waiver of ineligibility to be sought here from the Commissioner of Immigration rather than by a consular officer from his counterpart abroad.

Mr. SOURWINE. I have a number of questions about visa waivers which we'll get to a little later, but right at this point, am I correct in my understanding that a waiver of a visa can only be granted by the Attorney General and then only on the recommendation of the State Department?

Mr. AUERBACH. When we speak of waiver, Mr. Sourwine, may I draw the line between two types of waivers? I was now speaking of a waiver of ineligibility under section 212(d)(3) of the Immigration and Nationality Act.

I believe you are now referring to what we call the documentary waiver; namely, the waiver of the visa and/or passport under section 212(d)(4) of the Immigration and Nationality Act.

Mr. SOURWINE. I was not. I was referring most specifically to cases where there has been a declaration or finding of ineligibility under subparagraph 28. Then there is a waiver to permit the individual to come in. It doesn't replace a visa; it lets him come in without a visa.

Mr. AUERBACH. That is the former type, the section 212(d)(3) waiver. Your question, sir?

Mr. SOURWINE. I'm asking if these waivers have to be made by the Attorney General.

Mr. AUERBACH. The Attorney General has delegated to the Commissioner of Immigration and the Commissioner of Immigration has in turn delegated to the district directors in the field, major responsibility to exercise the authority on the recommendation of the consular officer or the Secretary of State. The authority of the Secretary of State and the consular officer is to recommend the waiver.

Mr. SOURWINE. Has the Secretary then delegated to certain consular offices his authority to recommend visa waivers?

Mr. AUERBACH. Under the statute, the consul has by himself this authority to recommend a waiver, but in the past—

Mr. SOURWINE. We are confused again.

Mr. AUERBACH. I'm sorry.

Mr. SOURWINE. Unless you mean to say that the consular officer has authority under the statute to waive a visa when a man has been found ineligible for a visa.

Mr. AUERBACH. The consular officer and the Secretary of State have concurrent authority under the law to recommend to the Attorney General the admission of an inadmissible alien under section 212(d)(3).

Mr. SOURWINE. This has never been, by departmental regulation or by the Secretary's directive, restricted to a decision here in Washington?

Mr. AUERBACH. By departmental instructions, for some time most of these recommendations for waivers had to come to us and then were submitted through the Department to the Commissioner of Immigration. But as I indicated earlier, Mr. Sourwine, this authority has progressively been delegated to immigration officers stationed abroad by the Immigration Service, and subsequently the Department has progressively released consular officers from the administrative requirement of submitting their recommendations through the Department.

Mr. SOURWINE. When was that done?

Mr. AUERBACH. This has been a development over the years. The last broadening of this policy, I think, took place within the last 10 months or so. But this was not a completely new development. This has developed over the years.

Mr. SOURWINE. Can you furnish the committee with any instructions or memorandums or directives or changes in regulations during the last 5 years which accomplished such a broadening as you are talking about?

Mr. AUERBACH. I think—

Mr. SOURWINE. Well, I want to find out if you can.

Mr. AUERBACH. I'll ask—

Mr. SOURWINE. No; you can tell whether you can. It is understandable that we'll then have to make a request.

Mr. AUERBACH. Yes. It can be done, indeed.

Mr. SOURWINE. We ask that you do it.

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. Mr. Chairman, may the request be made of the Secretary that this be furnished?

Senator KEATING. Yes; it is so ordered.

(In answer to this request Acting Assistant Secretary Robert E. Lee, in a letter to the subcommittee dated December 10, 1964, stated: "Before his death,¹ Mr. Auerbach prepared a note indicating that the enclosed were all the regulations and instructions issued during the last 5 years regarding delegation of authority to consular officers to recommend the waiver of ineligibility under Section 212(d)(3)(A) of the Act." The documents follow:)

¹ EDITOR'S NOTE.—Acting Assistant Secretary Robert E. Lee transmitting Mr. Auerbach's replies to the committee's submitted questions, enclosed the following memorandum from Mr. Auerbach:

To: H—Mr. John S. Leahy, Jr.

From: Frank L. Auerbach.

Subject: Testimony before Senate Subcommittee on Internal Security.

Please find attached the edited pages of my testimony before the Senate Subcommittee on Internal Security on Aug. 11 and Aug. 12, pp. 3478 through 3484, pp. 3532 through 3557, and pp. 3597 through 3713.

As you will note, Mr. Sourwine observed at the end of my testimony that "the examination has been more exhaustive than that of most witnesses, far more technical than that of most witnesses." You will also see that according to the transcript I testified in the afternoon of Aug. 12 for almost 4 hours after having been a witness on the morning of the same day as well as on the previous day. I point out these facts because my testimony, particularly toward its end, shows the wear of a long period of testifying on rather technical and complex matters, some of which were not in the area of my own competence.

I edited my testimony to iron out some of the rough spots resulting from this combination of facts. I have added a brief sentence on the last page of the testimony which pulls together the salient answers I gave to the counsel's questions during the four sessions of my testimony before the subcommittee.

AUGUST 24, 1964.

INSTRUCTIONS CONCERNING DELEGATION OF AUTHORITY

TEMPORARY ADMISSION OF INELIGIBLE ALIENS

¶41.95 Procedure in recommending temporary admission of ineligible aliens.

- (a) Except as provided in paragraph (b), a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien submit a report to the Department for transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).
- (b) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that an alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act.
- (c) In the case of an alien who is seeking to enter the United States for the purpose of proceeding in transit to the Headquarters District of the United Nations in the United States under the provisions of paragraph (3), (4) or (5) of section 11 of the Headquarters Agreement with the United Nations, and who is known or believed to be ineligible to receive a visa under the provisions of section 212(a)(26) of the Act, but not ineligible under the provisions of section 212(a)(27) or (29) of the Act, the consular officer shall submit promptly to the Secretary of State a full report with a request for an advisory opinion concerning the action to be taken in the case. The consular officer may include in such report a recommendation for transmission to the Attorney General concerning the alien's temporary admission into the United States under the provisions of section 212(d)(3)(A) of the Act.
- (d) When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General.

(Sec. 212, 66 Stat. 182; 8 U.S.C. 1182)

NOTES

1. Importance of section 212(d)(3)(A) action.

In section 212(d)(3)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer a very important discretionary function. It is not the intent of Congress that consular officers or the Department recommend the temporary admission of aliens ineligible to receive visas indiscriminately but since the provision was purposely included in the law, it should be used in all appropriate cases. No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a bona fide nonimmigrant. However, there are many bona fide nonimmigrants who are ineligible under a subparagraph of section 212(a) of the Act, other than (26), (27), or (29) whose presence for a brief visit in the United States is unlikely to be harmful in effect. Indeed their temporary admission might achieve a humanitarian purpose (example: necessary medical treatment); it might carry out a national policy (example: facilitation of trade); it might demonstrate that, when properly applied, our basic immigration policy is not incompatible with general freedom of travel and exchange of cultural ideas (example: attendance at a professional congress of a famous scientist who, while not a political activist, has political views which the Act proscribes).

2. Submission of recommendations direct to immigration officers in certain cases.

In order to expedite the processing of certain types of nonimmigrant visa applications in which consular officers recommend that an ineligible alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act, the Department has authorized the submission of such recommendation direct to the appropriate immigration officer. This procedure may be followed in cases of bona fide nonimmigrants in which the consular officer finds that:

- a. the alien has been convicted of more than one minor offense (generally involving petty theft or similar petty crimes) or has had one conviction of a serious crime involving moral turpitude, such as rape, robbery or house-breaking not within the contemplation of the Act of September 3, 1954 (Public Law 770, 83rd Congress) and the record indicates rehabilitation of the alien and integration into society as a law-abiding citizen,
- b. an emergent situation exists and the alien is ineligible on medical grounds which would not constitute a threat to public health in the United States, or under section 212(a)(12) where rehabilitation of the alien has been reasonably established. There must be elements of undue hardship in this category of case to justify exception from the normal procedure pursuant to which cases are reported to the Department for transmission to the Immigration and Naturalization Service,
- c. except in cases of aliens ineligible to receive visas under the provisions of section 212(a)(28) of the Act, the Immigration and Naturalization Service has previously authorized the alien's temporary admission under the provisions of section 212(d)(3)(A) and no new information has developed subsequent to the date of the previous order indicating that an additional ground of ineligibility to receive a visa may exist. In such cases the Immigration and Naturalization Service file number if known, the approximate date of the 212(d)(3)(A) order and any conditions imposed upon the alien's entry and stay in the United States must be furnished the immigration officer concerned,
- d. In cases falling within the categories listed above consular officers should forward their recommendations as provided in Note 3 to the Immigration Officer in Charge in care of the Foreign Service posts located in the city indicated:

d. (Cont'd)

<u>Location</u>	<u>Area of Responsibility</u>
Hamilton, Bermuda	Bermuda
Havana, Cuba	Cuba, Caribbean Islands, South America
Mexico D.F., Mexico	Mexico and Central America (except that consular officers in Mexico may refer cases to the immigration officers on temporary detail in Tijuana and Monterrey; the District Directors at San Antonio, El Paso and Los Angeles; or Officers-in-Charge El Paso, Calexico, San Ysidro, San Diego, Douglas, Raco, Nogales, San Luis, Brownsville, Del Rio, Eagle Pass, Hidalgo, Iaredo and Roma)
Frankfort, Germany	Germany, France, United Kingdom, Belgium, Netherlands, Luxembourg, Ireland, Iceland, Finland, Denmark, Norway, Sweden
Vienna, Austria	Austria, Switzerland, Yugoslavia, Iron Curtain Countries
Athens, Greece	Greece, Turkey, Iran, Iraq, United Arab Republic, Sudan, Lebanon, Israel, Jordan, Arabian Peninsula
Rome, Italy	Northern Italy, Iberian Peninsula, Africa (other than United Arab Republic and Sudan)
Naples, Italy	Southern Italy (Naples and Palermo consular districts)
Tokyo, Japan	All of continental Asia lying to the east of the western boundaries of Afghanistan and Pakistan; and all countries in the Pacific area.

Canadian posts should communicate with the appropriate Regional Office:

Northeast Regional Office 518 Shelburne Road Burlington, Vermont	Consulate at Niagara Falls, Ontario and all Foreign Service posts east of Niagara Falls.
Northwest Regional Office 790 Cleveland Avenue St. Paul 16, Minnesota	Consulate at Windsor, Ontario and all Foreign Service posts west of Windsor.

3. Submission of recommendations for 212(d)(3)(A) action.

Except as authorized in Note 2, all cases in which the consular officer recommends that the Attorney General exercise his authority under section 212(d)(3)(A) of the Act shall be submitted to the Department for transmission to the Attorney General. In cases in which a Mission makes a recommendation for 212(d)(3)(A) action, not concurred in by a consular officer, this fact should be stated in the report so that the Department may determine whether it should use the authority of the Secretary of State and make the recommendation in the absence of a recommendation by a consular officer. The following points must be covered in recommending 212(d)(3)(A) cases whether such recommendations are submitted to the Department or direct to immigration officers.

- 3.1 A consular officer is required to submit in triplicate a report of the facts in each case recommended for 212(d)(3)(A) action. Such report shall include the alien's full name, the date and place of his birth, his nationality, places of residence during the preceding 5 years, date and port of contemplated arrival if known, length of desired temporary stay, purpose of temporary entry, grounds of ineligibility and provisions of law relating to such ground or grounds of ineligibility, and surrounding facts and recommendation as to the action to be taken. In any case in which there may be a question with regard to the alien's nonimmigrant status, the report must state the basis for the consular officer's finding that the visa applicant is a bona fide nonimmigrant. If the alien has previously applied for an immigrant visa or has registered as an intending immigrant under an over-subscribed quota, such facts should be indicated.

3. (Cont'd)

- 3.2 An order issued by the Immigration and Naturalization Service granting an alien advance permission to enter the United States pursuant to section 212(d)(3)(A) of the Act limits the duration of the stay of, and the areas to be visited by, such alien to the dates and places specified at the time discretionary action is requested. Therefore, if an alien anticipates conferences or other activities in the United States which will require his presence in the United States beyond the date or outside the area required for the primary purpose of his visit, complete information and data thereon should be included in the report at the time the case is submitted for action under section 212(d)(3)(A) of the Act.
- 3.3 If an applicant's ineligibility is due to disease, mental or physical defect or disability of any kind, the report should describe the disease, defect, or disability. If the purpose of seeking admission into the United States is for treatment, the report should cover evidence presented to show:
- (a) that arrangements have been completed for treatment and where and from whom treatment will be received, (If the alien is afflicted with tuberculosis see 22 CFR 41.91(a)(1 - 6), Note 5).
 - (b) that financial arrangements for payment of expenses have been made, and
 - (c) that a bond will be available if required by the Attorney General.
- 3.4 If an applicant's ineligibility is due to conviction of a crime, the designation of the crime, the date and place of its commission and conviction therefor, and the sentence or other judgment of the court should be stated in the report. The report should also cover such matters as the official record of conviction, cummulation of sentence, parole, probation, or pardon.
- 3.5 If an applicant's ineligibility is due to present or past membership in, or affiliation with, any Communist or other totalitarian party or organization, there should be given a statement of the history of such membership or affiliation, whether he held any office in the organization and whether membership or affiliation was voluntary or involuntary. If involuntary membership or affiliation in a Communist Party is alleged, the report should cover the evidence furnished in support of such allegation. If an alien appears to be a defector within the meaning of section 212(a)(28)(ii) of the Act but there is insufficient time to establish defector status, section 212(d)(3)(A) action may be recommended. In such case, the consular officer's report should indicate these facts. If there is a likelihood that the alien will desire to reenter the United States, the consular officer should process the alien as a defector as promptly as possible in order that the presumption of ineligibility may be permanently removed.

4. Validity of visas issued pursuant to section 212(d)(3)(A) authorizations.

- 4.1 Immigration and Naturalization Service orders authorizing the temporary admission of aliens pursuant to section 212(d)(3)(A) of the Act are, unless otherwise specified, valid for one application for admission of the alien into the United States. In such cases the visa issued should be limited to one application for admission. If an alien in whose behalf a consular officer is recommending section 212(d)(3)(A) action wishes to make more than one entry into the United States information regarding such plans should be included in the report to the Department.
- 4.2 Authorizations granted under section 212(d)(3)(A) for alien crewmen are, unless otherwise indicated, valid for all applications for admission made by such crewmen in pursuit of their calling.

5. Form I-192 not to be used by consular officers.

Immigration and Naturalization Service Form I-192 (Application for Advance Permission to enter as Nonimmigrant) should not be used by consular officers since this form is prescribed for use at United States ports of entry. Furthermore, the proscribed fee of \$25 is not assessed when the discretionary authority contained in section 212(d)(3)(A) of the Act is exercised upon the recommendation of a consular officer or the Secretary of State.

6. Posting of bonds in certain cases.

Whenever the posting of a departure bond is required by the Immigration and Naturalization Service in connection with section 212(d)(3)(A) action, the bond is posted at the time the alien applies for admission into the United States and consular officers should not require evidence that the bond has been filed as a condition of visa issuance.

7. Notation on visa of waiver of excluding provision.

When a ground for exclusion is waived by the Attorney General under section 212(d)(3)(A) of the Act, notation of that fact shall be made on the nonimmigrant visa for the information of the immigration authorities at the port of entry. The consular officer shall insert in the visa stamp on the first unused line following the name(s) of the visa recipient(s) "212(d)(3)(A)" followed by a numeral designating the pertinent paragraph of section 212(e) which has been waived, as "212(d)(3)(A): (6)" referring to tuberculosis or "212(d)(3)(A):(9) and (28)" referring to the conviction of a crime involving moral turpitude and membership in a proscribed organization.

7. Notation on visa of waiver of excluding provision.

When a ground for exclusion is waived by the Attorney General under section 212(d)(3)(A) of the Act, notation of that fact shall be made on the nonimmigrant visa for the information of the immigration authorities at the port of entry. The consular officer shall insert in the visa stamp on the first unused line following the name(s) of the visa recipient(s) "212(d)(3)(A)" followed by a numeral designating the pertinent paragraph of section 212(a) which has been waived, as "212(d)(3)(A): (6)" referring to tuberculosis or "212(d)(3)(A): (9) and (28)" referring to the conviction of a crime involving moral turpitude and membership in a proscribed organization. If the communication from the Department contains a time limitation or terminal date of admission, such limitation should be indicated in the notation. The notation might then read: "212(d)(3)(A): (28): Four Months" or "212(d)(3)(A): (28): 4-1-61." (See Proc. Note 5.5, 22 CFR 41.124.) (For the notation to be used where a waiver of a ground of ineligibility has been granted in the case of a participant in the Soviet and Eastern European Exchange Program, see Proc. Note 5.6 to 22 CFR 41.124.)

8. Validity period of orders entered pursuant to section 212(d)(3)(A).

The Immigration and Naturalization Service has informed the Department that unless specifically otherwise limited by the terms of the order itself, all orders entered pursuant to section 212(d)(3)(A) of the Act with respect to ineligibility under section 212(a)(28) may be considered valid for visa issuance for a period of six months from the date of the order, regardless of the alien's country of residence. (Added 10-5-61)

NOTES

1. Importance of section 212(d)(3)(A) action.

In section 212(d)(3)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer a very important discretionary function. It is not the intent of Congress that consular officers or the Department recommend the temporary admission of aliens ineligible to receive visas indiscriminately but since the provision was purposely included in the law, it should be used in all appropriate cases. No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a bona fide nonimmigrant. However, there are many bona fide nonimmigrants who are ineligible under a subparagraph of section 212(a) of the Act, other than (26), (27), or (29) whose presence for a brief visit in the United States is unlikely to be harmful in effect. Indeed their temporary admission might achieve a humanitarian purpose (example: necessary medical treatment); it might carry out a national policy (example: facilitation of trade); it might demonstrate that, when properly applied, our basic immigration policy is not incompatible with general freedom of travel and exchange of cultural ideas (example: attendance at a professional congress of a famous scientist who, while not a political activist, has political views which the Act proscribes).

2. Submission of recommendations direct to immigration officers in certain cases.

In order to expedite the processing of certain types of nonimmigrant visa applications in which consular officers recommend that an ineligible alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act, the Department has authorized the submission of such recommendation direct to the appropriate immigration officer. This procedure may be followed in cases of bona fide nonimmigrants in which the consular officer finds that:

- a. the alien has been convicted of more than one minor offense (generally involving petty theft or similar petty crimes) or has had one conviction of a serious crime involving moral turpitude, such as rape, robbery or house-breaking not within the contemplation of the Act of September 3, 1954 (Public Law 770, 83rd Congress) and the record indicates rehabilitation of the alien and integration into society as a law-abiding citizen,
- b. an emergent situation exists and the alien is ineligible on medical grounds which would not constitute a threat to public health in the United States, or under section 212(a)(12) where rehabilitation of the alien has been reasonably established. There must be elements of undue hardship in this category of case to justify exception from the normal procedure pursuant to which cases are reported to the Department for transmission to the Immigration and Naturalization Service;
- c. except in cases of aliens ineligible to receive visas under the provisions of section 212(a)(28) of the Act, the Immigration and Naturalization Service has previously authorized the alien's temporary admission under the provisions of section 212(d)(3)(A) and no new information has developed subsequent to the date of the previous order indicating that an additional ground of ineligibility to receive a visa may exist. In such cases the Immigration and Naturalization Service file number if known, the approximate date of the 212(d)(3)(A) order and any conditions imposed upon the alien's entry and stay in the United States must be furnished the immigration officer concerned.
- d. In cases falling within the categories listed above consular officers should forward their recommendations as provided in Note 3 to the Immigration Officer in Charge in care of the Foreign Service posts located in the city indicated:

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2. (Cont'd)

d. (Cont'd)

<u>Location</u>	<u>Area of Responsibility</u>
WESTERN HEMISPHERE	
Hamilton, Bermuda	Bermuda
Nassau, Bahamas	Bahamas
Habana, Cuba	Cuba, Caribbean Islands, South America
Mexico, D. F., Mexico	Mexico and Central America (except that consular officers in Mexico may refer cases to the immigration officers on temporary detail in Tijuana and Monterrey; the District Directors at San Antonio, El Paso and Los Angeles; or Officers-in-Charge El Paso, Calexico, San Ysidro, San Diego, Douglas, Naco, Nogales, San Luis, Brownsville, Del Rio, Eagle Pass, Hidalgo, Laredo and Roma)
EUROPE	
Frankfurt, Germany	Germany, France, United Kingdom, Ireland, Belgium, Netherlands, Luxembourg, Iceland, Finland, Denmark, Norway, Sweden
Vienna, Austria	Austria, Switzerland, Yugoslavia, Iron Curtain Countries
Athens, Greece	Greece, Turkey, Iran, Iraq, United Arab Republic, Sudan, Lebanon, Israel, Jordan, Arabian Peninsula
Rome, Italy	Northern Italy, Iberian Peninsula, Africa (other than United Arab Republic and Sudan)
Naples, Italy	Southern Italy (Naples and Palermo consular districts)
FAR EAST	
Tokyo, Japan	Japan, Korea
Hong Kong	Hong Kong, Formosa (Taiwan), adjacent islands
Manila, Philippines	All other areas of Asia lying to the east of the western boundaries of Afghanistan and Pakistan; Australia, New Zealand, Philippines (except that consular officers at Suva, Fiji Islands, will refer cases of aliens entering the United States through Hawaii to the District Office of the Service at Honolulu).
Canadian posts should communicate with the appropriate Regional Office:	
Northeast Regional Office 518 Shelburne Road Burlington, Vermont	Consulate General at Toronto, Ontario and all Foreign Service posts east of Toronto
Northwest Regional Office 790 Cleveland Avenue St. Paul, 16, Minnesota	Consulate at Windsor, Ontario and all Foreign Service posts west of Windsor.

3. Submission of recommendations for 212(d)(3)(A) action.

Except as authorized in Note 2, all cases in which the consular officer recommends that the Attorney General exercise his authority under section 212(d)(3)(A) of the Act shall be submitted to the Department for transmission to the Attorney General. In cases in which a Mission makes a recommendation for 212(d)(3)(A) action, not concurred in by a

3. (Cont'd)

consular officer, this fact should be stated in the report so that the Department may determine whether it should use the authority of the Secretary of State and make the recommendation in the absence of a recommendation by a consular officer. The following points must be covered in recommending 212(d)(3)(A) cases whether such recommendations are submitted to the Department or direct to immigration officers.

- 3.1 A consular officer is required to submit in triplicate a report of the facts in each case recommended for 212(d)(3)(A) action. Such report shall include the alien's full name, the date and place of his birth, his nationality, places of residence during the preceding 5 years, date and port of contemplated arrival if known, length of desired temporary stay, purpose of temporary entry, grounds of ineligibility and provisions of law relating to such ground or grounds of ineligibility, and surrounding facts and recommendation as to the action to be taken. In any case in which there may be a question with regard to the alien's nonimmigrant status, the report must state the basis for the consular officer's finding that the visa applicant is a bona fide nonimmigrant. If the alien has previously applied for an immigrant visa or has registered as an intending immigrant under an over-subscribed quota, such facts should be indicated.
- 3.2 An order issued by the Immigration and Naturalization Service granting an alien advance permission to enter the United States pursuant to section 212(d)(3)(A) of the Act limits the duration of the stay of, and the areas to be visited by, such alien to the dates and places specified at the time discretionary action is requested. Therefore, if an alien anticipates conferences or other activities in the United States which will require his presence in the United States beyond the date or outside the area required for the primary purpose of his visit, complete information and data thereon should be included in the report at the time the case is submitted for action under section 212(d)(3)(A) of the Act.
- 3.3 If an applicant's ineligibility is due to disease, mental or physical defect or disability of any kind, the report should describe the disease, defect, or disability. If the purpose of seeking admission into the United States is for treatment, the report should cover evidence presented to show:
 - (a) that arrangements have been completed for treatment and where and from whom treatment will be received, (If the alien is afflicted with tuberculosis see 22 CFR 41.91(a)(1 - 6), Note 5.)
 - (b) that financial arrangements for payment of expenses have been made, and
 - (c) that a bond will be available if required by the Attorney General.
- 3.4 If an applicant's ineligibility is due to conviction of a crime, the designation of the crime, the date and place of its commission and conviction therefor, and the sentence or other judgment of the court should be stated in the report. The report should also cover such matters as the official record of conviction, commutation of sentence, parole, probation, or pardon.
- 3.5 If an applicant's ineligibility is due to present or past membership in, or affiliation with, any Communist or other totalitarian party or organization, there should be given a statement of the history of such membership or affiliation, whether he held any office in the organization and whether membership or affiliation was voluntary or involuntary. If involuntary membership or affiliation in a Communist Party is alleged, the report should cover the evidence furnished in support of such allegation. If an alien appears to be a defector within the meaning of section 212(a)(28)(ii) of the Act but there is insufficient time to establish defector status, section 212(d)(3)(A) action may be recommended. In such case, the consular officer's report should indicate these facts. If there is a likelihood that the alien will desire to reenter the United States, the consular officer should process the alien as a defector as promptly as possible in order that the presumption of ineligibility may be permanently removed.

4. Validity of visas issued pursuant to section 212(d)(3)(A) authorizations.

- 4.1 Immigration and Naturalization Service orders authorizing the temporary admission of aliens pursuant to section 212(d)(3)(A) of the Act are, unless otherwise specified, valid for one application for admission of the alien into the United States. In such cases the visa issued should be limited to one application for admission. If an alien in whose behalf a consular officer is recommending section 212(d)(3)(A) action wishes to make more than one entry into the United States information regarding such plans should be included in the report to the Department.
- 4.2 Authorization granted under section 212(d)(3)(A) for alien crewmen are, unless otherwise indicated, valid for all applications for admission made by such crewmen in pursuit of their calling.

5. Form I-192 not to be used by consular officers.

Immigration and Naturalization Service Form I-192 (Application for Advance Permission to enter as Nonimmigrant) should not be used by consular officers since this form is prescribed for use at United States ports of entry. Furthermore, the prescribed fee of \$25 is not assessed when the discretionary authority contained in section 212(d)(3)(A) of the Act is exercised upon the recommendation of a consular officer or the Secretary of State.

6. Posting of bonds in certain cases.

Whenever the posting of a departure bond is required by the Immigration and Naturalization Service in connection with section 212(d)(3)(A) action, the bond is posted at the time the alien applies for admission into the United States and consular officers should not require evidence that the bond has been filed as a condition of visa issuance.

7. Notation on visa of waiver of excluding provision.

When a ground for exclusion is waived by the Attorney General under section 212(d)(3)(A) of the Act, notation of that fact shall be made on the nonimmigrant visa for the information of the immigration authorities at the port of entry. The consular officer shall insert in the visa stamp on the first unused line following the name(s) of the visa recipient(s) "212(d)(3)(A)" followed by a numeral designating the pertinent paragraph of section 212(a) which has been waived, as "212(d)(3)(A): (6)" referring to tuberculosis or "212(d)(3)(A): (9) and (28)" referring to the conviction of a crime involving moral turpitude and membership in a proscribed organization. If the communication from the Department contains a time limitation or terminal date of admission, such limitation should be indicated in the notation. The notation might then read: "212(d)(3)(A): (28): Four months" or "212(d)(3)(A): (28): 1-1-60."

TEMPORARY ADMISSION OF INELIGIBLE ALIENS

41.95 Procedure in recommending temporary admission of ineligible aliens.

- (a) Except as provided in paragraph (b), a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).
- (b) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that an alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act.
- (c) In the case of an alien who is seeking to enter the United States for the purpose of proceeding in transit to the Headquarters District of the United Nations in the United States under the provisions of paragraph (3), (4) or (5) of section 11 of the Headquarters Agreement with the United Nations, and who is known or believed to be ineligible to receive a visa under the provisions of section 212(a)(26) of the Act, but not ineligible under the provisions of section 212(a)(27) or (29) of the Act, the consular officer shall submit promptly to the Secretary of State a full report with a request for an advisory opinion concerning the action to be taken in the case. The consular officer may include in such report a recommendation for transmission to the Attorney General concerning the alien's temporary admission into the United States under the provisions of section 212(d)(3)(A) of the Act.
- (d) When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General.

(Sec. 212, 66 Stat. 182; 8 U.S.C. 1182)

NOTES

1. Importance of section 212(d)(2)(A) action.

In section 212(d)(2)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer a very important discretionary function. It is not the intent of Congress that consular officers or the Department recommend the temporary admission of aliens ineligible to receive visas indiscriminately, but since the provision was purposely included in the law it should be used in all appropriate cases. No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a bona fide nonimmigrant. However, there are many bona fide nonimmigrants who are ineligible under a subparagraph of section 212(a) of the Act, other than (26), (27), or (29), whose presence for a brief visit in the United States is unlikely to be harmful in effect. Indeed their temporary admission might achieve a humanitarian purpose (example: necessary medical treatment); it might carry out a national policy (example: facilitation of trade); it might demonstrate that, when properly applied, our basic immigration policy is not incompatible with general freedom of travel and exchange of cultural ideas (example: attendance at a professional congress of a famous scientist who, while not a political activist, has political views which the Act proscribes). (divis: 2-26-60)

2. Submission of recommendations direct to immigration officers in certain cases.

2.1 In order to expedite the processing of certain types of nonimmigrant visa applications in which consular officers recommend that an ineligible alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act, and in accordance with 22 CFR 41.95(b), the Department authorizes the submission of such recommendation direct to the appropriate immigration officer. This procedure may be followed in cases of bona fide nonimmigrants in which the consular officer finds that:

- (a) the alien has been convicted of more than one minor offense (generally involving petty theft or similar petty crimes) or has had one conviction of a serious crime involving moral turpitude, such as rape, robbery or house-breaking not within the contemplation of the Act of September 3, 1954 (Public Law 770, 83rd Congress) and the record indicates rehabilitation of the alien and integration into society as a law-abiding citizen;
- (b) an emergent situation exists and the alien is ineligible on medical grounds which would not constitute a threat to public health in the United States, or under section 212(a)(12) where rehabilitation of the alien has been reasonably established. There must be elements of undue hardship in this category of case to justify exception from the normal procedure pursuant to which cases are reported to the Department for transmission to the Immigration and Naturalization Service;
- (c) except in cases of aliens ineligible to receive visas under the provisions of section 212(a)(28) of the Act, the Immigration and Naturalization Service has previously authorized the alien's temporary admission under the provisions of section 212(d)(3)(A) and no new information has developed subsequent to the date of the previous order indicating that an additional ground of ineligibility to receive a visa may exist. In such cases the Immigration and Naturalization Service file number if known, the approximate date of the 212(d)(3)(A) order and any conditions imposed upon the alien's entry and stay in the United States must be furnished the immigration officer concerned;
- (d) the alien is ineligible under the provisions of section 212(a)(28) of the Act and
 - (1) a waiver has been granted previously by the Immigration and Naturalization Service, within the past eighteen months,
 - (11) local checks disclose no information pertinent to the provisions of section 212(a)(28) not known at the time the previous waiver was granted,
 - (111) the principal officer at a consular office or the principal consular officer at a Legation or Embassy, determines that he has no reason to believe the Department's attitude with regard to a recommendation to the Immigration and Naturalization Service seeking a waiver, would have changed since the prior waiver was granted.

(Note 2.1(d) added 2-26-60)

NOTES

1. Importance of section 212(d)(3)(A) action.

In section 212(d)(3)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer a very important discretionary function. It is not the intent of Congress that consular officers or the Department recommend the temporary admission of aliens ineligible to receive visas indiscriminately, but since the provision was purposely included in the law it should be used in all appropriate cases. No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a bona fide nonimmigrant. However, there are many bona fide nonimmigrants who are ineligible under a subparagraph of section 212(a) of the Act, other than (26), (27), or (29), whose presence for a brief visit in the United States is unlikely to be harmful in effect. Indeed their temporary admission might achieve a humanitarian purpose (example: necessary medical treatment); it might carry out a national policy (example: facilitation of trade); it might demonstrate that, when properly applied, our basic immigration policy is not incompatible with general freedom of travel and exchange of cultural ideas (example: attendance at a professional congress of a famous scientist who, while not a political activist, has political views which the Act proscribes).

2. Submission of recommendations direct to immigration officers in certain cases.

2.1 In order to expedite the processing of certain types of nonimmigrant visa applications in which consular officers recommend that an ineligible alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act, and in accordance with 22 CFR 41.95(b), the Department authorizes the submission of such recommendation direct to the appropriate immigration officer. This procedure may be followed in cases of bona fide nonimmigrants in which the consular officer finds that:

- (a) the alien has been convicted of more than one minor offense (generally involving petty theft or similar petty crimes) or has had one conviction of a serious crime involving moral turpitude, such as rape, robbery or house-breaking not within the contemplation of the Act of September 3, 1954 (Public Law 770, 83rd Congress) and the record indicates rehabilitation of the alien and integration into society as a law-abiding citizen;
- (b) an emergent situation exists and the alien is ineligible on medical grounds which would not constitute a threat to public health in the United States, or under section 212(a)(12) where rehabilitation of the alien has been reasonably established. There must be elements of undue hardship in this category of case to justify exception from the normal procedure pursuant to which cases are reported to the Department for transmission to the Immigration and Naturalization Service;
- (c) except in cases of aliens ineligible to receive visas under the provisions of section 212(a)(28) of the Act, the Immigration and Naturalization Service has previously authorized the alien's temporary admission under the provisions of section 212(d)(3)(A) and no new information has developed subsequent to the date of the previous order indicating that an additional ground of ineligibility to receive a visa may exist. In such cases the Immigration and Naturalization Service file number if known, the approximate date of the 212(d)(3)(A) order, and any conditions imposed upon the alien's entry and stay in the United States must be furnished the immigration officer concerned;
- (d) ^{previous} the alien is ineligible under the provisions of section 212(a)(28) of the Act and
 - (i) a waiver has been granted previously by the Immigration and Naturalization Service under section 212(d)(3)(A) of the Act, through the Department, in connection with a visa application, within the past eighteen months,
 - (ii) local checks disclose no information pertinent to the provisions of section 212(a)(28) not known at the time the previous waiver was granted,
 - (iii) the principal officer at a consular office or the principal consular officer at a Legation or Embassy, determines that he has no reason to believe the Department's attitude with regard to a recommendation to the Immigration and Naturalization Service seeking a waiver, would have changed since the prior waiver was granted.

2. (Cont'd)

- 2.2 In cases falling within the categories listed in Note 2.1, consular officers should forward their recommendations with all necessary information as provided in Note 3, to the Immigration Officer in Charge in care of the Foreign Service posts located in the city indicated:

<u>Location</u>	<u>Area of Responsibility</u>
WESTERN HEMISPHERE	
Hamilton, Bermuda	Bermuda
Nassau, Bahamas	Bahamas
Habana, Cuba (Miami)*	Cuba, Caribbean Islands, South America
Mexico, D.F., Mexico	Mexico and Central America (except that consular officers in Mexico may refer cases to the immigration officers on temporary detail in Tijuana and Monterrey; the District Directors at San Antonio, El Paso and Los Angeles; or Officers-in-Charge El Paso, Calxico, San Ysidro, San Diego, Douglas, Naco, Nogales, San Luis, Brownville, Del Rio, Eagle Pass, Hidalgo, Laredo and Roma)
EUROPE	
Frankfurt, Germany	Germany, France, United Kingdom, Ireland, Belgium, Netherlands, Luxembourg, Iceland, Finland, Denmark, Norway, Sweden, Austria, Switzerland, Yugoslavia, Soviet bloc countries
Athens, Greece	Greece, Turkey, Iran, Iraq, United Arab Republic, Sudan, Lebanon, Israel, Jordan, Arabian Peninsula, Cyprus
Rome, Italy	Northern Italy, Spain, Portugal (including insular possessions in Atlantic), Malta and Africa (except United Arab Republic and Sudan)
Naples, Italy	Southern Italy
Palermo, Italy	Sicily
FAR EAST	
Tokyo, Japan	Japan, Korea, Okinawa
Hong Kong	Hong Kong, Taiwan, adjacent islands
Manila, Philippines	All other areas of Asia lying to the east of the western boundaries of Afghanistan and Pakistan; Australia, New Zealand, Philippines (except that consular officers at Suva, Fiji Islands, will refer cases of aliens entering the United States through Hawaii to the District Office of the Service at Honolulu).

* The Immigration Officer in Charge formerly located at Habana should be addressed as follows:

Officer in Charge
United States Immigration and Naturalization Service (Habana)
c/o District Director, Immigration and Naturalization Service
P. O. Box 622, Biscayne Annex
Miami 52, Florida

Telegrams should be addressed as follows:

Mr. Albert G. Vaughn
Officer in Charge, Habana
c/o Immigration and Naturalization Service
Miami, Florida

2. (2.2 Cont'd)

Telephone calls should be placed to Franklin 1-2501, Miami, on a person to person basis for the Officer-in-Charge, Habana. Out of regular office hours an automatic recording will refer all such calls to the INS office at the Miami Airport. The officer answering the telephone at the airport should be requested to give the telephone number of the Officer-in-Charge, Habana.

(Note 2.2 amended 3-1-61)

- 2.3 Consular officers in Canada may communicate with an officer of the Immigration and Naturalization Service located in one of the following cities:

<u>District Directors</u>		<u>Officers in Charge</u>
Seattle, Washington	Detroit, Michigan	Blaine, Washington
Helena, Montana	Buffalo, New York	Noyes, Minnesota
St. Paul, Minnesota	St. Albans, Vermont	Niagara Falls, New York
Portland, Maine		

3. Submission of recommendations for 212(d)(3)(A) action.

Except as authorized in Note 2, all cases in which the consular officer recommends that the Attorney General exercise his authority under section 212(d)(3)(A) of the Act shall be submitted to the Department for transmission to the Attorney General. In cases in which a Mission makes a recommendation for 212(d)(3)(A) action not concurred in by a consular officer, this fact should be stated in the report so that the Department may determine whether it should use the authority of the Secretary of State and make the recommendation in the absence of a recommendation by a consular officer. The following points must be covered in recommending 212(d)(3)(A) cases whether such recommendations are submitted to the Department or direct to immigration officers.

- 3.1 A consular officer is required to submit in triplicate a report of the facts in each case recommended for 212(d)(3)(A) action. Such report shall include the alien's full name, the date and place of his birth, his nationality, places of residence during the preceding 5 years, date and port of contemplated arrival if known, length of desired temporary stay, purpose of temporary entry, grounds of ineligibility and provisions of law relating to such ground or grounds of ineligibility, and surrounding facts and recommendation as to the action to be taken. In any case in which there may be a question with regard to the alien's nonimmigrant status, the report must state the basis for the consular officer's finding that the visa applicant is a bona fide nonimmigrant. If the alien has previously applied for an immigrant visa or has registered as an intending immigrant under an over-subscribed quota, such facts should be indicated.
- 3.2 An order issued by the Immigration and Naturalization Service granting an alien advance permission to enter the United States pursuant to section 212(d)(3)(A) of the Act limits the duration of the stay of, and the areas to be visited by, such alien to the dates and places specified at the time discretionary action is requested. A detailed itinerary and time schedule, particularly in cases of aliens ineligible under section 212(a)(28) of the Act, should be submitted with the original application. Also, if an alien anticipates participating in conferences or other activities which might require his presence in the United States beyond the date or outside the area in which the primary purpose of his visit is to be accomplished, complete information regarding such activities should be included in the report at the time the case is submitted for action. Aliens should also be informed that if it becomes necessary to alter or extend their itineraries after arrival in the United States, they must apply to the Immigration and Naturalization Service for amendment of the original conditions of their entry. (Amended 3-1-61)
- 3.3 If an applicant's ineligibility is due to disease, mental or physical defect or disability of any kind, the report should describe the disease, defect, or disability. If the purpose of seeking admission into the United States is for treatment, the report should cover evidence presented to show:
- (a) that arrangements have been completed for treatment and where and from whom treatment will be received (if the alien is afflicted with tuberculosis see 22 CFR 41.91(a) (1-6), Note 5),

NOTES

1. Importance of section 212(d)(3)(A) action.

In section 212(d)(3)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer a very important discretionary function. It is not the intent of Congress that consular officers or the Department indiscriminately recommend the temporary admission of aliens ineligible to receive visas, but since the provision was purposely included in the law it should be used in all appropriate cases. No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a bona fide nonimmigrant. However, there are many bona fide nonimmigrants who are ineligible under a subparagraph of section 212(a) of the Act, other than (26), (27), or (29), whose presence for a brief visit in the United States is unlikely to be harmful in effect. Indeed their temporary admission might achieve a humanitarian purpose (example: necessary medical treatment); it might carry out a national policy (example: facilitation of trade); it might demonstrate that, when properly applied, our basic immigration policy is not incompatible with general freedom of travel and exchange of cultural ideas (example: attendance at a professional congress of a famous scientist who, while not a political activist, has political views which the Act proscribes).

2. Submission of recommendations direct to immigration officers in certain cases.

2.1 In order to expedite the processing of certain types of nonimmigrant visa applications in which consular officers recommend that an ineligible alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act, and in accordance with 22 CFR 41.95(b), the Department authorizes the submission of such recommendation direct to the appropriate immigration officer. This procedure may be followed in cases of bona fide nonimmigrants in which the consular officer finds that:

2.11 the alien is ineligible to receive a visa under the provisions of section 212(a) other than 212(a)(27), (28), or (29) unless he is ineligible

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- (a) as a sex deviate under section 212(a)(4) of the Act;
 - (b) under section 212(a)(9) or 212(a)(10) of the Act because of conviction for the commission of a serious crime or crimes, such as arson, assault with a dangerous weapon, housebreaking, incest, manslaughter, rape, and crimes of degeneracy, unless the alien has been rehabilitated and integrated into society for at least 5 years since the date of his conviction or release from confinement, whichever occurred later;
 - (c) under section 212(a)(12) of the Act unless the applicant has not engaged in prostitution for a period of 5 years prior to the date of visa application and during that period has been rehabilitated and integrated into society; (Amended 5-25-62)
 - (d) under section 212(a)(13) of the Act; and
 - (e) under section 212(a)(23) of the Act.

2.12 in cases of aliens other than those ineligible to receive visas under the provisions of section 212(a)(27), (28), or (29) of the Act who are not covered by 2.11, the Immigration and Naturalization Service has previously authorized the alien's temporary admission under the provisions of section 212(d)(3)(A) and no new information has developed subsequent to the date of the previous order indicating that an additional ground of ineligibility to receive a visa may exist. In such cases the Immigration and Naturalization Service file number if known, the approximate date of the 212(d)(3)(A) order, and any conditions imposed upon the alien's entry and stay in the United States must be furnished the immigration officer concerned.

(Amended 5-25-62)

(For instructions relating to aliens who are ineligible under section 212(a)(28), and in emergent health situations, see Appendix A, 22 CFR 41.95, Note 4).

2. (Cont'd)

- 2.2 In any case in which a recommendation for action under section 212(d)(3)(A) is submitted directly to the Immigration and Naturalization Service in accordance with the provisions of Notes 2.11 or 2.12 hereof, (or Note 4 to 22 CFR 41.95, Appendix A) the Department should be promptly informed in the event of denial of the request for a waiver of ineligibility or in the event of undue delay in the decision by the Immigration and Naturalization Service. A report of such denial or undue delay should state possible adverse consequences to public or foreign relations of the United States, and should state all such humanitarian or other considerations as motivated the action of the consular officer. (Added 5-25-62)
- 2.3 Any case falling under the provisions of Notes 2.11 or 2.12 hereof (or under Note 4 to 22 CFR 41.95, Appendix A) is to be submitted to the Department if the consular officer is in doubt as to the merits of the individual case or if he knows or has reason to believe that pertinent information not available to him may be available to or through the Department. Any such case submitted to the Department should be introduced by the standard visa indicator "QUAIL" and sent by telegram if the public relations aspect and time factors are so pressing as to warrant the submission of an advance request by telegraphic means. If not urgent, the case should be submitted by operations memorandum captioned "VISAS: ADVISORY OPINIONS: (QUAIL) INELIGIBILITY OTHER THAN SECURITY" in accordance with Note 3 to this section or, if it involves security factors, by Form FS-493 in accordance with Note 6.11 to 22 CFR 42.90, Appendix A. (See Appendix D, Correspondence, Item 3.2 for text of visa indicator "QUAIL"). (Added 5-25-62)
- 2.4 This instruction authorizing the field to obtain certain waivers of ineligibility from appropriate Immigration Service officers does not apply if the consular officer or Chief of Mission knows or has reason to believe that the proposed visa action may lead to repercussions adverse to the foreign relations of the United States or in any other country. Cases in this category shall be submitted to the Department by telegram and introduced by the standard visa indicator "ROBIN" if the public relations aspects and time factors are so pressing as to warrant the submission of an advance request by telegraphic means. If not urgent, the case should be submitted by operations memorandum captioned "VISAS: ADVISORY OPINIONS: (ROBIN) INELIGIBILITY OTHER THAN SECURITY" in accordance with Note 3 to this section or, if it involves security factors, by Form FS-493 in accordance with Note 6.11 to 22 CFR 42.90, Appendix A. (See Appendix D, Correspondence, Item 3.2, for text of visa indicator "ROBIN"). (Added 5-2-562)
- 2.5 In cases falling within the categories listed in Note 2.1, consular officers should forward their recommendations with all necessary information as provided in Note 3, to the Immigration Officer in Charge in care of the Foreign Service posts located in the city indicated:

<u>Location</u>	<u>Area of Responsibility</u>
	WESTERN HEMISPHERE
Hamilton, Bermuda	Bermuda
Nassau, Bahamas	Bahamas
Habana, Cuba (Miami)*	Cuba, Caribbean Islands, South America
Mexico, D.F., Mexico	Mexico and Central America (except that consular officers in Mexico may refer cases to the immigration officers on temporary detail in Guadalajara, Tijuana and Monterrey; the District Directors at San Antonio, El Paso and Los Angeles; or Officers-in-Charge El Paso, Calxico, San Ysidro, San Diego, Douglas, Naco, Nogales, San Luis, Brownville, Del Rio, Eagle Pass, Hidalgo, Laredo and Roma)

2. (2.5 Cont'd)

EUROPE

Frankfurt, Germany	Germany, France, United Kingdom, Ireland, Belgium, Netherlands, Luxembourg, Iceland, Finland, Denmark, Norway, Sweden, Austria, Switzerland, Yugoslavia, Soviet bloc countries
Athens, Greece	Greece, Turkey, Iran, Iraq, United Arab Republic, Sudan, Lebanon, Israel, Jordan, Arabian Peninsula, Cyprus, Syria
Rome, Italy	Northern Italy, Spain, Portugal (including insular possessions in Atlantic), Malta and Africa (except United Arab Republic and Sudan)
Naples, Italy	Southern Italy
Palermo, Italy	Sicily

FAR EAST

Tokyo, Japan	Japan, Korea, Okinawa
Hong Kong	Hong Kong, Taiwan, adjacent islands
Manila, Philippines	All other areas of Asia lying to the east of the western boundaries of Afghanistan and Pakistan; Australia, New Zealand, Philippines (except that consular officers at Suva, Fiji Islands, will refer cases of aliens entering the United States through Hawaii to the District Office of the Service at Honolulu)

* The Immigration Officer in Charge formerly located at Habana should be addressed as follows:

Officer in Charge
 United States Immigration and Naturalization Service (Habana)
 c/o District Director, Immigration and Naturalization Service
 P. O. Box 622, Biscayne Annex
 Miami 52, Florida

Telegrams should be addressed as follows:

Officer in Charge, Habana
 c/o Immigration and Naturalization Service
 Miami, Florida

Telephone calls should be placed to Franklin 1-2501, Miami, on a person to person basis for the Officer-in-Charge, Habana. Out of regular office hours an automatic recording will refer all such calls to the INS office at the Miami Airport. The officer answering the telephone at the airport should be requested to give the telephone number of the Officer-in-Charge, Habana.

(Redesignated 5-25-62)

2.6 Consular officers in Canada may communicate with an officer of the Immigration and Naturalization Service located in one of the following cities:

<u>District Directors</u>		<u>Officers in Charge</u>
Seattle, Washington	Detroit, Michigan	Blaine, Washington
Helena, Montana	Buffalo, New York	Noyes, Minnesota
St. Paul, Minnesota	St. Albans, Vermont	Niagara Falls, New York
Portland, Maine		

(Redesignated 5-25-62)

3. Submission of recommendations for 212(d)(3)(A) action.

Except as authorized in Note 2, all cases in which the consular officer recommends that the Attorney General exercise his authority under section 212(d)(3)(A) of the Act shall be submitted to the Department for transmission to the Attorney General. In cases in which a Mission makes a recommendation for 212(d)(3)(A) action not concurred in by a consular officer, this fact should be stated in the report so that the Department may determine whether it should use the authority of the Secretary of State and make the recommendation in the absence of a recommendation by a consular officer. The following points must be covered in recommending 212(d)(3)(A) cases whether such recommendations are submitted to the Department or direct to Immigration officers.

- 3.1 A consular officer is required to submit in triplicate a report of the facts in each case recommended for 212(d)(3)(A) action. Such report shall include the alien's full name, the date and place of his birth, his nationality, places of residence during the preceding 5 years, date and port of contemplated arrival if known, length of desired temporary stay, purpose of temporary entry, grounds of ineligibility and provisions of law relating to such ground or grounds of ineligibility, and surrounding facts and recommendation as to the action to be taken. In any case in which there may be a question with regard to the alien's nonimmigrant status, the report must state the basis for the consular officer's finding that the visa applicant is a *bona fide* nonimmigrant. If the alien has previously applied for an immigrant visa or has registered as an intending immigrant under an over-subscribed quota, such facts should be indicated.
- 3.2 An order issued by the Immigration and Naturalization Service granting an alien advance permission to enter the United States pursuant to section 212(d)(3)(A) of the Act limits the duration of the stay of, and the areas to be visited by, such alien to the dates and places specified at the time discretionary action is requested. A detailed itinerary and time schedule, particularly in cases of aliens ineligible under section 212(a)(28) of the Act, should be submitted with the original application. Also, if an alien anticipates participating in conferences or other activities which might require his presence in the United States beyond the date or outside the area in which the primary purpose of his visit is to be accomplished, complete information regarding such activities should be included in the report at the time the case is submitted for action. Aliens should also be informed that if it becomes necessary to alter or extend their itineraries after arrival in the United States, they must apply to the Immigration and Naturalization Service for amendment of the original conditions of their entry.
- 3.3 If an applicant's ineligibility is due to disease, mental or physical defect or disability of any kind, the report should describe the disease, defect, or disability. If the purpose of seeking admission into the United States is for treatment, the report should cover evidence presented to show:
- (a) that arrangements have been completed for treatment and where and from whom treatment will be received. (if the alien is afflicted with tuberculosis see 22 CFR 41.91(a) (1 - 6), Note 5),
 - (b) that financial arrangements for payment of expenses have been made, and
 - (c) that a bond will be available if required by the Attorney General.
- 3.4 If an alien's ineligibility involves section 212(a)(1) or (4) of the Act, extreme care should be exercised to ensure that cases of feeble-minded or mentally defective aliens are not submitted to the Department until the consular officer is fully satisfied that the aliens concerned are in fact *bona fide* nonimmigrants. The factors enumerated in 22 CFR 41.25, Note 2, should be carefully considered and it must be determined that there are compelling reasons for the return of the alien to his residence abroad upon completion of his visit to the United States. In cases in which the Attorney General denies discretionary relief under section 212(d)(3)(A) of the Act to aliens of this type the consular officer should submit a report to the Department whenever the refusal would have an adverse effect on the public relations of the United States or of the post.

3. (Cont'd)

- 3.5 If an applicant's ineligibility is due to conviction of a crime, the designation of the crime, the date and place of its commission and conviction therefor, and the sentence or other judgment of the court should be stated in the report. The report should also cover such matters as the official record of conviction, commutation of sentence, parole, probation, or pardon.
- 3.6 If an applicant's ineligibility is due to present or past membership in, or affiliation with, any Communist or other totalitarian party or organization, there should be given a statement of the history of such membership or affiliation, whether he held any office in the organization and whether membership or affiliation was voluntary or involuntary. If involuntary membership or affiliation in a Communist Party is alleged, the report should cover the evidence furnished in support of such allegation. If an alien appears to be a defector within the meaning of section 212(a)(28)(11) of the Act but there is insufficient time to establish defector status, section 212(d)(3)(A) action may be recommended. In such case, the consular officer's report should indicate these facts. If there is a likelihood that the alien will desire to reenter the United States, the consular officer should process the alien as a defector as promptly as possible in order that the presumption of ineligibility may be permanently removed.

4. Validity period of orders entered pursuant to section 212(d)(3)(A).

- Revised*
- 4.1 Immigration and Naturalization Service orders authorizing the temporary admission of aliens pursuant to section 212(d)(3)(A) of the Act, are, unless otherwise specified, valid for one application for admission of the alien into the United States and may be considered valid for visa issuance for a period of six months from the date of the order, regardless of the alien's country of residence. Nonimmigrant visas issued pursuant to section 212(d)(3)(A) orders should be made valid for a period of time which expires on the same date the order expires. For example, if an order is dated two months prior to the issuance of a visa and has, therefore, only four months validity remaining, the visa issued pursuant to that order should also be limited to a period of four months. If an alien in whose behalf a consular officer is recommending section 212(d)(3)(A) action wishes to make more than one entry into the United States, information regarding such plans should be included in the report to the Department. (Amended 5-25-62)

- 4.2 Authorizations granted under section 212(d)(3)(A) for alien crewmen are, unless otherwise indicated, valid for all applications for admission made by such crewmen in pursuit of their calling.

5. Form I-192 not to be used by consular officers.

Immigration and Naturalization Service Form I-192 (Application for Advance Permission to Enter as Nonimmigrant) should not be used by consular officers since this form is prescribed for use at United States ports of entry. Furthermore, the prescribed fee of \$25 is not assessed when the discretionary authority contained in section 212(d)(3)(A) of the Act is exercised upon the recommendation of a consular officer or the Secretary of State.

6. Posting of bonds in certain cases.

Whenever the posting of a departure bond is required by the Immigration and Naturalization Service in connection with section 212(d)(3)(A) action, the bond is posted at the time the alien applies for admission into the United States and consular officers should not require evidence that the bond has been filed as a condition of visa issuance.

7. Notation on visa of waiver of excluding provision.

When a ground for exclusion is waived by the Attorney General under section 212(d)(3)(A) of the Act, notation of that fact shall be made on the nonimmigrant visa for the information of the immigration authorities at the port of entry. The consular officer shall insert in the visa stamp on the first unused line following the name(s) of the visa recipient(s) "212(d)(3)(A)" followed by a numeral designating the pertinent paragraph of section 212(a) which has been waived, as "212(d)(3)(A): (6)" referring to tuberculosis or "212(d)(3)(A): (9) and (28)" referring to the conviction of a crime involving moral turpitude and membership in a proscribed organization. If the communication from the Department contains a time limitation or terminal date of admission, such limitation should be indicated in the notation. The notation might then read: "212(d)(3)(A): (28): Four Months" or "212(d)(3)(A): (28): 4-1-61." (See Note 4 to this section and Proc. Note 5.5 to 22 CFR 41.124.) (For the notation to be used where a waiver of a ground of ineligibility has been granted in the case of a participant in the Soviet and Eastern European Exchange Program, see Proc. Note 5.6 to 22 CFR 41.124.) (Amended 5-25-62).

NOTES

1. Importance of section 212(d)(3)(A) action.

In section 212(d)(3)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer a very important discretionary function. It is not the intent of Congress that consular officers or the Department indiscriminately recommend the temporary admission of aliens ineligible to receive visas, but since the provision was purposely included in the law it should be used in all appropriate cases. No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a bona fide nonimmigrant. However, there are many bona fide nonimmigrants who are ineligible under a subparagraph of section 212(a) of the Act, other than (26), (27), or (29), whose presence for a brief visit in the United States is unlikely to be harmful in effect. Indeed their temporary admission might achieve a humanitarian purpose (example: necessary medical treatment); it might carry out a national policy (example: facilitation of trade); it might demonstrate that, when properly applied, our basic immigration policy is not incompatible with general freedom of travel and exchange of cultural ideas (example: attendance at a professional congress of a famous scientist who, while not a political activist, has political views which the Act proscribes).

2. Submission of recommendations direct to immigration officers in certain cases.

2.1 In order to expedite the processing of certain types of nonimmigrant visa applications in which the consular officer has made a determination that the applicant is a bona fide nonimmigrant but is ineligible to receive a visa on a ground for which a waiver of ineligibility may be recommended under the authority contained in section 212(d)(3)(A) of the Immigration and Nationality Act, other than section 212(a)(28) of the Act, the Department authorizes the submission of such recommendation direct to the appropriate immigration officer stationed abroad. (Amended 10-31-62)

2.11 The recommendation to the Immigration Service Officer should set forth clearly the reasons leading to the consular officer's determination that the applicant is ineligible to receive a visa under the specific provision of law and the equities involved which lead to the recommendation that the particular ground of ineligibility be waived.

2.12 The recommendation should also be responsive to the seriousness of the ground of ineligibility in the given case. Particular care should be exercised in developing the justification of the recommendation for a waiver when the ineligibility of the applicant is based on sections 212(a)(9), (10), (12), (13), or (23).

2.2 In any case in which a recommendation for action under section 212(d)(3)(A) is submitted directly to the Immigration and Naturalization Service in accordance with the provisions of Note 2.1 hereof, (or Note 4 to 22 CFR 41.95, Appendix A) the Department should be promptly informed in the event of denial of the request for a waiver of ineligibility or in the event of undue delay in the decision by the Immigration and Naturalization Service. A report of such denial or undue delay should state possible adverse consequences to public or foreign relations of the United States, and should state all such humanitarian or other considerations as motivated the action of the consular officer. (Amended 10-31-62)

2.3 Any case falling under the provisions of Note 2.1 hereof, (or under Note 4 to 22 CFR 41.95, Appendix A) is to be submitted to the Department if the consular officer knows or has reason to believe that pertinent information not available to him may be available to or through the Department. Any such case submitted to the Department should be introduced by the standard visa indicator "QJAIL" and sent by telegram if the public relations aspect and time factors are so pressing as to warrant the submission of an advance request by telegraphic means. If not urgent, the case should be submitted by operations memorandum captioned "VISAS: ADVISORY OPINIONS: (QJAIL) INELIGIBILITY OTHER THAN SECURITY" in accordance with Note 3 to this section or, if it involves security factors, by Form FS-493 in accordance with Note 6.11 to 22 CFR 42.90, Appendix A. (See Appendix D, Correspondence, Item 3.2 for text of visa indicator "QJAIL"). (Amended 10-31-62)

2. (Cont'd)

- 2.4 This instruction, authorizing the field to obtain certain waivers of ineligibility from appropriate Immigration Service officers, does not apply if the consular officer or Chief of Mission knows or has reason to believe that the proposed visa action may lead to repercussions adverse to the foreign relations of the United States. Cases in this category shall be submitted to the Department by telegram and introduced by the standard visa indicator "ROBIN" if the public relations aspects and time factors are so pressing as to warrant the submission of an advance request by telegraphic means. If not urgent, the case should be submitted by operations memorandum captioned "VISAS: ADVISORY OPINIONS: (ROBIN) INELIGIBILITY OTHER THAN SECURITY" in accordance with Note 3 to this section or, if it involves security factors, by Form FS-493 in accordance with Note 6.11 to 22 CFR 42.90, Appendix A. (See Appendix D, Correspondence, Item 3-2, for text of visa indicator "ROBIN"). (Added 5-25-62)
- 2.5 In cases falling within the categories listed in Note 2.1, consular officers should forward their recommendations with all necessary information as provided in Note 3, to the Immigration Officer in Charge in care of the Foreign Service post located in the city indicated:

<u>Location</u>	<u>Area of Responsibility</u>
WESTERN HEMISPHERE	
Habana, Cuba (Miami)* Mexico, D.F., Mexico	Cuba, Caribbean Islands, South America Mexico and Central America (except that consular officers in Mexico may refer cases to the immigration officers on temporary detail in Guadalajara, Tijuana and Monterrey; the District Directors at San Antonio, El Paso, Port Isabel, Phoenix and Los Angeles; or Officers-in-Charge El Paso, Calexico, San Ysidro, San Diego, Douglas, Naco, Nogales, San Luis, Brownsville, Del Rio, Eagle Pass, Hidalgo, Laredo and Roma)
EUROPE	
Frankfurt, Germany	Germany, France, United Kingdom, Ireland, Belgium, Netherlands, Luxembourg, Iceland, Finland, Denmark, Norway, Sweden
Vienna, Austria	Austria, Switzerland, Yugoslavia, Soviet bloc countries
Athens, Greece	Greece, Turkey, Iran, Iraq, United Arab Republic, Sudan, Lebanon, Israel, Jordan, Arabian Peninsula, Cyprus, Syria
Rome, Italy	Northern Italy, Spain, Portugal (including insular possessions in Atlantic), Malta and Africa (except United Arab Republic and Sudan)
Naples, Italy Palermo, Italy	Southern Italy Sicily
FAR EAST	
Tokyo, Japan Hong Kong Manila, Philippines	Japan, Korea, Okinawa Hong Kong, Taiwan, adjacent islands All other areas of Asia lying to the east of the western boundaries of Afghanistan and Pakistan; Australia, New Zealand, Philippines (except that consular officers at Suva, Fiji Islands, will refer cases of aliens entering the United States through Hawaii to the District Office of the Service at Honolulu)

(Amended 10-31-62)

TEMPORARY ADMISSION OF INELIGIBLE ALIENS

¶41.95 Procedure in recommending temporary admission of ineligible aliens.

- (a) Except as provided in paragraph (b) of this section, a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).
- (b) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that an alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act.
- (c) When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General.

(Sec. 212, 66 Stat. 182; 8 U.S.C. 1182)

(Amended 1-10-63, 28 F.R. 274, by deleting former paragraph (c)).

Department of State
Washington, D.C.

Transmittal Letter: Visa TL-602

Date: April 20, 1964

Foreign Affairs Manual

VOL. 9 - VISAS

1. MATERIAL TRANSMITTED:

Replace pages for insertion in Part II, Vol. 9 - Visas, FAM and facsimile of revised Form FS-493 for insertion in Appendix D, Part IV, 9 FAM.

2. EXPLANATION:

- a. The page containing 22 CFR 41.95 has been amended to include the related statutory provision.
- b. The Notes to 22 CFR 41.95 have been completely revised and reorganized.
- c. The Form FS-493 has been completely revised and will be distributed to the field as soon as it is printed. A facsimile of the revised Form is transmitted with this TL for insertion in Appendix D. The revised Form has been designed for use by consular officers in submitting requests for section 212(d)(3)(A) action to immigration officers abroad as well as to the Department. Consular officers should be guided by the check list on the reverse of the Form in submitting cases to the Department for security advisory opinions or 212(d)(3)(A) action or to immigration officers abroad in section 212(d)(3)(A) cases while using present supplies of the old Form. (See Visa TL-APPA-27 for classified instructions.)

3. FILING INSTRUCTIONS:

- a. A copy of this TL must be initialed by all visa-issuing officers indicating that the TL and the new or amended instructions have been read.
- b. Make the following page changes:

Remove	Visa	Insert Pages	Last Page of	Visa
Pages	TL No.		Preceding Text	TL No.
CFR 41.95 (rev. 61)	536	same	Tab "212(d)(3)(A) Procedure"	580
41.95 N. 1 - 8.2	532-537	41.95 N. 1 - 12	CFR 41.95 (rev. 61)	602
App. D, Form FS-493	555	same	Form I-485 (page 4)	545

- c. Make the following pen and ink corrections in the notes indicated:
 - CFR 41.50, N. 4.3 (unclassified) should refer to Appendix A, 22 CFR 41.95, N. 3.
 - 22 CFR 41.124, Proc. Note 5.5 delete reference to 41.95, N. 7.
 - Cross reference in Appendix D, Correspondence, Item 3.1 (seven) should refer to Appendix A, 22 CFR 41.95, N. 7.
- d. Cancel CA-10716 of March 29, 1963.
- e. File this TL in the TL binder and initial the "Check List of Transmittal Letters Received."

FOR IMMEDIATE ATTENTION:

All Visa TL's in numerical order through Visa TL-590 should now have been received. Any TL's which have not been received should be requested from the Department by OMV captioned "VISAS: REGULATIONS AND NOTES."

TEMPORARY ADMISSION OF INELIGIBLE ALIENS

41.95 Procedure in recommending temporary admission of ineligible aliens.

- (a) Except as provided in paragraph (b) of this section, a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).
- (b) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that an alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act.
- (c) When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General.

(Sec. 212, 66 Stat. 182; 8 U.S.C. 1182)

(Amended 1-10-63, 28 F.R. 274, by deleting former paragraph (c)).

RELATED STATUTORY PROVISION

Section 212(d)(3) of the Act reads:

"(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General."

NOTES

1. Importance of section 212(d)(3)(A) action.

In section 212(d)(3)(A) of the Act, Congress has conferred upon the Secretary of State and the consular officer an important discretionary function. While it is intended that this discretion be exercised selectively, consular officers should not hesitate to recommend its use where appropriate. There are many aliens ineligible to receive visas whose presence for a visit in the United States might well accrue directly or indirectly to the benefit of this country. Section 212(d)(3)(A) is intended to be used, for example, to enable aliens whose condition is not such that it would be a threat to the public health of this country to obtain necessary medical treatment in the United States, or to facilitate trade where a technical ground of ineligibility exists. The proper utilization of this section should demonstrate that our basic immigration policy is compatible with general freedom of travel, exchange of cultural ideas and humanitarian considerations, while at the same time ensuring, by thorough pre-security checks, that our internal security is being safeguarded.

2. Procedure to be followed in section 212(d)(3)(A) cases.

2.1 All section 212(d)(3)(A) cases should be submitted on Form FS-493, revised March 1964, whether they are sent to the Department or to the appropriate immigration officer as indicated in Appendix D, Services for I.N.S., Exhibit I. All items on the form must be completed insofar as possible and the form must be accompanied by a narrative statement covering all pertinent points mentioned in the check list on the reverse of the last copy of the form. If Form FS-493 is not available, the information called for by the Form, a facsimile of which appears in the Forms Section of Appendix D, should be submitted by memorandum if the case is being sent to the Immigration Service or by OMV if it is being sent to the Department. The OMV to the Department should be captioned: "VISAS: ADVISORY OPINIONS: SECURITY: 212(d)(3)(A)" or "VISAS: ADVISORY OPINIONS: INELIGIBILITY OTHER THAN SECURITY: 212(d)(3)(A)."

2.2 If time factors are so pressing as to warrant the submission of the case by telegram, as much as possible of the information required by the Form should be included in the telegram and all of the pertinent points required in the narrative statement should be covered. Telegrams should be charged to the alien or his sponsor unless the charging of telegraphic costs to the Department is authorized by Appendix D, Correspondence, Item 10.

3. Cases in which 212(d)(3)(A) authority may not be exercised.

3.1 No recommendation for the exercise of the Attorney General's discretionary authority may be submitted in behalf of a visa applicant who is not a nonimmigrant. The factors set out in 22 CFR 41.25, Note 2, must be carefully considered and it must be determined that the alien intends and will be able to return to his residence abroad upon completion of his visit to the United States before a section 212(d)(3)(A) recommendation may be submitted.

3.2 The law prohibits the use of section 212(d)(3)(A) in cases in which the alien is ineligible under section 212(a)(27) or (29).

3.3 Section 212(d)(3)(A) is not to be used in cases in which an alien is ineligible to receive a visa only under section 212(a)(16) or (17). (See Note 1 to 41.91(a)(16)) However, if the alien is also ineligible under another section of 212(a) and has not received the Attorney General's permission to reapply following exclusion, deportation, or removal, reference to the ground of exclusion under (16) or (17) should be made in the report recommending section 212(d)(3)(A) action. The Immigration and Naturalization Service will then be in a position to consider all aspects of the case at the same time. If this procedure is followed, the Service will not require the alien to file Form I-212 (Application for Permission to Reapply for Admission), nor will the prescribed fee for filing an application for permission to reapply be assessed.

3. (Cont'd)

3.4 Section 212(d)(3)(A) should not be used as a means of waiving the provisions of section 212(a)(26). Nonimmigrant visa and passport requirements may be waived only under the provisions of section 212(d)(4). (See 22 CFR 41.6 and Notes)

4. Criteria for recommending 212(d)(3)(A) action.

4.1 The law does not require that a specific finding be made that an alien's entry into the United States under section 212(d)(3)(A) is in the national or public interest. However, there must be sufficient favorable factors to warrant a recommendation for authorization of the alien's temporary admission.

4.2 Any recommendation that section 212(d)(3)(A) be invoked should be responsive to the seriousness of the acts, conditions or circumstances which render the alien ineligible to receive a visa.

4.3 See Appendix A, 41.95, Note 1.

5. Cases to be submitted to the Department.

In addition to the cases indicated in Appendix A, 22 CFR 41.95, Note 2, the following types of cases must be submitted to the Department for referral to the Attorney General: (See Note 6 to this section for types of cases which may be sent direct to Immigration Service officers abroad)

5.1 Any case in which the consular officer does not recommend section 212(d)(3)(A) action but is referring the case at the request of the alien should be submitted to the Department in accordance with the provisions of 22 CFR 41.95.

5.2 Any case is to be submitted to the Department if the consular officer knows or has reason to believe that the issuance or refusal of a visa to the alien may lead to repercussions adverse to the foreign relations of the United States, or if the alien is destined to the United Nations and is not classifiable A or G. (See App. A, 41.95, N. 4 and 42.90, N. 4.11)

5.3 Cases in which a Mission makes a recommendation for 212(d)(3)(A) action not concurred in by a consular officer must be submitted to the Department and the facts should be stated clearly in the report so that the Department may determine whether it should use the authority of the Secretary of State and make the recommendation in the absence of a recommendation by a consular officer.

5.4 Any case is to be submitted to the Department if the consular officer has doubts as to whether a 212(d)(3)(A) recommendation is warranted, or knows or has reason to believe that pertinent information not available to him may be available to or through the Department.

5.5 Cases involving section 212(a)(28) of the Act should be handled in accordance with Appendix A, 22 CFR 41.95, Note 2.

6. Submission of recommendations direct to immigration officers abroad in certain cases.

6.1 Except in the cases described in Note 5, consular officers may recommend waivers of ineligibility direct to the immigration officer in charge, in care of the appropriate Foreign Service Post as indicated in Exhibit I to Appendix D, Services for I.N.S.

6.2 In any case in which a recommendation for action under section 212(d)(3)(A) is submitted directly to the Immigration and Naturalization Service in accordance with the provisions of this Note or the Notes to Appendix A, 22 CFR 41.95, the Department should be promptly informed in the event of denial of the request for a waiver of ineligibility or in the event of undue delay in the decision by the Immigration and Naturalization Service. A report of such denial or undue delay should state possible adverse consequences to public or foreign relations of the United States, and should state all humanitarian or other considerations which motivated the recommendation by the consular officer.

6.3 See also Appendix A, 41.95, Note 3.

7. Validity period of orders entered pursuant to section 212(d)(3)(A).

7.1 Immigration and Naturalization Service orders authorizing the temporary admission of aliens pursuant to section 212(d)(3)(A) of the Act, are, unless otherwise specified, valid for one application for admission of the alien into the United States and may be considered valid for visa issuance for a period of six months from the date of the order, regardless of the alien's country of residence. Nonimmigrant visas issued pursuant to section 212(d)(3)(A) orders should be made valid for a period of time which expires on the same date the order expires. For example, if an order is dated two months prior to the issuance of a visa and has, therefore, only four months validity remaining, the visa issued pursuant to that order should also be limited to a period of four months or less.

7.11 A waiver of ineligibility valid for multiple applications for admission may be recommended in appropriate cases, but not if the alien

- (a) is insane;
- (b) is a narcotic drug addict, a narcotic trafficker or a chronic alcoholic;
- (c) is afflicted with any dangerous contagious disease;
- (d) was convicted for the commission of a serious crime involving moral turpitude such as arson, assault with a dangerous weapon, house-breaking, incest, voluntary manslaughter, rape, and crimes of degeneracy, and has not been rehabilitated and integrated into society for at least five years since the date of his conviction or release from confinement;
- (e) has engaged in prostitution within the five years immediately preceding the date of visa application.

7.12 A waiver of ineligibility valid for multiple applications for admission may be recommended for an alien who is eligible under section 212(a)(28) of the Act only because of past membership in, or past affiliation with, a front organization, or a past affiliation with the Communist Party where the involvement was so nominal that the consular officer considers the ineligibility to be a technical operation of the statute rather than an ideological commitment on the part of the applicant.

7.13 Any recommendation that a waiver of ineligibility be valid for multiple applications for admission should be made only if the consular officer is satisfied that such action is in the public interest and is not in conflict with the basic objectives of the law. Any such recommendation made direct to an immigration officer abroad must be concurred in by the Chief of Mission, Deputy Chief of Mission, Counselor for Consular Affairs, Principal Officer, or such other senior consular officer, other than the visa issuing officer, as may be designated by any of the foregoing officers. This concurrence must be made a matter of record.

7.14 Any recommendation that a waiver of ineligibility be valid for multiple applications for admission must set forth in detail the reasons for such a recommendation.

7.2 Authorizations granted under section 212(d)(3)(A) for alien crewmen are, unless otherwise indicated, valid for all applications for admission subsequently made by such crewmen in pursuit of their calling.

8. Ineligible aliens destined to the United Nations who are not classifiable A or C.

See Appendix A, 22 CFR 41.95, Note 4.

9. Form I-192 not to be used by consular officers.

Immigration and Naturalization Service Form I-192 (Application for Advance Permission to Enter as Nonimmigrant) should not be used by consular officers since this form is prescribed for use at United States ports of entry. Furthermore, the prescribed fee of \$25 is not assessed when the discretionary authority contained in section 212(d)(3)(A) of the Act is exercised upon the recommendation of a consular officer or the Secretary of State.

10. Posting of bonds in certain cases.

Whenever the posting of a departure bond is required by the Immigration and Naturalization Service in connection with section 212(d)(3)(A) action, the bond is posted at the time the alien applies for admission into the United States and consular officers should not require evidence that the bond has been filed as a condition of visa issuance.

11. Notation on visa of waiver of excluding provision.

See Procedural Note 5.5 to 22 CFR 41.124.

12. Notation on visa of waiver for participant in Soviet and Eastern European Exchange Program.

See Procedural Note 5.6 to 22 CFR 41.124.

DEPARTMENT OF STATE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA VISA ACTION REQUEST		DATE
		FROM
TO: <input type="checkbox"/> Office of Security (SY) - Department of State <input type="checkbox"/> Visa Office (VO) - Department of State <input type="checkbox"/> Immigration and Naturalization Service at _____		
ACTION REQUESTED (check only one) <input type="checkbox"/> Security advisory opinion <input type="checkbox"/> Name check only <input type="checkbox"/> 212(d)(3)(A) waiver <input type="checkbox"/> China background check <input type="checkbox"/> "Parakeet" name check		IF 212(d)(3)(A) WAIVER, INDICATE WHETHER <input type="checkbox"/> Security - 212(a)(28) <input type="checkbox"/> Recommended by consular officer <input type="checkbox"/> Other - 212(a) <input type="checkbox"/> Submitted at request of alien
1. NAME OF APPLICANT (include aliases, maiden name; previous married name, etc.)		2. DATE OF BIRTH (mo., day, yr.)
3. PLACE OF BIRTH (city, province, country)		4. PRESENT ADDRESS
5. DISTINGUISHING MARKS OF IDENTIFICATION		6. SEX
		7. MARITAL STATUS
		8. ALIEN REGISTRATION NO. (if any)
9. OCCUPATION (present and former, if pertinent; include name and address of present employer)		
10. NATIONALITY (including former, if any)		11. PASSPORT NO. _____ TYPE _____ ISSUED BY _____ DATE _____
12. FATHER'S NAME		13. MOTHER'S MAIDEN NAME
		14. SPOUSE'S NAME (include maiden name)
15. RESIDENCES OF 6 MONTHS OR MORE SINCE REACHING THE AGE OF 16 (years, street addresses, cities, countries)		
16. RELATIVES IN U. S. (names, street addresses, cities, states)		
17. PURPOSE OF ENTRY (give details in narrative statement if pertinent)		18. ANTICIPATED DATE AND PORT OF ARRIVAL, LENGTH OF STAY AND DESTINATION OR ITINERARY IN U. S.
19. TYPE OF VISA CONTEMPLATED (visa symbol, no. of entries and validity period)		20. REFERENCE TO PREVIOUS CORRESPONDENCE
21. APPLICANT TO BE ACCOMPANIED BY (give name, date and place of birth, nationality and relationship)		
22. REMARKS		(For Use of Office of Security) <input type="checkbox"/> No record <input type="checkbox"/> Security info attached <input type="checkbox"/> No derogatory information <input type="checkbox"/> Other (see remarks)
<p>For Name check only, forward original and 6 copies to SY. (Complete items 1 through 18 only)</p> <p>For China background check, forward original and 1 copy to SY. Attach photo with alien's name in Chinese characters. (Complete items 1 through 18 only)</p> <p>For "Parakeet" name check, security advisory opinion, or 212(d)(3)(A) waiver action forward original and 8 copies to VO. (See instructions on reverse of last page for preparation of narrative statement to accompany security advisory opinion and 212(d)(3)(A) waiver actions)</p> <p>For 212(d)(3)(A) waiver actions directed to INS abroad, forward original and 1 copy. (See instructions on reverse of last page for preparation of accompanying narrative statement)</p> <p>Use additional sheet for any item for which insufficient space is provided.</p>		

FORM 3 - 64 FS-493

NOTE: This form, consisting of an original and nine copies, with carbon interleaf, revised as of March 1964, is now being printed. An initial supply will be furnished all posts as soon as printed and it should not be requisitioned from the Department prior to receipt of the initial supply. To avoid waste, posts should continue to use old Forms FS-493 for name checks, China background checks, and "Parakeet" name checks until stock on hand is exhausted. As soon as the initial supply of the revised form is received, it should be used in all security advisory opinion and 212(d)(3)(A) cases submitted to the Department.

In security advisory opinion or 212(d)(3)(A) waiver cases, attach additional sheet for narrative statement which should include the pertinent items listed below:

I Security Advisory Opinion Cases:

- (a) Give summary and evaluation of pertinent information obtained through clearances, investigations and interview. Indicate source of information, reference or file number, if pertinent, and any limitation on use of information. Include history of applicant's affiliations, giving names of organizations, dates of membership, positions held and circumstances.

For "meaningful" membership see APPA 42.91(a)(28), Note 2.

For "involuntary" membership see APPA 42.91(a)(28), Note 3.

For "defector" cases, see APPA 42.91(a)(28), Note 4. (Note: if time factors are pressing, an alien who appears to qualify for defector status may be recommended for 212(d)(3)(A) action.)

- (b) Indicate political, economic, public relations factors, if any, and any special interest at post (Political Section, Economic Section, USIS, etc.)
- (c) In nonimmigrant cases, state whether consular officer is satisfied that the alien has a residence abroad which he has no intention of abandoning, if required, and that he is properly classifiable as a nonimmigrant.

II 212(d)(3)(A) Waiver Cases:

- (a) State section of law under which alien is ineligible.
- (b) Indicate political, economic, public relations factors, if any, and any special interest at post (Political Section, Economic Section, USIS, etc.)
- (c) State whether consular officer is satisfied that alien has a residence abroad which he has no intention of abandoning, if required, and that he is properly classifiable as a nonimmigrant.
- (d) Give reasons for consular officer's recommending or not recommending a waiver.
- (e) Give details as to purpose of visit (Item 17 on Form), including names and addresses of persons in the United States to be visited. Indicate nature of evidence furnished confirming declared purpose of visit.
- (f) If consular officer recommends more than one entry, give reasons therefor. (See 22 CFR 41.95, Note 7)
- (g) In security cases give the information outlined in I(a) above.
- (h) In cases involving convictions give the designation of the crime, the date and place of its commission and of the conviction, and the sentence or other judgment of the court.
- (i) In medical cases:
1. Describe the disease, defect or disability. If pertinent, give examining physician's findings including whether "communicable" or "noncommunicable" if alien has tuberculosis. If "communicable", state whether alien will comply with "Sanitary Measures for Travel of Aliens with Tuberculosis."
 2. If alien is seeking admission for treatment indicate:
 - i. What arrangements have been made for treatment including where and from whom treatment will be received.
 - ii. What financial arrangements have been made for payment of hospital and other expenses.
 - iii. Whether a bond will be available if required by the Attorney General.
- (j) In other cases describe the circumstances on which the finding of ineligibility was based.

For cases to Department of State, send original and 3 copies of narrative statement.
For cases to INS abroad, send original and 1 copy of narrative statement.

NOTE: The foregoing instructions are printed on only the last copy of the form.

Mr. SOURWINE. Am I correct then, that, at the present time, in at least many visa cases, the consular officer, after a finding of ineligibility, may recommend a waiver to the local Immigration and Naturalization representative and that waiver may be granted by him under delegated power from the Attorney General?

Mr. AUERBACH. That is correct.

Senator KEATING. And if he declines to do so, is that subject to an appeal to Washington?

Mr. AUERBACH. Outstanding instructions require that if a consular officer refuses to recommend a waiver, the alien can request him to submit this request to the Secretary of State so that the Secretary of State, acting on his own authority, can determine whether he wishes to submit this request to the Attorney General.

Senator KEATING. Well, now, suppose the consul makes the request for the waiver to the Immigration Service official, and the Immigration Service officer declines to grant the waiver. Can the alien then take an appeal from the Immigration Service officer's decision to Washington?

Mr. AUERBACH. I cannot speak for the Immigration Service, but my impression is that the alien has access to higher levels within the Immigration Service.

Senator KEATING. Are these matters usually handled at the local level and not brought to Washington?

Mr. AUERBACH. I would say that most waiver cases now are handled in the field rather than in Washington.

Senator KEATING. What are we talking about here: 10 cases a year or 100 or 1,000? In general, what is the number of cases of an ineligible alien asking for and being granted a waiver?

Mr. AUERBACH. I would have to guess, Senator. It is certainly now thousands. I would like to be permitted to supply this figure for the record.

Senator KEATING. I would be interested.

Mr. AUERBACH. Yes; to the extent that it is available.

Senator KEATING. Let us say in the last 2 years.

Mr. AUERBACH. Yes.

(Acting Assistant Secretary Robert E. Lee, under date of December 10, 1964, supplied the following:)

NUMBER OF ALIENS GRANTED WAIVERS

1. 212(d) (3) Waiver Orders Granted by the Attorney General Upon Recommendation of the Department of State.

Year	Orders	Aliens involved
Fiscal year 1963.....	1,415	2,211
Fiscal year 1964.....	1,582	3,553

2. 212(d) (3) Waiver Orders Granted by Immigration and Naturalization Service Field Representatives Upon Recommendations of Consular Officers.

Year	Orders	Aliens involved
Fiscal year 1963.....	1,268	No record.
Fiscal year 1964.....	1,188	Do.

Mr. SOURWINE. Mr. Auerbach, in view of what you have just said, would it be true that when a visa waiver case is submitted to Washington, this would necessarily imply either that the consular officer in the field did not see fit to recommend a waiver or that he did recommend it and the immigration man in the field did not see fit to grant it?

Mr. AUERBACH. This is correct. It could also be a case within a category in which, by instruction, the consul must submit certain waiver requests to the Department.

Mr. SOURWINE. And what are the types of waivers—waiver cases—which must be submitted to the Department in Washington?

Mr. AUERBACH. May I say, Senator, this instruction is contained in a classified document. Can I make this statement in such form that it is protected?

Mr. SOURWINE. You mean the information called for by that question is classified information?

Mr. AUERBACH. Yes, it is contained in a confidential appendix to the Visa Handbook.

Mr. SOURWINE. This is a regulation implementing an act of Congress, isn't it?

Mr. AUERBACH. It is not a regulation. This is an instruction. It is an internal instruction.

Mr. SOURWINE. It is an instruction implementing an act of Congress, isn't it?

Mr. AUERBACH. That is correct, but it is contained in a confidential document and it is not known to the public.

Mr. SOURWINE. Am I being asked to express an opinion here? I am quite willing to. In my opinion, there is no reason why the committee should not have this information. I am not asking you for a document. I am asking you for the classes of cases in which they have to come to Washington.

Mr. AUERBACH. Can this be handled in such a way that this is a classified statement?

Mr. SOURWINE. Well, all of the hearings of this committee are classified. But as has been pointed out many times, the committee's hearings are within the control of the committee and the committee would have the right to make them public. If a classified document is submitted, it is my understanding that the classified document may not be made public without the concurrence of the agency that classified it.

Is that correct, Senator? That is your understanding, isn't it?

Senator KEATING. In general. I was going to suggest that you submit the document.

Mr. AUERBACH. That is right. Would we be permitted to submit the confidential document, which lists specifically the cases which have been submitted?

Mr. SOURWINE. Rather than tell us now?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Would that be satisfactory, Mr. Chairman?

Senator KEATING. That is satisfactory.

Mr. SOURWINE. May we then make a request for that document?

Mr. AUERBACH. You are herewith making a request, right?

Mr. SOURWINE. Right. It will be recited in a letter to the Secretary in accordance with the usual procedure.

Unless the Senator had a further question on it, we'll get back to visa waivers later on some other points.

Senator KEATING. No question.

(In a letter to the subcommittee dated December 10, 1964, Acting Assistant Secretary Robert E. Lee included the following excerpt from the Foreign Affairs Manual:)

NOTES

1. Criteria to be considered in recommending 212(d)(3)(A) action for aliens ineligible on security grounds.

- 1.1 The alien must be a nonimmigrant who is 16 years of age or older and who is not ineligible under section 212(a)(27) or (29) of the Act. An alien under the age of 16 is not ineligible under section 212(a)(28).
- 1.2 In each case of refusal of a visa to a nonimmigrant under section 212(a)(28) of the Act, a consular officer should carefully consider whether to exercise his discretion by recommending that the alien's temporary admission be authorized under section 212(d)(3)(A) of the Act. Every case involving compassionate grounds; those wherein refusal of a visa could result in an important material loss to the alien or a United States citizen, individual or organization; and any case affecting the national interest, which includes one involving an alien who is a public figure or in whose case refusal of a visa could result in unfavorable publicity and ill will towards the Foreign Service Office concerned or the United States in general, should be submitted. In addition, whenever a nonimmigrant who has been refused a visa requests that his application be considered under section 212(d)(3)(A), a consular officer is required to make a full report to the Department even though he does not recommend obtention of such an order. When a case is reported at the request of the applicant, the alien need be informed only that the request will be submitted for consideration and not whether the consular officer recommends the action.
- 1.3 See also Appendix A, 22 CFR 41.90, Note 4.12 for cases likely to provoke public criticism.
- 1.4 The Department will not undertake affirmative action to facilitate travel to or from Cuba through the United States of any Soviet bloc national. Therefore no waivers pursuant to section 212(d)(3)(A) may be requested for such aliens who may require waivers.

(Note 1 revised and redesignated)

2. Cases to be submitted to the Department.

In addition to the types of cases set forth in Note 5 to 22 CFR 41.95 (unclassified) the following types of cases must be submitted to the Department for referral to the Immigration Service: (See Note 3 for types of cases which may be sent direct to immigration officers abroad)

- 2.1 Any case of an alien ineligible under 212(a)(28) by reason of membership within the past five years in the Communist Party or membership or affiliation with a Communist-front organization which the alien joined for ideological reasons or in which he held office, unless
 - (a) such alien was granted a waiver under section 212(d)(3)(A) through the Department within 24 months, or
 - (b) such alien has not travelled outside of the country of his birth since he was 16 years of age, or
 - (c) such alien is an educational or exchange grantee and has been the subject of pre-security clearances.

(See Note 3.1 if emergent health situation exists)
- 2.2 The case of any alien who is coming to the United States under the Soviet and Eastern European Exchange Program.
- 2.3 The case of any alien who is a national of the Union of Soviet Socialist Republics.
- 2.4 Aliens destined to the United Nations (see Note 4).
- 2.5 Any case of a non-Soviet bloc national, including that of a Yugoslav national, desiring to travel through the United States to or from Cuba who requires a waiver of ineligibility pursuant to section 212(d)(3)(A).

(Note 2 revised and redesignated)

3. Submission of recommendations direct to immigration officers in certain cases.

- 3.1 Except in cases described in Note 2, consular officers may recommend waivers of ineligibility for aliens who are ineligible under section 212(a)(28) direct to the immigration officer in charge, in care of the appropriate Foreign Service Post as indicated in Exhibit I to Appendix D, Services for I.N.S. Also, cases which would ordinarily be submitted to the Department in accordance with Note 2.1 may be referred directly to the appropriate immigration officer abroad if an emergent health situation exists and a senior consular officer is satisfied that, in spite of the alien's ineligibility under section 212(a)(28), his admission would not constitute a threat to the public safety of the United States.
- 3.2 In any case in which a recommendation for action under section 212(d)(3)(A) is submitted directly to the Immigration and Naturalization Service in accordance with the provisions of this Note, the Department should be promptly informed in the event of denial of the request for a waiver of ineligibility or in the event of undue delay in the decision by the Immigration and Naturalization Service. A report of such denial or undue delay should state possible adverse consequences to public or foreign relations of the United States, and should state all humanitarian or other considerations which motivated the recommendation by the consular officer.
- 3.3 Posts obtaining orders authorizing temporary admission under section 212(d)(3)(A) pursuant to this note are requested to obtain an extra copy of each order from the local representative of the Immigration and Naturalization Service and forward such copies to the Department in an envelope addressed "Visa Office (Security Branch)".

(Note 3 revised and redesignated)4. Ineligible aliens destined to the United Nations.

- 4.1 The case of any alien who is proceeding to the United States for a purpose connected with the United Nations who appears to be ineligible to receive a visa under any provision of law applicable to such a person (see 22 CFR 41.91(e)) should be referred to the Department for consideration prior to visa refusal.
- 4.2 In order to minimize the possible adverse political effects which may be caused by the fact that extraordinary procedures are necessary in cases of this type, an applicant for whom authorization of temporary entry is necessary may be informed only that it is necessary to refer his case to the Department for instructions. No mention should be made of the Attorney General or of the procedure for authorizing temporary entry for an ineligible alien. The biographical data and information concerning the applicant's memberships and affiliations, or other grounds of ineligibility, and his proposed visit to the United States should be taken by the consular officer orally and submitted as part of his report. No affidavit as such is to be required. All communications to the Department concerning persons coming to the United Nations should be sent by telegram or, if time permits, by airgram and marked "For VO and OIA."

(Note 4 added)5. Advance processing of 212(d)(3)(A) waivers for government grantees.

If, after careful consideration of the foreign relations and security aspects involved it is decided to recommend for a Leader Grant, scholarship, or department-sponsored exchange, an alien who is ineligible to receive a visa under section 212(a)(28) of the Act, the visa officer should, on the basis of the fullest possible local security check, submit his recommendation, favorable or unfavorable, to the Visa Office on Form FS-493 with narrative statement attached. Because of the absolute necessity of not advising such a nominee of the fact that he is being considered for a grant before the grant and waiver have been approved, the visa officer must, as a matter of exceptional procedure, submit the waiver request without the normal visa application or personal interview of the alien. (Added)

6. Soviet-bloc nationals whose itinerary includes a visit to or transit of Guam.

The Department should be informed by cable whenever the itinerary of a Soviet-bloc national, who is proposed as the beneficiary of a waiver pursuant to section 212(d)(3)(A) of the Act, calls for a visit to or transit of Guam. The report should include the name, pertinent biographic data, and travel plans of the alien. This information is desired by the Chief of Naval Operations on behalf of the Department of Defense in order that that Department may agree to or deny the inclusion of Guam in the approved itinerary. (Added)

7. Time required for processing 212(d)(3)(A) cases in the Department.

The time necessary for processing 212(d)(3)(A) requests in the Department varies from a minimum of about eight days in high level or national interest cases to a minimum of about four or five weeks in routine cases. Security investigation of each case prior to submission to the Attorney General for action is time consuming but unavoidable. Delays can be minimized with submission by the post of complete information with the original request for action. (Redesignated)

8. Validity period of orders entered pursuant to 212(d)(3)(A).

See 22 CFR 41.95, Note 7 (unclassified).

9. Procedure to be followed in submitting 212(d)(3)(A) cases.

See 22 CFR 41.95, Note 2 (unclassified)

Mr. SOURWINE. First, I wanted to ask you about visa regulations. This is in your particular area, is it not?

Mr. AUERBACH. This is correct.

Mr. SOURWINE. How are visa regulations made and approved?

Mr. AUERBACH. Visa regulations are ordinarily prepared in the Visa Office and then are published after they have been approved by the Administrator. The Secretary of State has delegated his authority for the publication of regulations under the Immigration and Nationality Act to the Administrator of the Bureau of Security and Consular Affairs.

Mr. SOURWINE. Who writes the regulation?

Mr. AUERBACH. The initiative may come from various sources. It may be that the Director of the Visa Office recommends or requests that a certain regulation be drafted. It may be that I think that there needs to be a clarification of regulations.

In 1959 and 1960, we completely revised all regulations for non-immigrants and immigrants. We achieved this in a working committee, with comments from consular officers in the field. Regulations, of course, are cleared through channels, by those interested in the Visa Office, the Director of the Visa Office, and they must be approved by the Administrator of SCA.

Mr. SOURWINE. Well, my question was: Who writes them? Don't you know of a section or branch or division which has the responsibility for writing visa regulations?

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. Well, what is it?

Mr. AUERBACH. The Regulations and Legislation Division, which is under my direct supervision.

Mr. SOURWINE. That is what I desired.

Mr. AUERBACH. I'm sorry; I didn't understand your question.

Mr. SOURWINE. No matter who suggests, you have the responsibility for drafting it and keying it into the existing regulations and putting it in proper form?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. And it goes from you to the Administrator, who is now Mr. Schwartz?

Mr. AUERBACH. It goes from me to the Director of the Visa Office.

Mr. SOURWINE. And with his approval, if it is granted, it goes to the Administrator?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. He has the authority to approve and cause the issuance of the regulation?

Mr. AUERBACH. That is right. They also are cleared by the Legal Adviser and by any area which may be interested in a particular regulation.

Mr. SOURWINE. Has the Administrator delegated to anyone the authority which he got from the Secretary to approve visa regulations?

Mr. AUERBACH. No. Except the Acting Administrator, of course, would under this delegation, approve regulations.

Mr. SOURWINE. At any time when the Administrator is not acting there?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Has this process for making and approving visa regulations, as you have outlined it here, been changed in any way since Mr. Schwartz became Administrator?

Mr. AUERBACH. No.

Mr. SOURWINE. What is the function of the Visa Office as you understand it?

Mr. AUERBACH. The function of the Visa Office is referred to in the act. If I may refer to the act: in section 104(d), the law says that the functions theretofore performed by the Passport Division and the Visa Division of the Department shall thereafter be performed by the Passport Office and the Visa Office, respectively, of the Bureau of Security and Consular Affairs.

Mr. SOURWINE. That doesn't answer my question; it just tells me where the functions came from.

Mr. AUERBACH. The Visa Office supervises the administration of the visa laws by consular officers. That, I would say, is the main function of the Visa Office. It issues regulations implementing the laws relating to immigration and visa matters.

Mr. SOURWINE. Well, as you understand it and from the statement that you have just made, it is your major job—that is, in the Visa Office—to see that the laws of the United States with regard to visas are properly administered?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. To see that those who should not have visas don't get them?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. And to that extent, the Visa Office is assisting in enforcing the immigration laws of the country?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Would you say that there hasn't been any change in this function or in the emphasis on this function in the last 2 or 3 years?

Mr. AUERBACH. If you stretch this a little further, I would say the emphasis in recent years has been more on facilitation and operational matters than on law-enforcement matters.

Mr. SOURWINE. Well, you may be getting at an answer to the question, but perhaps I can help you get there more quickly. You have indicated that you feel that it is the primary job of the Visa Office

to enforce the laws of the United States in the area of its competence?

Mr. AUERBACH. Right.

Mr. SOURWINE. Do you think all visa officers feel the way you do about that, or do any of them, with reason perhaps, feel that there is some other function which is their primary responsibility, that they are not primarily law-enforcement officers?

Mr. AUERBACH. It is very difficult to answer for other people, Mr. Chairman. I think I only can repeat that the emphasis has somewhat shifted from law enforcement, which was the main emphasis when I came to the Visa Office in 1951, to service, facilitation of tourism, and international travel in more recent years.

Mr. SOURWINE. This is substantially what I'm getting at. Let me tell you my understanding of it, from being counsel and from all the information which has been made available to me. It is that visa officers have been told, perhaps not in these words, but in effect, that their primary job is to serve the people of the countries where they are stationed who may desire to come to the United States; that they are performing a service for tourism, public relations for the United States, and this is what we should focus on.

Am I correct about that?

Mr. AUERBACH. I am unaware, Mr. Sourwine, that this was put in this form, but I think there have been many steps taken over the years which have emphasized the importance of international travel, the importance of tourism. As I stated before, in earlier years the emphasis was more on the enforcement of the law. That has been the general development; yes.

Mr. SOURWINE. All right. Would you say the orientation of visa officers with respect to their major tasks has changed in recent years?

Mr. AUERBACH. I have been responsible for portions of the visa training of new consular officers, and as far as I am concerned there has been no change in the emphasis on law administration.

Mr. SOURWINE. Mr. Valenza, whom I think you know—

Mr. AUERBACH. Indeed.

Mr. SOURWINE (continuing). —told us that during the period since Mr. Schwartz became Administrator, there has been increased stress on the public relations aspect of visa matters. I think you said substantially the same thing here this morning.

Mr. AUERBACH. That there has been an increasing development on the public relations aspect; yes.

Mr. SOURWINE. Now, you say there has been no change in your own indoctrination or orientation of visa officers. So how has this change come about that you and Mr. Valenza both say has been made? Who is laying this increased stress on public relations?

Mr. AUERBACH. Public relations, of course, is a term which is very difficult to define.

Mr. SOURWINE. You used it. You knew how you meant it.

Mr. AUERBACH. That is right. I used the term to tell consular officers, for example, to be as polite as possible in refusing a visa, realizing that this consular officer may be the first and last American he meets, ever, at any time, in connection with this refused visa.

Mr. SOURWINE. Isn't the term "public relations" also used in the sense that visa officers should be careful about turning down an applicant without taking into consideration the public relations effect of a refusal or the public relations effect of a number of refusals in that country, in that area?

Mr. AUERBACH. One of the most difficult tasks for a consular officer is to differentiate between a nonimmigrant and an immigrant, particularly in countries with heavily oversubscribed quotas. This is a matter of public knowledge.

There have been, always, difficulties that some officers may be too tough in turning down doubtful cases, and some may have been too easygoing in weighing the case in favor of the alien. It is very difficult to pin down who said what. I think this is a matter of general atmosphere, that during these last few years, I think, there has been more emphasis on facilitation, tourism, and all that. I think this is as far as I can pin it down.

Mr. SOURWINE. All right, Mr. Auerbach.

Have there been any directives that you know about which went to visa officers which stressed public relations or the public relations aspect of their jobs?

Mr. AUERBACH. I would have to refresh my recollection on a specific instruction on that. I think our visa notes—not regulations—at one point reminded consular officers of the "Visit U.S.A. Year" and the various Presidential announcements on this subject. These, in a sense, are instructions, if you wish, which you might call instructions relating to public relations. But the term is so broad that I am reluctant to—

Mr. SOURWINE. Let's cut through this.

May we have a request, Mr. Chairman, that the committee be furnished with a record at this point of any directives or instructions—I didn't use the word "regulations"—to visa officers which stressed public relations or the public relations aspects of their jobs, and just limit it to the last 2 years?

Senator KEATING. It is so ordered.

(Mr. Robert E. Lee, Acting Assistant Secretary, in a letter to the subcommittee dated December 10, 1964, included the following documents:)

DIRECTIVES TO VISA OFFICERS

NOTES

1. Administration stresses importance of facilitating international travel.

This administration, as well as previous administrations, has, on the highest level, emphasized to the Department its interest in the facilitation of international travel both for its cultural and social advantages to the free world and for its economic significance. The President has specifically requested that the handling of visitor visa applications be expedited. This action should be taken consistent with the requirements of the law and regulations. Particular attention should be given to cases of persons coming to conferences, conventions or convocations who must be in the United States by a specified date. (See 22 CFR 41.90, Note 1 concerning submission to the Department of doubtful cases and 22 CFR 41.95 and Notes for section 212(d)(3)(A) procedure where applicable.) (Amended 8-28-63)

2. Determination of temporary nature of visit.

2.1 In determining whether an applicant for a temporary visitor visa has a residence in a foreign country which he has no intention of abandoning, the consular officer may wish to consider the following factors:

- (a) Is the period of time for which the applicant is planning to come reasonably consistent with the purpose of his visit;
- (b) Are the arrangements for defraying the expenses of the applicant's visit and return passage reasonable without the applicant's having recourse to employment in the United States;
- (c) Does the applicant have reasonably permanent employment or business connections which would cause him to return abroad;
- (d) Does the applicant have family, social, cultural or other associations which would cause him to return abroad;
- (e) Has the alien established that he will be admitted into the country to which he intends to proceed following his visit;
- (f) Has the applicant established that he has, for the purpose of the present visa application, a residence abroad which he does not intend to abandon, although he has previously evidenced an intention to immigrate into the United States, for example by having registered on a quota waiting list, or by having applied for an immigrant visa;
- (g) Is there reason to believe that the applicant is an intending immigrant who applies for a nonimmigrant visa to avoid a waiting period on an oversubscribed quota, or to circumvent fees, or clearance or documentary requirements.

2.2 The criteria listed under Note 2.1 are intended to serve only as general guides. It must be recognized that the presence or absence of any of these factors is not necessarily conclusive evidence of the alien's real intent in the individual case. If the consular officer, after consideration of the criteria in Note 2.1 and any other pertinent factors, is not satisfied of the applicant's intent to return abroad, he is required by law to refuse the visa. If the visa is refused, the applicant should be informed in appropriate cases that he may at any time submit additional evidence in an effort to establish his qualifications for a visitor visa. (See 22 CFR 41.130 and Notes)

2.3 The doubts of a consular officer about an alien's intent to return abroad can not be resolved by the alien's offer or willingness to leave abroad a child, spouse or other dependent.

2.4 The mere suspicion that an alien after admission may be induced by more favorable living conditions in the United States to attempt to remain is not a sufficient ground to refuse a visa. In border-line cases see Note 5 to 22 CFR 41.122.

2. (Cont'd)

- 2.5 Students, young professionals and others not interested in domestic service as a vocation, frequently apply for visitor visas when they wish to come to the United States temporarily to acquaint themselves with American life by becoming a part of a private household. They plan to perform incidental domestic services in return for room and board and pocket money. The fact that household services will be performed does not preclude the issuance of a visitor visa if the services are of a kind which are normally performed by a member of the family and which will not interfere with the realization of the applicant's objective. Basic factors to be considered are whether the applicant's status in life is such that he would be unlikely to undertake domestic employment as his vocation, and whether the sponsor's intention is to receive him as a member of his family, and not as a domestic employee. The alien's intention to depart from the United States must be satisfactorily established. The fact that the sponsor is defraying the applicant's transportation in whole or in part need not preclude the classification of the applicant as a temporary visitor for pleasure.

(Note 2 revised 8-28-63)

3. Effect of marital status or marriage plans on visitor classification.

- 3.1 An alien who applies for a visa for the purpose of marrying a citizen or alien permanent resident of the United States and establishing a permanent residence in this country is not classifiable as a visitor since he has no residence abroad which he has no intention of abandoning. However, a visitor visa may not be refused on the mere suspicion that an applicant may marry after entering the United States.
- 3.2 An alien who is proceeding to the United States to marry a United States citizen or permanent resident alien may be classified as a visitor if he establishes that, following the marriage, he will depart from the United States, irrespective of an ultimate intention to immigrate.
- 3.3 An alien spouse of a United States citizen may be classified as a visitor if he establishes that the purpose of his coming is to accompany the United States citizen to the United States for a temporary visit.

(Former Note 2.4 revised and redesignated 8-28-63)

4. Aliens classifiable B-1.

- 4.1 An alien who wishes to come to the United States for employment which does not qualify him for A, C, D, E, G, H, I, J, or NATO status must be classified as an immigrant unless he comes within one of the classes described in Note 4.2.
- 4.2 The following aliens are classifiable B-1:
- (a) Aliens coming to engage in commercial transactions which do not involve employment, to negotiate contracts, to consult with business associates, to litigate, to participate in scientific, educational, professional or business conventions or conferences, or to undertake independent research;
 - (b) Aliens coming primarily to perform noncompetitive temporary services who would be classifiable H-1 or H-2, except that they do not receive a salary or other remuneration from a United States source other than a subsistence allowance or reimbursement for other expenses incidental to their temporary stay;
 - (c) An alien invited to participate in the training of Peace Corps volunteers or coming to the United States under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Stat. 612), unless he qualifies for A classification. (For the notation to be inserted on any visa issued under this legislation, see 22 CFR 41.124, Procedural Note 5.14);
 - (d) An alien invited to participate in any program of furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961 (75 Stat. 424);

Mr. SOURWINE. Do you know, sir, of any instructions given to visa officers, or indications to them that it is part of their job to try to make everybody they deal with in the foreign country happy so there won't be any complaints on the part of visa applicants, or that it is their job to try to reduce the number of complaints on the part of visa applicants?

Mr. AUERBACH. I don't know of any.

Mr. SOURWINE. Are consular officers today encouraged to be lenient in making decisions with respect to visas, especially in the area of distinguishing between immigrants and nonimmigrants?

Mr. AUERBACH. I believe I remember that there have been some instructions which have pointed out the importance or the desirability of cutting through doubtful cases.

Mr. SOURWINE. Can you put your finger on those so that we may request the Secretary whether they may be furnished to the committee? You said you know there are some. Can you locate them so that you can submit them up to the Secretary for determination as to whether they can come to this committee for our record?

Mr. AUERBACH. I can attempt to do that.

Mr. SOURWINE. May we make the request that if they can be identified, they be provided for the record?

Senator KEATING. It is so ordered.

(Acting Assistant Secretary Lee, in a letter to the chairman dated December 10, 1964, provided copies of airgrams to diplomatic and consular posts advising of a procedure for waiving personal appearances of visa applicants. Reproductions of these follow:)

UNCLASSIFIED

1. Temporary visitors for business or pleasure, if
 - (a) the alien is well and favorably known at the consular office and is a resident of the consular district, or
 - (b) within the 24 months preceding the present application the alien has been issued a nonimmigrant visa and appeared personally to make application for that visa, or
 - (c) the principal officer determines that a waiver of personal appearance is justified in the national interest or because of unusual circumstances, including hardship to the individual visa applicant.
2. Temporary workers of distinguished merit and ability and representatives of bona fide information media.
3. Exchange visitors who qualify as leaders in a field of special knowledge or skill and the spouse and children of such exchange visitors.

A copy of the regulations as they appeared in the Federal Register is attached.

3. Application of Discretion.

Prudence should be used in applying this discretionary authority. Until further notice the waiver of personal appearance authorized under 22 CFR 41.114(f) for leaders may not be used except in the cases of aliens who are recipients of a United States Government grant. The discretionary authority for waiver of personal appearance should not be used in any case in which the consular officer knows or has reason to believe that the applicant may be ineligible to receive a visa and therefore would require a waiver of ineligibility under section 212(d)(3)(A) of the Immigration and Nationality Act, except in the case of Departmental leader grantees classifiable "J". Personal appearance should always be required when doubt exists about the alien's bona fides as a nonimmigrant.

In cases described in section 41.114(d)(2) of the regulations the applicant need not be personally known to the consular officer if he is well and favorably known either in person or by reputation to another ranking officer of the foreign service establishment.

In cases

UNCLASSIFIED

In cases described in section 41.114(d)(3) the term "principal officer" is defined as a Chief of Mission, a Principal Officer, a Deputy Chief of Mission, a Counselor for Consular Affairs, or a Supervising Consul General. If a waiver is granted to an alien within the H-1 class and his spouse or children wish to accompany him to the United States their cases may be considered as falling within the class described in section 41.114(d).

The authority to waive personal appearance in the case of aliens classifiable "I" should ordinarily be exercised only in the case of members of the working press or other representatives of information media who are firmly established in their profession or are employed by a reputable information medium.

4. Operational Considerations:

Provision should be made for safe storage of the alien's passport while it is in the consular office and a return of it to the applicant by safe mail.

If a fee is prescribed for the issuance of a visa and personal appearance is to be waived, instructions must be given to the applicant as to how the fee is to be paid and the fee must be collected before the visa is issued.

5. Comments:

In as much as the Department is planning to broaden further the authority to waive personal appearance in certain nonimmigrant visa cases it invites any comments which officers may wish to make on how the authority now granted is administered at the particular post, the impact on public and foreign relations and on the visa program of the foreign service establishment. These comments will be most helpful to the Department as a guide in its timing, and substantive and operational planning of the further broadening of the authority to waive personal appearance. These comments should be submitted by operations memorandum captioned "VISAS: REGULATIONS AND NOTES".

RUSK

Enclosure:

Text of amended regulations.

TEXT OF AMENDED REGULATIONS§41.114 Personal Appearance.

Except as otherwise provided in this section, every alien who makes application for a nonimmigrant visa shall be required to appear in person before a consular officer. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien who is

- (a) a child under ten years of age,
- (b) within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, A-3, C-2, C-3, G-1, G-2, G-3, G-4, G-5, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7,
- (c) an applicant for a diplomatic or official visa,
- (d) an applicant for a nonimmigrant visa under the provisions of section 101(a)(15)(B) of the Act if (1) within the preceding 24 months he was issued a nonimmigrant visa of a classification requiring the alien's personal appearance, or (2) he is well and favorably known at the foreign service establishment at which he is applying, and is a resident of the consular district in which the foreign service establishment is located, or (3) the principal officer, or, at a diplomatic mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the Supervising Consul General, determines that a waiver of personal appearance is justified in the national interest or because of unusual circumstances, including hardship to the individual visa applicant,
- (e) within a class of nonimmigrants classifiable under the visa symbols H-1 or I, or
- (f) within a class of nonimmigrants classifiable under the visa symbol J-1 and who qualifies as a leader in a field of specialized knowledge or skill and is not required to be medically examined under the provisions of 22 CFR 41.113(a)(1), and the spouse and children of such an alien who qualify for J-2 classification.

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

ORIGINATOR

VO-137

DEPARTMENT OF STATE

85 AIRGRAM

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FOR RM USE ONLY

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CA-2036.

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PRIORITY
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TO : ALL AMERICAN DIPLOMATIC AND CONSULAR POSTS (except CHIENGMAI, HUE, JERUSALEM, AND POLAD CINCPAC), AND THE DISTRICT ADMINISTRATORS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS, THE GOVERNOR OF AMERICAN SAMOA, AND THE EXECUTIVE SECRETARY OF THE CANAL ZONE.

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FROM : Department of State

DATE: 10 22 11 13 AM '62

AGR	COM	FRB

SUBJECT : Proposed broadened authorization to issue certain nonimmigrant visas without personal appearance of applicant.

INT	LAB	TAR

REF : Department's Circular Airgram 1630 of August 13, 1962.

TR	XMB	AIR

ATTENTION: Chiefs of Mission at diplomatic Missions and Principal Officers at consular establishments.

ARMY	CIA	NAVY

OSD	USIA	NSA

1. Background

The Department has been searching for a way to keep nonimmigrant visa issuance procedures consistent with the changing requirements of the times and at the same time to preserve the integrity of the immigration laws.

In recent years the base of the travelling public has expanded in most countries from the metropolitan areas, where consular establishments are located, to provincial areas. It is not possible to continue to open new consular posts in these ever expanding areas so that the travelling public can be supplied visas in a convenient and efficient manner. At the same time there are significant political and economic reasons, which form the basis for the United States Travel Program, as to why more tourism to the United States should be encouraged.

As a first step in the direction of a more flexible system of nonimmigrant visa issuance, posts, by reference, were authorized to waive personal appearance of nonimmigrant applicants in a limited category of cases.

VO - 135

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FORM 4-62 DS-323

In Out

The Department is prepared now to go a step further in the direction of waiving personal appearance for applicants for nonimmigrant visas. The system which will be authorized was developed by the Department in close working relationship with representatives of the Immigration and Naturalization Service in consultation with interested Congressional committees.

2. Scope of Proposed Regulations

The Department plans to publish on or about October 1, amendments to existing regulations which would authorize the field to issue, without personal appearance, nonimmigrant visas in the B-1 and B-2 categories, without the restrictions contained in regulations published on August 11, 1962, which require that the individual visa applicant has previously been issued another visa or is well and favorably known to the issuing office.

A new form of application for visitor visas by mail has been devised which would enable the consular officer to make a determination whether the visa may be issued by mail or whether personal appearance should be required in the individual case. A sample copy of this form (FS-257a and FS-257a (Information)) is enclosed. It is designed to serve as a self-mailing form. The applicant will detach its application portion along a perforated line and mail it with supporting documents to the office.

3. Implementation of Proposed Procedures.

It is recognized that the implementation of the proposed plan may present some problems to certain posts. Other posts will be able to place the arrangement in motion without any or only slight modification of the information portion of the enclosed form (FS-257a). It is anticipated that the proposed procedure will be installed on a country by country basis after the Chief of Mission in each country, in consultation with the principal officers under his jurisdiction, has made a finding of the circumstances under which the installation of this procedure should be undertaken.

Once the implementation of the new regulations has been initiated in a specific country, persons inquiring about visitor visas would be sent Form FS-257a and FS-257a (Information). Upon receipt of the completed form and supporting documents, the consular officer would examine them and would either authorize the issuance of the visa or would indicate that a personal interview is required.

If the issuance of the visa is authorized based on the submission of Form FS-257a, this form would be properly endorsed, folded twice so that it would be reduced to a 3 x 5 format and filed in the existing 3 x 5 card index.

More detailed instructions about the implementation of this program will be issued at the time of the publication of the proposed regulations.

4. Action Requested

Since the Department plans to publish the proposed regulations on or about October 1, 1962, Chiefs of Mission at all diplomatic missions are requested to consult immediately with the principal officers of consular establishments under their jurisdiction about the local modifications of the proposed procedures and information sheet necessary to adapt the proposed program to the needs of their area now or at a later date.

If the decision is reached in principle that the new program can be put into operation promptly upon publication of the new regulation, the Department should be advised by telegram no later than September 17, 1962. Additional comments should be submitted by operations memorandum with the subject: "VISAS: REGULATIONS AND NOTES." Consular posts that ordinarily report on administrative matters directly to the Department (such as Curacao, Hong Kong and Nassau) should submit their telegrams and comments to the Department and send copies to the appropriate Mission. The report should include a statement as to whether the information part of the attached form can be used as is or a draft of the revision deemed necessary to meet local conditions should be attached. If it is the view of the Mission that the installation of the program should be deferred, the Department would appreciate receiving by November 1, 1962, the Mission's estimate of the time when and the circumstances under which the program can be adopted.

The regulations to be published on or about October 1 will be discretionary and therefore not self-executing. The new program is to be placed into operation in any one country only after the Chief of Mission (or Principal officer of a consular post reporting directly to the Department) has submitted a plan for its execution within his area of jurisdiction and the plan has been approved by the Department. Thus, inquiries by interested organizations, such as carriers and travel agents, about the timing of the new procedure may in appropriate cases be referred to the Department.

Posts which can inaugurate the program on or about October 1 and can use Form FS-257a (Information) without modification of its text are herewith authorized to have printed locally a six months' supply of the form. The form may be printed in English or in the local language as appropriate. Future supplies of the form will be obtained through the normal sources of supply of visa forms.

It is hoped that a majority of the countries involving the areas from which large scale tourism can be expected will be ready to proceed with the implementation of the new program at the time the proposed regulations are published. At that time the Department is planning to give this new program considerable publicity and will include in it a listing of the countries in which the program will become operative immediately. The Department would welcome the submission of tentative plans for local publicity on the same subject.

RUSK

Enclosure:

Sample of Form FS-257a
and FS-257a (Information).

(DO NOT WRITE IN THIS SPACE - FOR OFFICE USE)

_____ visa approved on _____
 (Symbol) (Date)
 by _____
 (Name and Title of Officer)

VISA APPLICATION
 (Please PRINT or TYPE)

1. FAMILY NAME GIVEN NAME MIDDLE NAME

2. PREVIOUS NAME(S) INCLUDING MAIDEN NAME

3. PLACE OF BIRTH (City) (Province) (Country)

4. DATE OF BIRTH (Month) (Day) (Year)

5. HOME ADDRESS

6. PROFESSION OR OCCUPATION

7. BUSINESS ADDRESS

8.	HAIR (Color)	EYES (Color)	HEIGHT	COMPLEXION (Ruddy, fair, etc.)	9. MARKS OF IDENTIFICATION (Visible scars, etc.)
10.	NATIONALITY		MARITAL STATUS <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced		

11. PURPOSE OF TRIP TO U.S. (For example, tourism, visit to friends or relatives, business, - please give details)

12. APPROXIMATE DATE OF DEPARTURE FOR THE U.S.

13. LENGTH OF PROPOSED STAY IN U.S.

14. WHO WILL PAY FOR YOUR TRANSPORTATION AND EXPENSES? (*Self, my company, brother in U.S., etc.*)

15. COUNTRIES IN WHICH YOU HAVE LIVED FOR MORE THAN ONE YEAR DURING THE PAST 5 YEARS AND APPROXIMATE DATES OF SUCH RESIDENCE

16. HAVE YOU PREVIOUSLY BEEN REFUSED A U.S. VISA?

YES

NO

17. ARE YOU REGISTERED FOR IMMIGRATION TO THE U.S.?

YES

NO

18. I HAVE READ AND UNDERSTOOD THE INFORMATION CONTAINED IN PARAGRAPH 4 OF THE ATTACHED FORM FS-257a(Information)(8-62). NONE OF THE RESTRICTIONS THEREIN APPLY TO ME EXCEPT THE FOLLOWING: (*If there are any restrictions state them here and explain more fully in an attached statement:*)

I certify that the answers I have furnished on this form are correct to the best of my knowledge and belief. Also, I understand that possession of a visa does not entitle the bearer to enter the U.S. if upon arrival at a port he is found inadmissible.

DATE

SIGNATURE

A visa issued to anyone who has knowingly furnished false information in his visa application is subject to cancellation either before or after arrival in the United States. Anyone who has furnished such false information is ineligible to receive a visa in the future.

PHOTOGRAPH

VISITOR VISA INFORMATION

1. Under United States law a visa is necessary in order to travel to the United States. There are several different types of visas. If you wish to work in the United States, spend there a "working vacation", study there, or live there permanently or more or less indefinitely, you will need a different type of visa, the requirements for which we will be glad to explain to you.

2. This information sheet describes the requirements for a visitor visa. Four items are normally required of each applicant for such a visa:

- | | |
|---------------|---|
| A. PASSPORT | C. EVIDENCE OF INTENTION TO LEAVE THE UNITED STATES AFTER TEMPORARY VISIT THERE |
| B. PHOTOGRAPH | D. COMPLETED APPLICATION FORM |

Application for a visitor visa may be made in person or by mail.

3. In order to apply by mail please detach and complete the attached form (the law requires a separate application for each traveller regardless of age) and send it together with the documents described below to this office:

A. Passport valid for travel to the United States and good for at least six months longer than your intended stay there.

B. One passport-type photograph (not required of children under 16). Each person should sign his name on the back of his photograph.

C. Evidence of your intention to leave the United States after your temporary visit there. There is no required form for such evidence and we will be glad to consider whatever you may wish to furnish in this connection. You may find it most convenient to furnish a letter from your employer stating that you will be returning to your position or job after your trip to the United States. A letter from a responsible member of your community who knows you (such as a government, bank or school official, a clergyman or other community leader) briefly describing your family and/or other ties in your community which would cause you to return after your trip to the United States may also be accepted.

4. United States law prohibits the issuance of a visitor visa to anyone who plans to work in the United States or to remain there permanently or indefinitely. United States law prohibits the issuance of any visa to a person who has a dangerous disease, such as tuberculosis; or has suffered a serious mental illness; or is a narcotics addict or trafficker; or has a criminal record, including one involving an offense against public morals; or is or has been a member of the Communist Party or any affiliated organization, unless the grounds of ineligibility have been waived in advance. In the event any of the foregoing restrictions are applicable to you, personal appearance at this office is recommended. If that is not possible at this time, a statement regarding the facts in your case should be attached to your application form and mailed to us. In certain cases it is possible that these restrictions may be waived. This and other visa information can be obtained by telephoning, visiting, or writing to this office.

5. We will review your application as soon as it is received and, if you are found eligible, a visa will be stamped in your passport which will be mailed to you promptly. If we have a question about your documentation or eligibility we will invite you to come to the office for a discussion with a Consul. We recommend, therefore, that you apply for your visa as early as possible and before making final travel arrangements.

6. *Of course, you are always welcome to apply for your visa in person*. In that case there will be no need for you to fill out the attached form and you will need to bring with you only the documents already mentioned. If you are found eligible, the visa will be issued to you when you visit this office.*

* We are closed on all legal holidays of this country and the United States. United States holidays are January 1, February 22, May 30, July 4, the first Monday in September, November 11, the fourth Thursday in November and December 25. When any United States holiday falls on a Saturday we will be closed on the preceding Friday and when one falls on Sunday we will be closed the following Monday.

141.114 Personal appearance.

- (a) Except as otherwise provided in this section, every alien who makes application for a nonimmigrant visa shall be required to appear in person before a consular officer. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien who is:
- (1) A child under ten years of age,
 - (2) Within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, A-3, C-2, C-3, G-1, G-2, G-3, G-4, G-5, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7,
 - (3) An applicant for a diplomatic or official visa,
 - (4) An applicant for a nonimmigrant visa under the provisions of section 101(a)(15)(B) of the Act if (i) within the preceding 24 months he was issued a nonimmigrant visa of a classification requiring the alien's personal appearance, or (ii) he is well and favorably known at the foreign service establishment at which he is applying, and is a resident of the consular district in which the foreign service establishment is located,
 - (5) Within a class of nonimmigrants classifiable under the visa symbols C-1, H-1, or I,
 - (6) Within a class of nonimmigrants classifiable under the visa symbol J-1, who qualifies as a leader in a field of specialized knowledge or skill and who is the recipient of a United States Government grant, and the spouse and children of such an alien who qualify for J-2 classification,
 - (7) Within any other nonimmigrant class not included in subparagraphs (1) through (6) of this paragraph in whose case the principal officer or, at a diplomatic mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the Supervising Consul General determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant, or
 - (8) Within a class of nonimmigrants classifiable under the visa symbols B-1 or B-2, if he is applying at a post which has been authorized by the Department to accept temporary visitor visa applications by mail.
- (b) In the categories described in subparagraphs (1) through (3) of paragraph (a) of this section, the visa application shall be made on Form FS-257. In any case in which personal appearance is waived, pursuant to subparagraph (8) of paragraph (a) of this section, application for a visa shall be made on Form FS-257a. In all other cases in which personal appearance is waived the consular officer may, in his discretion, require that the application be submitted on Form FS-257a.

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

(Amended 10-2-62, 27 F.R. 9723)

NOTES

1. Waiver of personal appearance pursuant to 22 CFR 41.114(a)(4) - (8).

- 1.1 The waiver of personal appearance for an applicant is not intended in any way to change the standards which are reflected in existing regulations and instructions with regard to security checks, visa classification, number of entries and validity of visas. (Added)
- 1.2 The waiver of personal appearance is discretionary. When the consular officer feels that an interview with the applicant is necessary before a final determination of eligibility can be made in a given case he should require a personal appearance. The fact that a case is being processed without personal appearance of the applicant does not relieve the consular officer from the responsibility of taking prompt final action. (Added)
- 1.3 Personal appearance should ordinarily be required of any alien in whose case a waiver of visa ineligibility under Section 212(d)(3)(A) of the Immigration and Nationality Act is sought. However, providing there is no doubt concerning the applicant's qualification as a nonimmigrant, personal appearance may be waived in the discretion of the consular officer if he feels that he has sufficient information on which to base a request for a waiver and no collateral intelligence purposes would be served by such a personal appearance. (Added)

2. Personal interview of visa applicant.

When personal appearance is required, every effort should be made by consular officers to conduct visa interviews fairly and sympathetically. Any semblance of cross-examination, assumption of bad faith or entrapment must be avoided. In border-line cases and in cases which are or may become the subject of controversy, a careful record should be made of the course of the interview so that the final action taken can be fully explained. (Added)

Mr. SOURWINE. Mr. Valenza has told us there was stress on consular officers, and I quote him, "to be as lenient as they possibly can with the evidence."

Do you think that is—

Mr. AUERBACH. With the evidence, you say?

Mr. SOURWINE. Yes, "to be as lenient as they possibly can with the evidence."

Mr. AUERBACH. If Mr. Valenza referred to the fact that we have eased up on the requirements to be submitted in connection with public charge and related evidence in nonimmigrant visa cases, then that is a correct statement.

Mr. SOURWINE. Mr. Auerbach, do you have any knowledge of any pressure or pressures brought on or against consular officers and visa officers, particularly in the field, with respect to particular visa cases?

Mr. AUERBACH. I have not been involved in individual visa cases for the last 2 years. Consequently, I can't give you a reply.

Mr. SOURWINE. Is there any pressure on U.S. visa officers from sources in the United States not connected with the State Department that you know of?

Mr. AUERBACH. Pressure in which direction, Mr. Sourwine?

Mr. SOURWINE. Do you know of any pressures brought on visa officers by sources not connected with the State Department? We would like to know about them. Pressures to do anything.

Mr. AUERBACH. Again, the term "pressure" is very broad. Of course, consular officers are approached by representatives of aliens who seek visas—attorneys, voluntary agencies seeking remedial action in cases in which visas have been refused.

Mr. SOURWINE. That is a part of their proper function, isn't it, to deal with these?

Mr. AUERBACH. That's right.

Mr. SOURWINE. You wouldn't call that a pressure?

Mr. AUERBACH. I would not.

Mr. SOURWINE. The question is about pressure. If you do not know of any, say so.

Mr. AUERBACH. I do not.

Mr. SOURWINE. Do you know of any pressures on U.S. visa officers from sources, nongovernmental sources, abroad?

Senator KEATING. He was talking about abroad.

Mr. SOURWINE. I meant to comprehend only nongovernmental sources in the United States in the previous question.

Mr. AUERBACH. I do not.

Mr. SOURWINE. Do you know of any particular visa cases in which any influence other than a proper consideration of the laws of the United States and the interpretation of those laws has influenced the decision?

Mr. AUERBACH. No.

Mr. SOURWINE. We spoke of Mr. Valenza. Do you consider Mr. Thomas Valenza, who is the Chief of the Security Branch of the Visa Office, to be a competent officer?

Mr. AUERBACH. I would not only consider him a competent officer, I consider him an outstanding officer. He served under my direct supervision for many years—not now. He is the only person to whom I gave two outstanding efficiency reports.

Mr. SOURWINE. Is he a good security man?

Mr. AUERBACH. He is an excellent security man.

Mr. SOURWINE. Do you consider him to be unnecessarily security minded?

Mr. AUERBACH. I would say no.

Mr. SOURWINE. Have you heard it stated that Mr. Valenza is unnecessarily security minded?

Mr. AUERBACH. No, I have not.

Mr. SOURWINE. Has Mr. Valenza's position changed organizationally since Mr. Schwartz became Administrator?

Mr. AUERBACH. We had a reorganization in the Visa Office, I believe it was in September 1962. I do not recall now when Mr. Schwartz took office. I think this was immediately preceding Mr. Schwartz taking office.

Prior to Mr. Schwartz's taking office, Mr. Valenza's position changed.

Mr. SOURWINE. How was it changed?

Mr. AUERBACH. Mr. Valenza at that time, in addition to being Chief of the Security Branch,¹ was also my deputy. I was then Assistant Director of the Visa Office and Division Chief. Mr. Valenza was my deputy as Division Chief. When the reorganization took place, his job became limited to that of Chief of the Security Branch.

Mr. SOURWINE. You said Mr. Valenza used to be supervised by you but was not now. Who is his supervisor now?

Mr. AUERBACH. His immediate supervisor is Mr. George Owen.

Mr. SOURWIN. Is Mr. Owen a security officer?

Mr. AUERBACH. Mr. Owen is a Foreign Service officer.

Mr. SOURWINE. Is he a security officer?

Mr. AUERBACH. He is no specialist as a security officer.

Mr. SOURWINE. The two are not necessarily incompatible. A Foreign Service officer could be a security officer?

Mr. AUERBACH. There are Foreign Service officers who came out of one of the security agencies and you might consider them experts. To the best of my knowledge, Mr. Owen is not a specialist in security matters.

Mr. SOURWINE. May I go off the record just a moment, Senator?

Senator KEATING. Yes.

(Off record discussion.)

Senator KEATING. We are in recess subject to the call of the Chair.

(Whereupon, at 3 p.m., the subcommittee recessed to reconvene the following day, Wednesday, August 12, 1964, at 8 a.m., in room 457 Old Senate Office Building.)

¹ Mr. Valenza's position was further discussed in the Aug. 12, 1964, hearing at p. 1138.

TESTIMONY OF FRANK L. AUERBACH

WEDNESDAY, AUGUST 12, 1964

Senator Hugh Scott presiding.

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

For the Department: Lawrence H. Hoover, Jr., Department observer.

(Mr. Auerbach was previously sworn.)

* * * * *

Senator HUGH SCOTT. The committee will come to order.

Are we proceeding with Mr. Auerbach as a new witness? Does he need to be sworn?

Mr. SOURWINE. No, sir; Mr. Auerbach has testified on previous occasions, the last time yesterday afternoon. He did not conclude.

Senator SCOTT. Go ahead, Mr. Sourwine.

Mr. SOURWINE. Mr. Auerbach, shortly before we recessed yesterday, you had referred to the fact that you had given Mr. Valenza* certain outstanding ratings. I believe you said he was the only man you ever gave two outstanding ratings to.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Do you recall the circumstances which called for giving him these outstanding ratings?

Mr. AUERBACH. The circumstances leading to these ratings are described in the reports which I have not reread recently. I was prompted by his good judgment, his devotion to his duties, his ability to analyze security cases objectively, and to make sound judgments. I would say these are the highlights.

Mr. SOURWINE. Mr. Auerbach, was either or were both of these outstanding ratings based in part upon Mr. Valenza's handling of certain extremely difficult security cases?

Mr. AUERBACH. As I recall, yes.

Mr. SOURWINE. In both cases, or in the case of one of the outstanding ratings?

Mr. AUERBACH. I think in one of them.

Mr. SOURWINE. I'll tell you that Mr. Valenza, perhaps through modesty, did not tell us of two outstanding ratings, but he did mention that he had been given by you an outstanding rating, which he said was because of his handling of certain extremely difficult security cases. Do you remember what those cases were?

Mr. AUERBACH. All I remember now is that these were highly classified cases involving difficult problems of evaluating whether the particular alien was or was not ineligible to receive a visa under the provisions of sections 212(a)(27), (28), or (29), of the Immigration and Nationality Act.

Mr. SOURWINE. Were these cases in which Mr. Valenza ruled that the aliens were ineligible?

Mr. AUERBACH. I don't recall all the cases at this point. In some, yes.

Mr. SOURWINE. Now, it must be true, must it not, that if you gave him an outstanding rating based on his handling of certain security

*Thomas Francis Valenza, Chief, Security Branch Visa Office.

cases, either there must have been something outstanding in the way he handled them, or else you must have felt that he was particularly right in the conclusion he reached.

Mr. AUERBACH. I would say, Mr. Chairman, both criteria would have applied.

Mr. SOURWINE. Do you know how many cases were involved, or approximately how many?

Mr. AUERBACH. I would now say maybe five. I would not be able to reconstruct these particular circumstances.

Mr. SOURWINE. I do not want to ask for the details of any of these cases because this might be deemed a security matter, and while not within the Executive order respecting the withholding of material in an employee security case, I don't even want to get that close to the question here. However, since, as it has been pointed out, that there are many security cases, and since, as you have indicated here, you are unable to say whether these particular cases were decided for or against, I think it is not improper to ask that we be given the names and dates of the cases which were particularly involved in getting Mr. Valenza his outstanding rating.

I understand that you will not be able to give us this information today from memory, but I would ask that the Chair instruct that the request of the committee be that this information be furnished.

Senator SCOTT. That will be done.

Mr. SOURWINE. It will, of course, have to have the approval of the Secretary of State, as we understand it.

Senator SCOTT. Subject to the approval of the Secretary of State, the request is made.

Mr. SOURWINE. Thank you, sir.

(Under date of February 19, 1965, Acting Assistant Secretary Lee, in a letter to the subcommittee, stated:

Before his death, Mr. Auerbach prepared a note which acknowledged that the subcommittee had requested the names and dates of cases which were particularly involved in getting Mr. Valenza's outstanding rating; however, Mr. Auerbach did not prepare an answer to this question and did not provide information which would enable the Department to prepare an answer to it.

Mr. Auerbach, Mr. Valenza told the committee that in all of these cases which were involved in his outstanding rating, there had been subsequent rereviews and reversals of the original decisions. Do you know whether this is true?

Mr. AUERBACH. I do not. As I explained on previous occasions, I was relieved of the responsibility for cases at the time of the reorganization of the Visa Office in September of 1962.

Mr. SOURWINE. Now, in the interest of saving time, if you don't know, please just say so.

Mr. AUERBACH. All right.

Mr. SOURWINE. If it is deemed pertinent to find out why you don't know, we'll ask.

Mr. AUERBACH. Thank you, sir.

Mr. SOURWINE. If it is true, as Mr. Valenza indicated, that all of the cases on which his outstanding ratings were based have since been changed as to result, then they must all now be in a status contrary to what you at the time regarded as the correct decision. Is that correct, from what you have said here already?

Mr. AUERBACH. To the extent that he had reached a negative finding, your conclusion would be correct.

Mr. SOURWINE. Now, I should like, Mr. Chairman, if you see fit, to have the further request made of the Department that the committee be informed for the record whether it is true that the decisions made or recommended by Mr. Valenza in these particular cases have been changed. This may be done without indicating whether the decision was adverse or favorable.

Senator SCOTT. Without objection, that is so ordered.

(Under cover of a letter dated February 19, 1965, Acting Assistant Secretary Lee wrote:)

Since Mr. Auerbach, in his note, did not identify the above-mentioned cases, the Department would be unable to indicate whether the decisions or recommendations might have been changed.

Mr. SOURWINE. Were you, Mr. Auerbach, ever in a position to approve or disapprove any of Mr. Valenza's decisions or recommendations?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Did you ever disapprove any?

Mr. AUERBACH. There have been many cases involved. I do not recall any far-reaching case or cases of any consequence where I disagreed with him. It could very well have been that there were matters of judgment involved. But there has never been a basic conflict in interpretation between Mr. Valenza and me.

Mr. SOURWINE. It is easy to see why you would have a high opinion of his judgment in that case.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Mr. Auerbach, did you have an opinion or opportunity to express an opinion with respect to any action which may have been taken in reversing any of these decisions made or recommended by Mr. Valenza?

Mr. AUERBACH. No.

Mr. SOURWINE. If any of them have been reversed, would you know or do you know on whose orders?

Mr. AUERBACH. No, I would not.

Mr. SOURWINE. Has the Visa Office ever been reversed by the Administrator of the Bureau in any matter of substance?

Mr. AUERBACH. May I ask you to clarify this question? Are you referring to cases?

Mr. SOURWINE. Anything at all. Has the Visa Office ever made a decision in a matter of substance which went up to the Administrator and was there reversed?

I might say there is no shame to you involved if that happened. I would expect that might happen any number of times. I am just trying to find out for the record if it did.

Mr. AUERBACH. I'm trying to think about my area of jurisdiction.

Mr. SOURWINE. Never mind your own area of jurisdiction. The question goes to anything you know. Do you know of any area?

Mr. AUERBACH. I do not recall at this point any incident of this kind.

Mr. SOURWINE. That is right down to the present time?

Mr. AUERBACH. Mr. Chairman, I think I can testify only to first-hand information.

Mr. SOURWINE. Of course, you can only testify to what you know.

Mr. AUERBACH. Right.

Mr. SOURWINE. You don't know of any such instance?

Mr. AUERBACH. I have no solid knowledge of any such situation.

Mr. SOURWINE. Does that indicate that you do have information with respect to such an occasion, but don't consider the information such as to be solid?

Mr. AUERBACH. None comes to my mind at this point.

Mr. SOURWINE. All right.

Do you know of any instance in which the Visa Office has ever been ordered to reverse itself and grant a visa after it had been denied?

Mr. AUERBACH. I referred to one case during my first appearance before this committee in which, to my knowledge, a previous denial of a waiver of eligibility was reversed, but I do not know, as I believe I indicated then, who directed this action.

Mr. SOURWINE. Did you identify that case?

Mr. AUERBACH. Yes, I did.

Mr. SOURWINE. And you know of no other?

Mr. AUERBACH. None comes to my mind.

Mr. SOURWINE. Do you know of any instance in which Mr. Schwartz has reversed the Visa Office when it approved or recommended the issuance of a visa?

Mr. AUERBACH. I do not.

Mr. SOURWINE. As a matter of policy, in the Bureau of Security and Consular Affairs, are visa officers ever bypassed in connection with visa matters?

Mr. AUERBACH. Again, I have no knowledge in view of the definition of my responsibilities.

Mr. SOURWINE. Is the Visa Office itself every bypassed in making decisions on visa matters?

Mr. AUERBACH. The basic responsibility, as far as the Department is concerned, rests of course, with the Secretary of State and with the Administrator by delegation from the Secretary of State. So I think the Administrator at any time has the authority to reach decisions which are delegated to the Visa Office.

Mr. SOURWINE. Of course it has.

Mr. AUERBACH. But I do not get involved in cases, as I have pointed out, and have no knowledge of any such case.

Mr. SOURWINE. All right, do you know of any instance in which Mr. Schwartz has taken action to cause the denial of a visa or a visa waiver in a case where the Visa Office thought it should have been granted?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Do you know of any case in which Mr. Schwartz has taken action to cause the denial—the granting of a visa or a visa waiver where the Visa Office thought it should be denied?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Now, does that answer comprehend the one case that you told us about earlier?

Mr. AUERBACH. As I indicated before, Mr. Sourwine, I do not know who directed this issuance.

Mr. SOURWINE. Very good. What is the proper security procedure in the handling of a visa application?

Mr. AUERBACH. I presume you refer to the issuance of visas at consular offices?

Mr. SOURWINE. Yes.

Mr. AUERBACH. This, of course, is a rather comprehensive procedure and varies to some extent, depending on whether the applicant is an applicant for an immigrant visa or for a nonimmigrant visa.

Mr. SOURWINE. Go ahead and explain.

Mr. AUERBACH. In the case of the immigrant visa applicant as well as in the case of the nonimmigrant visa applicant, every consul is required to make checks against what we refer to as local Lookout Cards and against the so-called Lookout Book.

Mr. SOURWINE. The Lookout Book is the same for all?

Mr. AUERBACH. The Lookout Book is the same for all.

Mr. SOURWINE. And the local Lookout Cards are different from station to station?

Mr. AUERBACH. They are additional and are different from station to station. The check is made by a local employee, usually before the case comes before the consul. In the case of immigrants, in addition to this first check, checks are made at all posts at which the alien has been in residence for 6 months or more before his application for the visa.

In the case of nonimmigrants, the consular officer has authority to make these out-of-town checks on what is referred to as a postcheck basis; in other words, he may issue the visa and make this particular examination after the issuance of the visa. And if adverse information becomes known subsequent to the issuance of the visa and the alien is still outside of the United States, he will take steps to have this visa revoked. If the alien has already entered the United States, this information will be made known to the Department for referral to the Immigration and Naturalization Service, and possible revocation of the visa if it is a nonimmigrant visa.

Mr. SOURWINE. Are these checks that you have spoken of in the case of nonimmigrant visas made the same way and to the same extent whether the application is with the appearance of the applicant or without the appearance of the applicant?

Mr. AUERBACH. Yes; the same checks are made whether the alien appears in person or applies without personal appearance.

Mr. SOURWINE. Now, when an alien has a visa, a nonimmigrant visa, which I think you said could be issued up to 4 years—

Mr. AUERBACH. That is correct.

Mr. SOURWINE (continuing). —and he seeks the revalidation of that visa, what security checks are required?

Mr. AUERBACH. The consular officer would make the checks against the Lookout Book, against the local cards, would make certain that no adverse information has come to his attention since the issuance of the original visa. I must state here that I do not recall whether checks at this point will be made with places of residence he has been in for 6 months or more since the issuance of the last visa. I assume that they will be made, but I cannot say this definitely.

Can I make one point off the record?

Senator SCOTT. Yes.

(Discussion off record.)

Mr. SOURWINE. Back on the record.

Can an individual, an alien, get a nonimmigrant visa which will permit him to enter and leave and reenter the United States a number of times during a period of validity?

Mr. AUERBACH. Visas are issued either for a limited number of applications for admission or for unlimited numbers of applications for admission.

Mr. SOURWINE. Are the checks the same, the security checks the same with respect to both types of issuance?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Can an alien get a 4-year visa which will let him come to the United States and stay here 4 years as a visitor?

Mr. AUERBACH. I want to be sure I understand your question correctly. Let me point out that the period of validity of the visa is not related to the period of admission, as you know, of course. In other words, the period of validity of the visa signifies that, during this period, the alien can make any number of applications for admission at a port of entry to the Immigration and Naturalization Service.

As you also know, it is conceivable that an alien arrives here with a visa valid for 1 day and is admitted for 6 months and will get extensions of stay because the validity of the visa is no condition for the extension of stay.

Mr. SOURWINE. But on the contrary, if a man has a 4-year visa and he comes to the United States, will he be limited as to his stay to a period less than 4 years?

Mr. AUERBACH. Oh, yes, indeed. The Immigration Service, to the best of my knowledge, never admits an alien at one time for more than 6 months, and I believe in certain types of cases for 1 year, and after the period of admission expires the alien has to apply for an extension of stay.

Mr. SOURWINE. So if the man has a 4-year visa, he will still be subject to a reapplication for extension of stay at least every 6 months, if he wanted to remain in the country?

Mr. AUERBACH. That is correct; every 6 months, or 1 year, depending on the circumstances. I would like to stand corrected on that point if I am wrong.

Mr. SOURWINE. Now, if an alien has come to the United States under a 4-year visa and has had extensions which permitted him to remain in the United States for 4 years, and at the end of that time, does he have to apply for another visa or for an extension of the visa in order to stay here, or does he then only ask a further extension of his stay from the Immigration and Naturalization Service?

Mr. AUERBACH. If he does not leave the United States, then the alien does not need to have a valid visa. He needs a valid visa only at the time of his application for admission.

Mr. SOURWINE. This would be true just as much in the case of a 4-year visa as in the case of a 1-day visa?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. He might come in under a 1-day visa and be extended for 6 months or more; he might come in under a 4-year visa and be extended for an indefinite series of year after year?

Mr. AUERBACH. That is correct, and you know, of course, that the Immigration and Naturalization Service, in deciding on the period

of admission, is guided by the alien's purpose in coming here. So that a student of medicine, of course, would be permitted to be here for a considerably longer period of time than someone who comes to attend a wedding.

Mr. SOURWINE. Now, is it easier to secure the revalidation of a visa than it is to get a visa?

Mr. AUERBACH. Yes, to the extent that the revalidation always can take place without personal appearance.

Mr. SOURWINE. If an individual is granted a visa without a personal appearance, is his process of obtaining that visa just as easy as the process of obtaining the revalidation of a visa previously issued?

Mr. AUERBACH. May I ask the reporter to read that question?

Mr. SOURWINE. Surely.

(The pending question was read.)

Mr. AUERBACH. I would assume that a first issuance of a visa is always a more thoroughgoing process than the reissuance or revalidation of a visa.

Mr. SOURWINE. Do you think that the security checks in the case of an application for a revalidation of a visa are either less in scope or more perfunctory than the security checks in connection with the original issuance of a visa?

Mr. AUERBACH. As far as I recall, the instructions would call for the same type of examination.

Mr. SOURWINE. How does that answer jive with your last answer, which indicated that you thought that the security checks were more thorough in the case of an original visa application than in the case of a revalidation?

Mr. AUERBACH. In the case of the alien who appears in person for his first visa, I would assume that the consular officer, if any doubts exist, would quiz this alien much more thoroughly to resolve any questions of doubt. Having resolved these questions of doubt, when the time for application for revalidation comes, I presume the checks then are done on the record.

Mr. SOURWINE. Are you meaning to say that in the case of a revalidation, they simply bring the security information up to date or make a check to see if there is anything adverse since the original issuance?

Mr. AUERBACH. That is essentially correct.

Mr. SOURWINE. What I am trying to get at is whether there is any security danger or security problem in the issuance of visas without appearance, and their subsequent revalidation without appearance over what might be quite a term of years. Can you help us to get at the root of this problem? Do you know the answer to this question?

Mr. AUERBACH. This is a very difficult question to evaluate in a "yes" or "no" form. I think this is a type of question which should be explored, if I may say that, by actual case studies, and since these procedures have been in effect for some time, that the Department might wish to explore—

Mr. SOURWINE. Has the Department ever explored this question, to your knowledge?

Mr. AUERBACH. Not to my knowledge.

Mr. SOURWINE. Surely you know the committee is not in a position to explore it adequately, because we don't have enough information

about these occasions. If it is to be explored, the Department would have to do it. Would it be your recommendation that the Department explore this question?

Mr. AUERBACH. I would certainly believe that this would be consistent with the Department's responsibility.

Mr. SOURWINE. Have you ever recommended that this be done?

Mr. AUERBACH. I believe I have recommended that the relative security of issuing visas by mail, or, rather, without personal appearance be evaluated against the issuance with personal appearance.

Mr. SOURWINE. Has that been done?

Mr. AUERBACH. I am unaware of that.

Mr. SOURWINE. If the committee were to ask the Department to make a study such as we were talking about, it would take a very considerable length of time to do it well, wouldn't it?

Mr. AUERBACH. I would think so, yes.

Mr. SOURWINE. Well, I'll not suggest such a request, because we are trying to complete these hearings this week. Can you tell us how long it takes, on the average, to perform the necessary and essential security work in connection with a visa application?

Mr. AUERBACH. Here again, Mr. Sourwine, we have to differentiate between immigrants and nonimmigrants.

Mr. SOURWINE. Yes.

Mr. AUERBACH. In the case of immigrants, I would think it is the general experience that depending on the number of places of residence of the applicant outside of the consular district, it may take anywhere from 1 to 3 or 4 months.

Mr. SOURWINE. Now, when I say how long does it take to perform the necessary and essential security work, I asked for an average. I am now asking the same question with regard to a minimum. What do you consider the minimum time required to perform the necessary and essential security work in connection with an application for an immigrant visa?

Mr. AUERBACH. I do not try to evade the question, but it depends on the countries in which the alien has resided, Mr. Chairman, because it depends on the cooperation you have in reaching certain sources of information. But if you wish to take an average, I have known of cases which have been handled maybe in 6 weeks, and others which have taken much longer.

Mr. SOURWINE. All right. That is not an average. You are talking now about particular cases. Have you ever known a case to be handled in a month or less?

Mr. AUERBACH. If the alien has not resided outside the place where he applies for a visa, the answer is "Yes."

Mr. SOURWINE. Could this be done in a week?

Mr. AUERBACH. My knowledge of the operational aspects is not sufficiently solid to give you an answer to this question.

Mr. SOURWINE. All right.

Now, with respect to a nonimmigrant visa, what is the average time required for the essential security work, and what is the minimum on the same basis you expressed it for the other type of visa?

Mr. AUERBACH. As I explained, in most nonimmigrant cases where there is no obvious adverse information known and the alien is not

from an out-of-town district, the visa may be issued in half an hour or less, inasmuch as certain other checks which require inquiry out of town will be made on what I referred to as a postcheck basis.

Mr. SOURWINE. Now, do you, Mr. Auerbach, know of any instances in which visas have been granted and in which derogatory information has afterward come in or been discovered which had a bearing on the eligibility of the applicant to receive a visa?

Mr. AUERBACH. Such instances have occurred, yes.

Mr. SOURWINE. Has it ever been necessary, to your knowledge, to cancel any visas because of situations of this kind?

Mr. AUERBACH. Yes.

Mr. SOURWINE. In approximately how many cases?

Mr. AUERBACH. I do not know.

Mr. SOURWINE. Would you have an idea how high a percentage of cases fall into this class?

Mr. AUERBACH. I would not, but I presume that this information could be either made available or an effort could be made to make this information available. I am not certain, Mr. Sourwine, whether a record is kept of all cancellations.

I have been relieved from this particular aspect of visa work for 2 years.

Mr. SOURWINE. Mr. Chairman, may the request be that the Department furnish, if it is statistically possible to do so, figures showing the number of visas which have been canceled or curtailed during the last 2 years as a result of information becoming available or being discovered after the visa had been issued.

Senator SCOTT. Without objection, that is so ordered.*

Mr. SOURWINE. Have cases of this kind caused any embarrassment to the Department, as far as you know?

Mr. AUERBACH. I do not recall any particular case of this type.

Mr. SOURWINE. As a result of such a situation, has it ever been necessary to ask for a visa waiver or to recommend a visa waiver which may not otherwise have been asked for or recommended?

Mr. AUERBACH. I do recall that situations like this have arisen without being able to remember names.

Mr. SOURWINE. Now, I want to go back to a point which hooks up with your earlier testimony.

Are visas issued or issuable by all consular officers, or only by certain consular officers?

Mr. AUERBACH. Only visa officers as defined by the Immigration and Nationality Act are authorized to issue visas.

Mr. SOURWINE. And all consular officers are not visa officers?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Now, are visas issued at all stations or posts where there are consular officers?

Mr. AUERBACH. May I make a correction of my statement?

Mr. SOURWINE. Of course.

Mr. AUERBACH. To the best of my knowledge, all consular officers are authorized to issue visas.

Mr. SOURWINE. That is the point I was trying to get at.

Mr. AUERBACH. Right.

*The requested information had not been supplied at the time of publication of this volume.

Mr. SOURWINE. You had said earlier, no.

Mr. AUERBACH. I was in error; I'm sorry.

Mr. SOURWINE. Then are visas issued at any post or station abroad where there is a consular officer?

Mr. AUERBACH. Would you mind repeating that question?

Mr. SOURWINE. Are visas issued at any post or station abroad where there is a consular office?

Mr. AUERBACH. Nonimmigrant visas are issued at all posts; immigrant visas are issued only at certain posts.

Mr. SOURWINE. Is there a list available of the posts at which immigrant visas are issued?

Mr. AUERBACH. Indeed there is a list available.

Mr. SOURWINE. Is this a classified document in any way?

Mr. AUERBACH. No, this is a document which is made available to the general public.

Mr. SOURWINE. For instance, if I say, "Are immigrant visas issued at Paris?" you can say they are or they are not?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Do you happen to know whether they are?

Mr. AUERBACH. They are issued in Paris.

Mr. SOURWINE. If I say, "Are they issued at Bremen?" are they or are they not?

Mr. AUERBACH. There has been a change with Bremen. Immigrant visas are not issued in Bremen. I do not recall now whether nonimmigrant visa issuance has been terminated there. There has been certain—

Mr. SOURWINE. I thought you said that nonimmigrant visas were issued at all stations abroad.

Mr. AUERBACH. At all visa-issuing stations.

Mr. SOURWINE. Oh. In other words, there are stations abroad which are not visa-issuing stations?

Mr. AUERBACH. Take Yokohama, for example. Yokohama used to issue nonimmigrant visas and is now more limited. There has been a tendency to limit certain posts to certain functions, so that certain posts do not issue visas. But I do not—

Mr. SOURWINE. You say Yokohama does not issue any class of visas now?

Mr. AUERBACH. Does not issue immigrant or nonimmigrant visas.

Mr. SOURWINE. How about Stuttgart? Do they issue immigrant or nonimmigrant visas?

Mr. AUERBACH. Stuttgart does not issue immigrant visas, but issues nonimmigrant visas.

Mr. SOURWINE. Are these classifications based upon lists of those to whom the power of issuance has been given, or are they determined on the basis of a withdrawal of the power from certain stipulated posts?

Do you follow me?

Mr. AUERBACH. As I understand your question, you wish to know whether this authority is attached to the individual or to the necessity of the location?

Mr. SOURWINE. No, I did not mean that, although that perhaps is an interesting question.

Let me put it this way: You have testified that in the case of immigrant visas, there is a list of stations which issues them.

Mr. AUERBACH. And of nonimmigrant visas.

Mr. SOURWINE. There is also a list of those who issue nonimmigrant visas?

Mr. AUERBACH. This is a combined list.

Mr. SOURWINE. A combined list showing in one list what type of visas are issued?

Mr. AUERBACH. This one list indicates whether a post issues immigrant and nonimmigrant visas or only nonimmigrant visas or only diplomatic visas. For example, Bonn is an example of an embassy which issues only diplomatic visas.

Mr. SOURWINE. I see. This list, then, includes every post, or does it only include posts which issue any kind of a visa?

Mr. AUERBACH. Only those posts which issue some kind of visa.

Mr. SOURWINE. That answer necessarily implies that there are some posts abroad manned by individuals from the State Department which do not issue any kind of a visa. Is this correct?

Mr. AUERBACH. I believe that is correct. I would like to plead ignorance, because this is an operational question, with which I do not keep up to date as much as I do with the legal aspects of the law.

Mr. SOURWINE. I need one more question answered, I think, to make this picture clear.

With respect to posts which do not issue immigrant visas, does the fact that they do not, indicate that they have been withdrawn from the list of those who do, or might it be simply that they never were designated to issue immigrant visas?

Mr. AUERBACH. It may be that they were never designated to issue immigrant visas.

You referred to Stuttgart. I happen to remember that before the war Stuttgart did issue immigrant visas. These are questions of personnel management and shifting needs for visa facilities in a given country which govern these determinations.

Mr. SOURWINE. Does the same situation entail with respect to nonimmigrant visas? That is, where a post does not issue a nonimmigrant visa, is that because the power of issuance of such visas has been withdrawn from the post, or could it be that that post never did issue nonimmigrant visas?

Mr. AUERBACH. I believe the latter is true, but I would prefer if a more competent witness could be quizzed on this operational question.

Mr. SOURWINE. In the absence of such a witness, Mr. Chairman, I think we can fill out the record if we may ask for three lists; first, the list which Mr. Auerbach has identified as a combined list, showing the posts and stations which issue either both types of visas or only nonimmigrant visas.

Senator SCOTT. Without objection, that is so ordered.

(Under a covering letter dated February 19, 1965, Acting Assistant Secretary Lee supplied the subcommittee with the following list:)

IMMIGRANT AND NONIMMIGRANT

Aden Colony (and Protectorate): Aden, consulate.

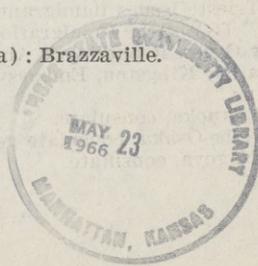
Afghanistan: Kabul, Embassy.

Algeria: Algiers, Embassy.

Angola (Portuguese West Africa): Luanda, consulate general.

Argentina: Buenos Aires, Embassy.

- Australia :
 Adelaide, consulate.
 Brisbane, consulate.
 Melbourne, consulate general.
 Perth, consulate.
 Sidney, consulate general.
- Austria : Vienna, Embassy.
- Bahama Islands : Nassau, consulate general.
- Barbados : Bridgetown, Barbados, consulate general.
- Belgium : Brussels, Embassy.
- Bermuda : Hamilton, consulate general.
- Bolivia :
 Cochabamba, consulate.
 La Paz, Embassy.
- Brazil :
 Belém, consulate.
 Belo Horizonte, consulate.
 Curitiba, consulate.
 Porto Alegre, consulate.
 Recife, consulate general.
 Rio de Janeiro, Embassy.
 Salvador, consulate.
 São Paulo, consulate general.
- British Guiana : Georgetown, consulate general.
- British Honduras : Belize, consulate.
- Bulgaria : Sofia, Legation.
- Burma : Rangoon, Embassy.
- Burundi, Kingdom of : Usumbura, Legation.
- Cambodia, Kingdom of : Phnom-Penh, Embassy.
- Cameroon, Federal Republic of : Yaounde, Embassy.
- Canada :
 Calgary, consulate general.
 Halifax, consulate general.
 Montreal, consulate general.
 Quebec, consulate.
 Saint John, consulate.
 St. John's, consulate general.
 Toronto, consulate general.
 Vancouver, consulate general.
 Windsor, consulate.
 Winnipeg, consulate general.
- Canal Zone : Balboa, the Executive Secretary of the Canal Zone.
- Caroline Islands, Eastern (Trust Territory of the Pacific Islands) : Ponape, (district administrator).
- Caroline Islands, Western (Trust Territory of the Pacific Islands) :
 Koror, Palau District (district administrator).
 Yap (district administrator).
- Central African Republic (former Ubangi Shari) : Bangui, Embassy.
- Ceylon : Colombo, Embassy.
- Chad, Republic of : Fort Lamy.
- Chile :
 Antofagasta, consulate.
 Santiago, Embassy.
- China (Taiwan) : Taipei, Taiwan (Formosa) Embassy.
- Colombia :
 Barranquilla, consulate.
 Bogotá, embassy.
 Cali, consulate.
 Medellín, consulate.
- Congo, Republic of (former French Equatorial Africa) : Brazzaville.
- Congo, Republic of the (former Belgian Congo) :
 Bukavu, consulate.
 Léopoldville, Embassy.
- Costa Rica : San Jose, Embassy.
- Cyprus, Republic of : Nicosia, Embassy.
- Czechoslovakia : Prague, Embassy.



- Dahomey, Republic of : Cotonou, Embassy.
 Denmark : Copenhagen, Embassy.
 Dominican Republic : Santo Domingo, Embassy.
 Ecuador :
 Guayaquil, consulate general.
 Quito, Embassy.
 El Salvador : San Salvador, Embassy.
 England :
 Liverpool, consulate.
 London, Embassy.
 Ethiopia (including Eritrea) :
 Addis Ababa, Embassy.
 Asmara, consulate.
 Fiji Islands : Suva, consulate.
 Finland : Helsinki, Embassy.
 France :
 Bordeaux, consulate.
 Marseille, consulate general.
 France : Paris, Embassy.
 Gabon, Republic of : Libreville, Embassy.
 Germany :
 Berlin, mission.
 Frankfurt/Main, consulate general.
 Hamburg, consulate general.
 Munich, consulate general.
 Ghana : Accra, Embassy.
 Greece :
 Athens, Embassy.
 Thessaloniki (Salonika), consulate general.
 Guatemala : Guatemala City, Embassy.
 Guinea, Republic of (former French Guinea) : Conakry, Embassy.
 Haiti : Port-au-Prince, Embassy.
 Honduras :
 San Pedro Sula, consulate.
 Tegucigalpa, Embassy.
 Hungary :
 Budapest, Legation.
 The Legation at Budapest has limited visa facilities and issues diplomatic, official and (in rare instances) other nonimmigrant visas, and preference and nonquota immigrant visas only.
 Iceland : Reykjavik, Embassy.
 India :
 Bombay, consulate general.
 Calcutta, consulate general.
 Madras, consulate general.
 New Delhi, Embassy.
 Indonesia : Djakarta (Batavia), Embassy.
 Iran, clearance procedures : Teheran, Embassy.
 Iraq : Baghdad, Embassy.
 Ireland :
 Northern : Belfast, consulate general.
 Republic of (Eire) : Dublin, Embassy.
 Israel : Tel Aviv, Embassy.
 Italy :
 Genoa (Genova), consulate general.
 Naples (Napoli), consulate general.
 Palermo, consulate general.
 Trieste issues immigrant visas only under section 101(a) (27) (A) through (G) of the Immigration and Nationality Act.
 Ivory Coast, Republic of : Abidjan, Embassy.
 Jamaica : Kingston, Embassy.
 Japan :
 Fukuoka, consulate.
 Kobe-Osaka, consulate general.
 Nagoya, consulate.

Naha, consular unit (Okinawa).
Sapporo, consulate.
Tokyo, Embassy.

Jordan: Amman, Embassy.
Kenya: Nairobi, Embassy.
Korea: Seoul, Embassy.
Kuwait, State of: Kuwait, Embassy.
Laos: Vientiane, Embassy.
Lebanon: Beirut, Embassy.
Liberia: Monrovia, Embassy.
Libya: Tripoli, Embassy.
Malaysia: Singapore, consulate general.
Mali, Republic of (former French Soudan): Bamako, Embassy.
Malta: Valletta, consulate.
Mariana Island (Trust Territory): Saipan, district administrator.
Marshall Islands (Trust Territory): Majuro, district administrator.
Mauritania, Islamic Republic of: Nouakchott, Embassy.

Mexico:
Ciudad Juarez (Chihuahua), consulate.
Guadalajara (Jalisco), consulate general.
Merida (Yucatan), consulate.
Mexico, Embassy D. F. (District Federal).
Monterrey (Nuevo Leon), consulate general.
Nogales (Sonora), consulate.
Tijuana (Baja California), consulate general.

Morocco:
Casablanca, consulate general.
Tangier, branch office of Embassy.

Mozambique: Lourenco Marques, consulate general.

Nepal, Kingdom of: Katmandu, Embassy.

Netherlands: Rotterdam, consulate general.

Netherlands Antilles: Curacao, consulate general.

Netherlands Guiana (Dutch Guiana): Paramaribo, Surinam, consulate general.

New Zealand:
Auckland, consulate.
Wellington, Embassy.

Nicaragua: Managua, Embassy.

Niger, Republic of: Niamey, Embassy.

Nigeria, Federation of:
Ibadan, consulate.
Lagos, Embassy.

Norway: Oslo, Embassy.

Nyasaland: Blantyre, consulate.

Pakistan:
Dacca, consulate general.
Karachi, Embassy.
Lahore, consulate general.

Panama: Panamá City, Embassy.

Paraguay: Asunción, Embassy.

Peru: Lima, Embassy.

Philippines, Republic of the: Manila, Embassy.

Poland: Warsaw, Embassy.

Portugal:
Lisbon, Embassy.
Oporto, consulate.
Ponta Delgada, São Miguel Island, consulate.

Rhodesia:
Lusaka, consulate.
Salisbury, consulate general.

Rumania: Bucharest, Legation.

Rwanda (Africa): Kigali, Embassy.

Samoa, American: Pago Pago, office of the Governor, Tutuilla.

Saudi Arabia:
Dhahran, consulate general.
Jidda, embassy.

Scotland: Glasgow, consulate.
 Senegal, Republic of: Dakar, Embassy.
 Sierra Leone: Freetown, Embassy.
 Somali Republic: Mogadiscio, Embassy.
 South Africa, Republic of:
 Cape Town, consulate general.
 Durban, consulate general.
 Johannesburg, consulate general.
 Spain:
 Barcelona, consulate general.
 Bilbao, consulate.
 Madrid, Embassy.
 Seville, consulate general.
 Sudan, Republic of the: Khartoum, Embassy.
 Sweden:
 Goteborg, consulate general.
 Stockholm, Embassy.
 Switzerland: Zurich, consulate general.
 Syrian Arab Republic:
 Aleppo, consulate general.
 Damascus, Embassy.
 Tanganyika (East Africa): Dar-es-Salaam, Embassy.
 Thailand (Siam): Bangkok (Krung Thep), Embassy.
 Togo, Republic of (former French Togoland): Lomé, Embassy.
 Trinidad and Tobago: Port-of-Spain, Trinidad, Embassy.
 Tunisia: Tunis, Embassy.
 Turkey:
 Ankara, Embassy.
 Istanbul, consulate general.
 Izmir, consulate general.
 Union of Soviet Socialist Republics: Moscow, Embassy.
 United Arab Republic (formerly Egypt): Cairo, Embassy.
 Upper Volta, Republic of: Ougadougou, Embassy.
 Uruguay: Montevideo, Embassy.
 Venezuela:
 Caracas, Embassy.
 Maracaibo, consulate.
 Puerto la Cruz, consulate.
 Vietnam: Saigon, Embassy.
 West Indies, French: Martinique, consulate.
 Yemen Arab Republic (formerly Kingdom of Yemen): Taiz, Embassy.
 Yugoslavia: Belgrade, Embassy.
 Zanzibar: Zanzibar, Embassy.

NONIMMIGRANT ONLY

Algeria:
 Constantine, consulate.
 Oran, consulate.
 Argentina: Cordoba, consulate.
 Belgium: Antwerp, consulate general.
 Brazil: Brasilia, branch office of Embassy at Rio de Janeiro.
 Cameroon, Federal Republic of: Douala, consulate.
 Canada: Ottawa, Embassy.
 Congo, Republic of the (former Belgian Congo):
 Bukavu, consulate.
 Elisabethville, consulate.
 Stanleyville, consulate.
 Dominican Republic: Santiago de los Caballeros, consulate.
 England:
 Birmingham, consulate.
 Southampton, consulate.
 France:
 Lyon, consulate.
 Nice, consulate.
 Strasbourg, consulate.

Germany :

Bonn, Embassy.
 Bremen, consulate general.
 Duesseldorf, consulate general.
 Stuttgart, consulate general.

Indonesia :

Medan (Sumatra), consulate.
 Surabaya, consulate.

Iran :

Isfahan, consulate.
 Khorramshahr (Mohammerah), consulate.
 Meshed (Mash-Had), consulate.
 Tabriz, consulate.

Iraq : Basra, consulate.

Italy :

Florence (Firenze), consulate.
 Milan (Milano), consulate general.
 Rome, Embassy.
 Trieste, consulate.
 Turin (Torino), consulate.

Libya : Benghazi, consulate.

Luxembourg, Grand Duchy of : Luxembourg City, Embassy.

Mexico :

Matamoros (Tamaulipas), consulate.
 Mazatlan (Sinaloa), consulate.
 Mexicali (Baja California), consulate.
 Nuevo Laredo (Tamaulipas), consulate (nonimmigrant and preference im-
 migrant only).
 Piedras Negras (Coahuila), consulate.
 Tampico (Tamaulipas), consulate (nonimmigrant and preference immi-
 grant only).
 Veracruz (Veracruz), consulate.

Morocco : Rabat, Embassy.

Netherlands : Amsterdam, consulate general.

Nigeria, Federation of :

Kaduna, consulate.
 Enugu, consulate.

Pakistan : Peshawar, consulate.

Panama : Colon, consulate.

Peru : Arequipa, consulate.

Philippines, Republic of the : Cebu, consulate.

Poland : Poznan, consulate.

Scotland : Edinburgh, consulate.

South Africa, Republic of : Port Elizabeth, consulate.

Spain :

Valencia, consulate.
 Vigo, consulate.

Switzerland : Bern, Embassy.

Turkey : Adana, consulate.

United Arab Republic (formerly Egypt) :

Alexandria, consulate general.
 Port Said, consulate.

Yugoslavia : Zagreb, consulate general.

DIPLOMATIC AND OFFICIAL ONLY

Australia : Canberra, Embassy (Sydney issues diplomatic visas when authorized
 by the Embassy).
 Netherlands : The Hague, Embassy.
 South Africa, Republic of : Pretoria, Embassy.
 Hungary : Budapest has limited visa facilities and issues diplomatic, official,
 and (in rare instances) other nonimmigrant visas and preference and nonquota
 immigrant visas only.

CREW LISTS

Canal Zone: Deputy shipping commissioners at Balboa and Cristobal.

Mr. SOURWINE. Second, a list of the posts and stations abroad which do not issue any visas at all if, in fact, there are any such posts and stations.

Senator SCOTT. Without objection, it is so ordered.

LISTS OF POSTS WHICH DO NOT ISSUE VISAS

Burma: Mandalay, consulate.¹
 Palestine: Jerusalem, consulate general.
 Libya: Baida.
 Malaysia: Kuching, consulate.
 Pakistan: Rawalpindi office.
 Thailand:
 Chiengmai, consulate.
 Udorn, consulate (special purpose post).
 Vietnam: Hue, consulate.
 Yemen: Sana's office.

Mr. SOURWINE. Third, a list of stations which have formerly had the power to issue visas of one class or another, but have had that authority withdrawn and an indication, if possible, of the reason why it was withdrawn.

Senator SCOTT. Without objection, that is so ordered.

(By letter dated February 19, 1965, Acting Assistant Secretary Lee replied as follows:)

In 1963, the consulate at Mandalay was reduced to a special purpose post with only one officer. In view of staff limitations, no visa services could be performed at that office. It previously issued nonimmigrant visas only.

Mr. SOURWINE. Mr. Auerbach, Mr. Valenza told us that he had noticed that the Visa Division was getting from the field more and more derogatory reports. Do you know what he was referring to?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Have you noticed any increase in the number of complaints coming in with respect to refusals to grant or issue visas or visa waivers?

Mr. AUERBACH. No; I have not.

Mr. SOURWINE. Is it true that checks on visa applicants today are not as thorough as they should be?

Mr. AUERBACH. This is a matter of judgment, Mr. Chairman.

Mr. SOURWINE. You are an expert. What is your judgment?

Mr. AUERBACH. I cannot speak for the Department here.

Mr. SOURWINE. We understand that.

Mr. AUERBACH. I can give only a qualified answer, Mr. Chairman, and this answer would be referring to an earlier observation I made, that the general tendency to facilitate tourism may lead a consular officer to rely on the postcheck approach more readily than he used to years ago.

Mr. SOURWINE. All right.

Mr. Auerbach, would it be more economical and efficient to have visas issued by the same authority and, so far as possible, by the same personnel as admissions?

¹ Mandalay is the only post which previously issued visas.

Mr. AUERBACH. As I understand your question, you ask whether the doublecheck system is effective or whether it should be eliminated in favor of a one-service administration of the law.

Mr. SOURWINE. Well, if that is the way you understand the question, answer it on that basis.

Mr. AUERBACH. Again, I cannot speak for the Department and I would like this to be very clearly understood.

As you know, there have been recommendations from persons, authorities, and commissions, who are more experienced than I am, that steps in this direction be taken. I recall the Commission on Government Security, the so-called Wright Commission—

Mr. SOURWINE. Lloyd Wright. He is a former president of the American Bar Association.

Mr. AUERBACH (continuing). —made such a recommendation in 1957, or at least a recommendation approximating this solution.

I believe the Hoover Commission made such a recommendation at one time; much earlier, of course. I believe that Members of Congress have introduced legislation to that effect, including the late Congressman Walter and, I believe, Congressman Celler.

Mr. SOURWINE. All of this being true, it still doesn't answer the question, which calls for your conclusion.

Mr. AUERBACH. My conclusion would be that the time seems ripe to make a thorough investigation of all elements which led to the doublecheck when it was first established and determine whether, in the light of developments of recent years, it still serves that purpose, because there are certain areas in which it does not. I think such an examination would have to include the field and would have to examine all the elements and would—it could either lead to a strengthening of the doublecheck system or could lead to an elimination of the doublecheck system.

Mr. SOURWINE. What are the areas in which the doublecheck system, you say, does not serve the purposes intended?

Mr. AUERBACH. The doublecheck system is, of course, effective fully only in immigrant cases, because immigrants, with very few exceptions are required to have visas and also to be checked at ports of entry. But when you enter the area of the nonimmigrant movement, then you find, of course, that large numbers of aliens enter without visas, under waivers of documentation authorized by the statute, section 212(d)(4). Then you enter the same area which we touched upon before; namely, the situation where an alien is issued a visa for an extended period of time for multiple entry, where, of course, he is checked at the time of visa issuance but enters any number of times during the validity of the visa and, therefore, is then only subject to a single check.

So it is in these areas in which the doublecheck is not effective.

Mr. SOURWINE. Well, that is not because the doublecheck system doesn't work, it is because in these areas, there isn't any doublecheck; isn't that right?

Mr. AUERBACH. That is right. In other words, the doublecheck is applicable to a relatively small number of the total admissions.

Mr. SOURWINE. Yes. Did you have in mind when you said that there were areas where the doublecheck system failed to serve its intended

purpose that there were such areas where there is a doublecheck, or is supposed to be, but where it is not effective?

Mr. AUERBACH. I think the situation is similar here, Mr. Chairman, to the situation I described earlier of first-visa issuance and revalidation. I would expect that an immigrant inspector who passes on the admission of an alien without a visa makes a more thoroughgoing examination than he does in the case of an alien who has a valid visa which was recently issued.

Mr. SOURWINE. I see.

Mr. Auerbach, do you have a view on the question of whether, if all authority and administrative responsibility with respect to both the issuance of visas and the admission of aliens is to be placed in one place, it should be with the Immigration and Naturalization Service under the Department of Justice, or in the State Department?

Mr. AUERBACH. Since this is primarily a law-enforcement responsibility, I do not think that the State Department would properly be charged with the responsibility of law-enforcement functions in the United States.

Mr. SOURWINE. Mr. Auerbach, during all of your experience in the Department of State and in the Visa Division, has it been customary for the Visa Division to receive policy directives from time to time from the Office of the Administrator of the Bureau of Security and Consular Affairs?

Mr. AUERBACH. I believe some such policy directives have been received, but they did not affect my area of jurisdiction, with one exception, and I believe I testified on this point. This is the requirement that all notes to the regulations as of the date of that instruction must be submitted to the Administrator.

Mr. SOURWINE. Has there been any increase or decrease noticeable to you in the number of policy directives coming from the Administrator's office since Mr. Schwartz became Administrator?

Mr. AUERBACH. My contact with Mr. Schwartz's office and with the instructions he may issue to the Visa Office is so slight that I cannot express any opinion.

Mr. SOURWINE. Let's go into this matter of your contact with the Administrator. How often does Mr. Schwartz visit the offices of the Visa Administration, so far as you know?

Mr. AUERBACH. He has not visited my office. I am unaware of any visits to any other part of the Visa Office.

Mr. SOURWINE. How many times has Mr. Schwartz called you in for a conference since he became Administrator?

Mr. AUERBACH. This is difficult to remember, but I would say that Mr. Schwartz called on me on some specific assignments, maybe 10 times.

Mr. SOURWINE. Does Mr. Schwartz hold regular meetings with the Directors of the offices in the Bureau?

Mr. AUERBACH. I understand, as I believe I testified earlier, that the Director of the Visa Office has a weekly conference with the Bureau of the Administrator.

Mr. SOURWINE. Are these meetings always held, or are they sometimes canceled?

Mr. AUERBACH. I do not know.

Mr. SOURWINE. You have never attended any of these meetings?

Mr. AUERBACH. I have not.

Mr. SOURWINE. Do you know of any instances in which they have been canceled?

Mr. AUERBACH. I do not recall.

Mr. SOURWINE. Do you have any regular contact with Mr. Schwartz at all?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Have you ever had occasion to go to his office to see him about a matter of Department business?

Mr. AUERBACH. I did.

Mr. SOURWINE. On your own initiative?

Mr. AUERBACH. At his request.

Mr. SOURWINE. Have you ever had occasion to go on your own initiative?

Mr. AUERBACH. I did not, to the best of my recollection.

Mr. SOURWINE. On the occasions when you went to Mr. Schwartz's office because he had sent for you, were you able to see him promptly?

Mr. AUERBACH. In most instances, yes.

Mr. SOURWINE. Have you ever received any direct orders from Mr. Schwartz?

Mr. AUERBACH. Yes, in connection with special assignments he has given me on the few occasions to which I referred before.

Mr. SOURWINE. Would you say or can you say whether there is adequate communication between Mr. Schwartz' office and the offices under his supervision or control?

Mr. AUERBACH. Since I report directly to the Director of the Visa Office, I cannot pass judgment.

Mr. SOURWINE. All right. Under the procedures invoked or required by Mr. Schwartz' office, is it necessary to go to that office or deal with that office with respect to a variety of matters concerning or connected with the day-to-day operations of the Visa Office?

Mr. AUERBACH. Without being able to substantiate this in detail, I understand that there have been instructions to this effect.

Mr. SOURWINE. Is this now required to a greater extent than it was before Mr. Schwartz became Administrator?

Mr. AUERBACH. I would say yes.

Mr. SOURWINE. Does Mr. Schwartz' office, as a matter of practice, do any substantial part of the work that ought to be done by the subordinate officers of the Bureau?

Mr. AUERBACH. It is the general impression that the Bureau does get involved in more matters than was true before.

Mr. SOURWINE. Does Mr. Schwartz or does his office handle a larger number of visa cases in proportion of all visa cases than the proportion of such cases handled by the Administrator or his office before Mr. Schwartz came to the Department?

Mr. AUERBACH. I cannot answer that, because I do not handle cases.

Mr. SOURWINE. Do you have any knowledge of any particular visa case or any list of visa cases in which Mr. Schwartz has an interest or has been reported to be interested?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Do you have any information that there is such a case or such a list?

Mr. AUERBACH. I believe I remember that, at one point, certain types of cases involving security matters had to be submitted to the Office of the Administrator.

Mr. SOURWINE. Does Mr. Schwartz ever handle visa cases entirely himself? That is, without reference or consultation with the Visa Office?

Mr. AUERBACH. I do not know that.

Mr. SOURWINE. Are you familiar with the Kaoru Yasui case?

Mr. AUERBACH. I am not.

Mr. SOURWINE. That was a visa waiver case?

Mr. AUERBACH. I have heard the name, but I do not know any details.

Mr. SOURWINE. Going back to a matter on which you gave certain testimony—that is, with respect to visa waivers—I want to be sure the record is clear. Is it true that the consular officer has authority to waive a ground of ineligibility, or grounds of ineligibility under some circumstances and to issue the visa?

Mr. AUERBACH. The consular officer has no authority to waive the ground of ineligibility. The consular officer has concurrent authority with the Secretary of State to recommend to the Attorney General or his designated subordinate a waiver of ineligibility in nonimmigrant cases, with the exception of two grounds of ineligibility.

Mr. SOURWINE. Which are?

Mr. AUERBACH. 212(a)(27) and 212(a)(29), which are the most serious security grounds.

Mr. SOURWINE. Identify those for the record?

Mr. AUERBACH. Section 212(a)(27) and 212(a)(29) of the Immigration and Nationality Act.

Mr. SOURWINE. But they involve what?

Mr. AUERBACH. They involve, very generally speaking, persons who are or are expected to be involved in espionage or in other subversive activities, or whose coming would be detrimental to the internal security of the United States.

Mr. SOURWINE. And 212(a)(28) is subversive membership, or membership in the Communist Party?

Mr. AUERBACH. 212(a)(28), on the other hand, relates to aliens who are or were members or who are or were affiliated with organizations which are subversive.

Mr. SOURWINE. And with respect to 212(a)(28), there is authority to recommend a waiver?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Now, the consular officer has authority to determine the application of an ineligibility clause and decide whether the alien is or is not eligible?

Mr. AUERBACH. Would you read the question back, please?

(The pending question was read.)

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Are there any instances in which the visa officer may feel that the alien is ineligible under some particular clause other than (27), (28), or (29), and still have authority to issue the visa?

Mr. AUERBACH. Not without a waiver of ineligibility.

Mr. SOURWINE. But he does have the authority to grant a waiver of ineligibility?

Mr. AUERBACH. He does not have that authority.

Mr. SOURWINE. Who does?

Mr. AUERBACH. Only the Attorney General, who has delegated this authority to the Commissioner of Immigration, who in turn has delegated this authority to certain immigration officers.

Mr. SOURWINE. I think we may have a certain amount of confusion.

What I am trying to ascertain is whether there is such a thing as a waiver of ineligibility, which differs from the waiver of a visa, the waiver of the visa requirement.

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. All right, would you explain that?

Mr. AUERBACH. Yes.

Mr. SOURWINE. In the case of a waiver of the visa requirement, that is done in cases where the alien has been determined to be ineligible?

Mr. AUERBACH. No, sir.

Mr. SOURWINE. Well, explain this situation.

Mr. AUERBACH. All right. Section 212(d)(4) of the Immigration and Nationality Act authorizes that the visa and passport requirement be waived by the Attorney General and the Secretary of State acting jointly under various circumstances, such as on the basis of unforeseen emergency in individual cases.

Mr. SOURWINE. Where there is such a waiver, a visa is issued, right?

Mr. AUERBACH. Where there is such a waiver, no visa is issued, but the alien must be determined to be eligible to receive a visa.

You cannot issue, under the law—I'm sorry. You cannot authorize a waiver of the documentary requirement in the case of an ineligible alien, unless his ineligibility has been waived.

On the other hand, section 212(d)(3) authorizes in its first part that the Secretary of State or the consular officer recommend to the Attorney General a waiver in nonimmigrant cases of any grounds of ineligibility other than the most serious security grounds, to which I referred before.

Mr. SOURWINE. (27) and (29)?

Mr. AUERBACH. That is right.

Mr. SOURWINE. I still don't have this clearly in my mind, Mr. Auerbach. Perhaps it is not your fault. I am trying to find out whether there are two different situations, one being a waiver of visa so as to permit an alien to come in without a visa, and the other being a waiver of some particular ineligibility so as to permit an alien to get a visa notwithstanding his ineligibility under that particular section of the law.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. There are?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Now, what is the distinction and what are the differences in the exercise of the waiver authority in those two instances?

Mr. AUERBACH. In the case of the waiver of the documentary requirement—namely, passport or visa—the action is joint action by the Secretary of State and the Attorney General.

Mr. SOURWINE. In that case, now, where the ineligibility is because of lack of possession of a document required by the law, the Secretary

of State and the Attorney General, acting jointly, may waive the ineligibility, is that right?

Mr. AUERBACH. The documentary ineligibility.

Mr. SOURWINE. Waive the documentary ineligibility. They, in effect, waive the documentary requirement of the law?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. And a visa may issue?

I see Mr. Hoover is shaking his head.

Mr. AUERBACH. Then no visa is issued.

Mr. SOURWINE. Then let me go back to what I asked you a moment ago and which I thought you said "yes" to. I asked you if there were two cases, one in which there was a waiver of the requirement for a visa and the person was admitted without a visa—

Mr. AUERBACH. That is correct.

Mr. SOURWINE (continuing). And the other in which there was a waiver of some ineligibility or some eligibility requirement, and the alien was given a visa notwithstanding his failure to make the requirement. I thought you said there were two such cases.

Mr. AUERBACH. There are two such cases, but there is a difference in terminology and I think this explains it.

Mr. SOURWINE. Explain it out. It is probably a semantic problem.

Mr. AUERBACH. It is strictly a semantic problem. Usually when we speak of a waiver of ineligibility, we do not embrace the documentary ineligibility, the nonpossession of a visa or a passport.

Mr. SOURWINE. In other words, these are not requirements for eligibility?

Mr. AUERBACH. They are requirements, but inasmuch as the law sets up two distinct avenues of handling these situations, we have become used to differentiating between the qualitative waiver under section 212(d) (3), which is based on a recommendation by the Secretary of State or the consul to the Attorney General and a waiver of the documentary requirement, passport and/or visa, under section 212(d) (4), based upon joint action by the Secretary of State and the Attorney General.

Mr. SOURWINE. Now, what are the cases in which the joint action of the Secretary of State and the Attorney General may result in the waiver of a requirement of the law and the issuance of a visa?

Mr. AUERBACH. These situations are specified in section 212(d) (4). Firstly they can be individual cases on the basis of unforeseen emergency.

Secondly, a discretionary waiver may be granted and I read now from the law, "on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals"; and third, in the case of "aliens proceeding in immediate and continuous transit through the United States." This third case is usually referred to as bonded transit.

Mr. SOURWINE. Yes.

Now, what are the documents which may be waived or the requirement for which may be waived by this joint action?

Mr. AUERBACH. The visa or the passport or visa and passport.

Mr. SOURWINE. All right.

Now, if the document which the alien does not have is a passport, and if there is a waiver of the requirement for passport by the joint action of the Secretary of State and the Attorney General, does the alien then get a visa?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Well, then, in the terminology which I was using, including the lack of a passport as a basis for ineligibility, there was a waiver of an ineligibility and he got a visa. And what you are saying is that your word of art, "ineligibility," refers only to the numbered clauses under 212(d), and does not include the lack of a passport?

Mr. AUERBACH. Mr. Chairman, Mr. Sourwine's terminology is more accurate in terms of the statute. Ours is more practical for dealing with these two types of waivers.

Mr. SOURWINE. I'm not quarreling with you. I just want the situation made clear on the record.

Mr. AUERBACH. Yes, we are in agreement.

Mr. SOURWINE. Because there has been a great deal of testimony that has appeared to be conflicting, and it may be, in part, at least, because of a failure to understand this distinction.

Mr. AUERBACH. I believe this may be so.

Mr. SOURWINE. Is there any other requirement of eligibility, using it in my broader sense, besides the possession of a passport, which may be waived by the joint action of the Secretary and the Attorney General so as to permit the issuance of a visa?

Mr. AUERBACH. I cannot think of any.

Mr. SOURWINE. Now, if the requirement for a visa is waived by joint action, it has essentially the same effect as the waiver by the Attorney General on the recommendation of the Secretary of State of the requirement for a visa; doesn't it?

Mr. AUERBACH. Not necessarily, Mr. Sourwine.

Mr. SOURWINE. What is the difference?

Mr. AUERBACH. As a matter of illustration, I would like to read here from the Code of Federal Regulations (22 CFR 41.7(d)). This authorizes a visa waiver. The language reads as follows:

An alien who is well and favorably known at the consular office who has been previously issued a nonimmigrant visa which has since expired and who is embarking on a direct journey to the United States under emergent circumstances which preclude the timely issuance of a visa.

He may be the beneficiary of a visa waiver. But the consul must here be satisfied that the alien would be eligible to receive the visa if there did not exist emergent circumstances which prompt him to recommend the waiver of the visa requirement.

Mr. SOURWINE. I think I have it clearly in mind now. See if I state it accurately.

The joint waiver by the Secretary of State and the Attorney General is applicable where the only basis for rejecting the alien for admission would be his failure to possess a visa, but in which he is and has been found to be eligible for a visa, and the action by the Attorney General on the recommendation of the Secretary of State is with respect to cases where the alien has been found clearly ineligible to receive a visa, but where he is being admitted without a visa?

Mr. AUERBACH. That is correct, if the visa requirement has been waived by joint action.

Senator SCOTT. Does the alien admitted under these emergency procedures need to establish that he has earlier applied for a visa?

Mr. AUERBACH. Mr. Chairman, the language specifically refers to the requirement that the alien "has previously been issued a non-immigrant visa" in this particular instance.

Mr. SOURWINE. There is, however, a provision there, isn't there, which will let him get admitted if there is a joint waiver by the Secretary and the Attorney General in an emergency situation?

Mr. AUERBACH. Without previous issuance?

Mr. SOURWINE. Yes.

Mr. AUERBACH. Yes, indeed; in the individual case.

Mr. SOURWINE. But that is another section in there?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Does that answer your question?

Senator SCOTT. Yes, that answers the question.

Mr. AUERBACH. I would also like to clarify one other point. It is conceivable that an alien is the beneficiary of a documentary waiver visa and/or passport waiver, in whose case the ineligibility under one of the other grounds has been waived by the Attorney General under the other provision of law; namely, section 212(d)(3)(A) at the recommendation of the Secretary of State or the consular officer.

Senator SCOTT. May I ask a question, Mr. Sourwine?

Mr. SOURWINE. Oh, yes.

Senator SCOTT. These waivers thereafter, are these waivers by action of the Secretary of State and the Attorney General or by the Secretary of State upon the recommendation of the Attorney General, classified documents?

Mr. AUERBACH. Mr. Chairman, your question, as I understand it, is whether these are classified documents?

Senator SCOTT. Whether the action admitting aliens under any of these provisions is giving a classification which would prevent it from becoming unclassified material.

Mr. AUERBACH. No, indeed not, unless the reason in itself requires classification. But it could be the case of an alien, for example, who is ineligible because he had an attack of insanity years ago and is ineligible for that reason, or because he was convicted of a crime involving moral turpitude years ago and a waiver is granted. This is not a classified matter.

Senator SCOTT. Well, is there any regulation of the Department which forbids access by a senatorial committee to the action taken and the persons involved in the admission of aliens under these provisions we have been discussing?

Mr. AUERBACH. I am not familiar with a particular legal provision outside of the Immigration and Nationality Act, but there is, of course, a provision in the law, the Immigration and Nationality Act—

Mr. SOURWINE. Which requires that information desired by either of the Immigration Subcommittees or by the Joint Committee on Immigration and Nationality policy shall be furnished. Is that substantially correct?

Mr. AUERBACH. That is substantially correct.

Mr. SOURWINE. You certainly don't read that as denying such information to another Senate committee having jurisdiction over the subject matter; do you?

Mr. AUERBACH. I'm not sure I—

Mr. SOURWINE. The fact that the act provides that the information shall be made available to certain named committees would not be considered as prohibiting that the information be given, or that any information be given to another committee or rather the House or Senate which had jurisdiction with respect to the information that was asked of it?

Mr. AUERBACH. As I recall the provision, it permits the use of visa files for the administration and for legislative purposes relating to the immigration and other laws of the United States.

Senator SCOTT. How much time do you have? I have an appointment at 2:35.

Mr. SOURWINE. We have, I would judge, Senator, another half hour with Mr. Auerbach. If you are unable to sit, I would have no suggestion except these alternatives, that we recess and bring him back—

Senator SCOTT. I know the alternatives.

Let us continue with the hearing.

Off the record just a moment.

(Off the record discussion.)

Mr. SOURWINE. If you have that provision before you, will you read it, Mr. Auerbach?

Mr. AUERBACH. I would be glad to, Mr. Sourwine. I am referring to section 222(f) of the Immigration and Nationality Act which reads as follows:

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

Mr. SOURWINE. That wasn't the section I had in mind asking you to read. Would you read the section of the act giving congressional committees, or certain congressional committees, access to the information?

Mr. HOOVER. It is 244, I believe, isn't it? Maybe that is not right.

Mr. AUERBACH. May we go off the record for 1 minute to make sure this is the one?

Mr. SOURWINE. Take your time.

Mr. AUERBACH. Could I have the question read, please?

Mr. SOURWINE. Certainly.

(The pending question was read.)

Mr. AUERBACH. Mr. Sourwine, I believe you refer to section 401 of the Immigration and Nationality Act, which establishes the Joint Congressional Committee on Immigration and Nationality Policy. Subsection (f) of section 401 provides as follows:

The Secretary of State and the Attorney General shall without delay submit to the committee all regulations, instructions, and all other information as

requested by the committee relative to the administration of this act; and the Secretary of State and the Attorney General shall consult with the committee from time to time with respect to their activities under this act.

Mr. SOURWINE. That applies in its terms only to the joint committee?

Mr. AUERBACH. Yes, sir.

Mr. SOURWINE. But I have asked you whether you consider that that requirement with respect to making information available to the joint committee is to be construed in any way as implying the desire of Congress that information should be withheld from any other committee of the Congress having jurisdiction in a particular instance.

Mr. AUERBACH. I would interpret this section as an empowering section which specifically establishes a requirement that certain information be made available to a certain committee which is established by this section. I don't think it goes beyond that.

Mr. SOURWINE. Now, the one thing I want to clear up is a question of whether there may be in a single case or in the case of single applicant both kinds of waivers we have been talking about. To make this clear, let me ask a couple of preliminary questions.

Is it true that a documentary waiver, a waiver of documentation, is not to be granted if there is ineligibility under one of the numbered clauses?

Mr. AUERBACH. That is correct, unless this ineligibility has been waived under the other provisions to which we referred.

Mr. SOURWINE. I thought that was what I understood you to say and that was what I am getting at.

If there has been a finding of ineligibility based on one of the numbered clauses for which a waiver may be granted by the Attorney General—that is, a waiver of visa—and the Attorney General has granted that, and there still remains a question of failure to possess a passport, can the requirement for a passport then or still be waived by the joint action of the Secretary of State and the Attorney General?

Mr. AUERBACH. May I go back off the record for a moment?

Mr. SOURWINE. All right.

Mr. AUERBACH. I would like to have the question read.

Mr. SOURWINE. Let the record show that you want the question read. (The pending question was read.)

Mr. AUERBACH. If the alien is ineligible because he has no passport and this requirement has been waived by joint action of the Secretary of State and the Attorney General and it develops that the alien is also ineligible to receive a visa because of one of the nondocumentary grounds of ineligibility, this nondocumentary ground of ineligibility can be waived by the Attorney General upon the recommendation of the Secretary of State or the consular officer.

Mr. SOURWINE. Now you have turned my question entirely around.

Mr. AUERBACH. I'm sorry.

Mr. SOURWINE. You had previously testified that the documentation could not be waived if the alien were ineligible under one of the numbered clauses. Isn't that true?

Mr. AUERBACH. Mr. Sourwine, I believe I amended this statement by saying subsequently, or unless this ground has been—

Mr. SOURWINE. You did. You did. But that comprehends the idea that the waiver of the ineligibility under the numbered clause will

precede the waiver by joint action of the requirement for documentation, doesn't it?

Mr. AUERBACH. I can visualize that this situation could arise in either sequence.

Mr. SOURWINE. How? Since the law requires that there be no ineligibility under a numbered clause if there is to be a waiver of documentation, and since this may only be cured by a waiver of the ineligibility under the numbered clause by the action of the Attorney General?

Mr. AUERBACH. As I see it, this situation could arise if, at the time the consular officer requests that the Attorney General join in the documentary requirement, he is unaware of the alien's ineligibility under one of the nondocumentary grounds and subsequent to the joining by the Attorney General in a waiver of the documentary requirement, he receives a report that this alien had an attack of insanity 10 years ago. In that case, then, he would have to obtain a waiver of the ineligibility—

Mr. SOURWINE. Or else—

Mr. AUERBACH. Or else—

Mr. SOURWINE. What?

Mr. AUERBACH. Could not issue the visa.

Mr. SOURWINE. All right. In other words, the action of waiver of the documentation would be void and of no effect in the event of an after-discovered eligibility of a nondocumentary nature.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Unless that ineligibility should then be waived by the Attorney General on the recommendation of the Secretary of State.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Which still, it seems to me, makes the waiver of the ineligibility a prerequisite to the effective issuance of the joint waiver of a documentary requirement.

Mr. AUERBACH. I don't wish to complicate the situation further, but it could happen that a documentary waiver is granted and the consul is unaware of any other ineligibility.

Mr. SOURWINE. I understand that.

Mr. AUERBACH. Then the alien proceeds to the United States.

Mr. SOURWINE. Yes.

Mr. AUERBACH. And comes to the port of entry. Meanwhile, the consular officer has obtained this subsequent information that the alien is ineligible under one of the other grounds. In that case, section 212(d)(3)(B) provides that the Attorney General can grant this waiver without recommendation by the Secretary of State or the consular officer.

Mr. SOURWINE. Yes. And doesn't that get back to the question I asked you earlier of whether cases of individuals who came in or who might have come in under this hurry-up procedure, where the check was made after the issuance of the visa, and were then found to have a basis for ineligibility, might not be embarrassing and might not cause the issuance or make necessary the issuance of a waiver which wouldn't otherwise be issued?

Mr. AUERBACH. I believe I answered that in the affirmative when you asked the question.

Mr. SOURWINE. I don't remember how you answered, but that is the fact in that kind of case?

Mr. AUERBACH. That is right.

Mr. SOURWINE. And it is certainly possible, and certainly also, isn't it much more likely, in the case where the security work is not all completed, that the checks are not all made before the visa is issued?

Mr. AUERBACH. That is true.

Mr. SOURWINE. Now, are there any waivers by joint action of documentary requirements in cases where the security checks have not all been completed?

Mr. AUERBACH. There are waivers of the documentary requirements set forth by regulation, not in individual cases, for classes of non-immigrants where the consular officer does not participate at all.

Mr. SOURWINE. I'm aware of that, but I'm talking now about individual cases. Is there ever a waiver by the joint action of the Secretary and the Attorney General in an individual case before the completion of all the security checks?

Mr. AUERBACH. I'm not aware of that situation.

Mr. SOURWINE. Well, if, as I understood you to say it could happen that after there had been such a waiver, it was then discovered that there was an ineligibility, and that, as I understood you to say, this could happen and was more likely to happen in a case where these security checks had not been completed at the time the visa was issued, then it must be obvious that there are cases in which the waiver is granted and the visa issued before the security checks have been completed. Isn't that logically necessary? Doesn't it logically follow?

Because, Mr. Auerbach, if there never is an exercise of the joint power to waive a documentary requirement until after the security checks have been completed, then by virtue of that fact, there never is an issuance of such a documentary waiver at a time when there has not been a determination with respect to eligibility.

Mr. AUERBACH. Let me answer this as follows, Mr. Sourwine. The number of cases in which documentary requirements are waived in individual cases is relatively few.

Mr. SOURWINE. Yes.

Mr. AUERBACH. The question of what we both refer to as "completion of security check" is a relative term. The consular officer may think he has completed these checks but, subsequently, adverse information comes in because there was mistaken identity, or because additional information becomes available.

Mr. SOURWINE. I can understand this, but I'm trying to get at the point, it is not merely a matter of completion of the check, but there has to have been a finding by the consular officer which is discretionary with him, but he has to have made the finding of eligibility under all of the nondocumentary requirements before there can be or before there ever is a waiver by joint action of the Secretary of State and the Attorney General of a documentary requirement.

Mr. AUERBACH. That is true.

Mr. SOURWINE. He may be wrong.

Mr. AUERBACH. That's right.

Mr. SOURWINE. His discretion may be bad.

Mr. AUERBACH. That's right.

Mr. SOURWINE. Or it may be good on the basis of all he knows and he may learn something later on.

Mr. AUERBACH. That's right.

Mr. SOURWINE. Now, in the cases where there has been a regulation on this point, then we get into a situation of mass admissions, whether with or without visas, where there could very well be after-acquired information going to the question of eligibility.

Mr. AUERBACH. Yes.

Mr. SOURWINE. Now, are there regulations under which aliens are admitted without visas, and are there also regulations under which aliens are granted visas without the necessity for particular waivers in consideration case by case?

Mr. AUERBACH. There are regulations issued under the authority of section 212(d) (4) which exempt certain classes of nonimmigrants—

Mr. SOURWINE. Exempt them?

Mr. AUERBACH. Exempt certain classes of nonimmigrants of the visa and passport requirement, or the visa requirement or the passport requirement.

Mr. SOURWINE. Now, without asking you now to summarize those, and not meaning to request a recital in full of all those regulations, would it be possible to prepare a reasonably brief statement showing the regulations and the effect of them that operate in this area?

Mr. AUERBACH. Yes, indeed. I would like to refer to the citation now as a matter of record, if I may.

The regulations are contained, as far as the Department of State is concerned, in 22 CFR 41.6 and 41.7.

Mr. SOURWINE. You can realize, however, that while the committee might have someone on its staff whom it would deem competent to make a summary of these regulations, it would be much more valid if the Department furnished the committee with such a summary.

May I go off the record, please?

(Discussion off the record.)

Mr. SOURWINE. May the order be that we request of the Secretary of State that such a summary of these regulations be provided?

Senator SCOTT. It is so ordered.

(Acting Assistant Secretary Lee supplied the following document as an attachment to a letter to the chairman dated February 19, 1965:)

§ 41.6 *Nonimmigrants not required to present passports, visas, or border-crossing identifications cards.*

The provisions of section 212(a) (26) of the Act relating to the requirements of valid passports and visas for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212(d) (4) of the Act under the conditions specified for the following classes:¹

¹ Section 212(d) (4) of the Act reads:

"(4) Either or both of the requirements of paragraph (26) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(d)."

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda.*

A visa shall not in any case be required of a Canadian national, and a passport shall not be required of such a national except after a visit outside of the Western Hemisphere. A visa shall not be required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his residence in Canada or Bermuda, and a passport shall not be required of such an alien except after a visit outside of the Western Hemisphere. A British subject who has his residence in the Bahamas shall require a passport and a visa for admission to the United States except that a visa shall not be required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at Nassau, Bahamas that he is clearly and beyond a doubt entitled to admission in all other respects. A visa shall not be required of a British subject who has his residence in, and arrives directly from, the Cayman Islands and who presents a certificate from the Clerk of Court of the Cayman Islands stating what, if anything, the Court's criminal records show concerning such subject, and a certificate from the Office of Administrator of the Cayman Islands stating what, if anything, its records show with respect to such subject's political associations or affiliations. (Amended 3-13-62, 27 F.R. 2362)

(b) *British, French and Netherlands nationals, and nationals of certain adjacent islands of the Caribbean which are independent countries.*

A visa shall not be required of a British, French or Netherlands national, or of a national of an independent country of the Western Hemisphere not named in section 101(a) (27) (C) of the Act, who has his residence in British, French or Netherlands territory, or in an independent country not named in section 101(a) (27) (C), located in the adjacent islands of the Caribbean area, and who is proceeding to Puerto Rico or the Virgin Islands of the United States, or who is proceeding to the United States as an agricultural worker. (Amended 10-30-63, 28 F.R. 11535)

(c) *Mexican nationals.*

A visa and a passport shall not be required of a Mexican national who is a military or civilian official or employee of the Mexican national, state, or municipal government, or of a member of the family of any such official or employee; or is in possession of a border-crossing card on Form I-186 and is applying for admission in accordance with the terms thereon and the provisions of 8 CFR 212.6; or is entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border. A visa shall not be required of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States; or is proceeding to the United States as an agricultural worker pursuant to Title V of the Agricultural Act of 1949, as amended. (Amended 10-30-63, 28 F. R. 11535)

(d) *Natives and residents of the Trust Territory of the Pacific Islands.*

A visa and a passport shall not be required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States. (Added 8-2-62, 27 F.R. 7635; redesignated 10-30-63, 28 F.R. 11535)

(e) *Aliens in immediate transit.*

(1) *Aliens in bonded transit.*

A visa and a passport shall not be required of an alien, other than an alien who is a citizen of Albania, Bulgaria, Communist-controlled China ("Chinese People's Republic"), Cuba, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, North Korea ("Democratic People's Republic of Korea"), North Viet-Nam ("Democratic Republic of Viet-Nam"), Outer Mongolia ("Mongolian People's Republic"), Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), or the Union of Soviet Socialist Republics, and resident of one of said countries who is being transported in immediate and continuous transit

through the United States in accordance with the terms of a contract, including a bonding agreement, entered into between the transportation line and the Attorney General under the provisions of section 238(d) of the Act, to insure such immediate and continuous transit through, and departure from, the United States enroute to a specifically designated foreign country. The acceptance of the privilege of transit without visa and passport provided by this subparagraph shall constitute an agreement by the alien and the transportation line that the alien will depart voluntarily from the United States without recourse to any hearing or proceeding provided for in the regulations of the Immigration and Naturalization Service and that at all times he is not aboard an aircraft which is in flight through the United States he shall be in the custody directed by the district director of that Service: *Provided*, That if admissibility is established only after exercise of the discretionary authority contained in section 212(d) (3) (B) of the Act, the alien shall be in the custody of the Immigration and Naturalization Service at the expense of the transportation line and shall depart on the earliest and most direct foreign-destined vessel or aircraft. (Amended 1-24-61, 26 F. R. 645 and 3-13-62, 27 F. R. 2362)^{2 3}

(2) *Foreign government officials in transit.*

If an alien is of the class described in section 212(d) (8) of the Act only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least thirty days from the date of his application for admission into the United States shall be required.⁴

(f) *Individual cases of unforeseen emergencies.*

A visa and a passport shall not be required of a nonimmigrant who, either prior to his embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director of the Immigration and Naturalization Service in charge of the port of entry, after consultation with and concurrence by the Director of the Visa Office of the Department, that, because of an unforeseen emergency, he was unable to obtain the required documents. Any waiver of the visa requirement heretofore or hereafter granted pursuant to section 212(d) (4) (A) of the Act in the case of a national or resident of Cuba who embarks for the United States on or after November 16, 1963, shall not be valid unless such national or resident proceeds directly from Cuba to the United States and has been inspected in Cuba by officials of the United States Immigration and Naturalization Service and of the United States Public Health Service immediately prior to his departure for the United States, irrespective of whether such national or resident had prior notice of these conditions. (Amended 11-16-63, 28 F.R. 12217)¹

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

§ 212.1 *Documentary requirements for nonimmigrants.* A valid unexpired visa and an unexpired passport, valid for the period set forth in section 212(a) (26) of the Act, shall be presented by each arriving nonimmigrant alien except that the passport validity period for an applicant for admission who is a member

¹ See footnote at p. 1133.

² Section 238(d) of the Act reads:

“(d) The Attorney General shall have power to enter into contracts including bonding agreements with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. Notwithstanding any other provision of this Act, such aliens may not have their classification changed under section 248.”

³ Section 212(d) (3) (B) of the Act reads:

“Except as provided in this subsection, an alien * * * (B) who is inadmissible under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General.”

⁴ Section 212(d) (8) of the Act reads:

“(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (26), (27), and (29) of subsection (a) of this section.”

of a class described in section 102 of the Act is not required to extend beyond the date of his application for admission if so admitted, and except as otherwise provided in the Act, this chapter, and for the following classes:

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda.* A visa is not required of a Canadian national, and a passport is not required of such a national except after a visit outside of the Western Hemisphere. A visa is not required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his residence in Canada or Bermuda, and a passport is not required of such an alien except after a visit outside of the Western Hemisphere. A visa and a passport are required of a British subject who has his residence in the Bahamas except that a visa is not required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at Nassau, Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects. A visa is not required of a British subject who has his residence in, and arrived directly from, the Cayman Islands, and who presents a certificate from the clerk of court of the Cayman Islands stating what, if anything, the court's criminal records show concerning him, and a certificate from the Office of Administrator of the Cayman Islands stating what, if anything, its records show with respect to his political associations or affiliations.

(b) *British, French, and Netherlands nationals, and nationals of certain adjacent islands of the Caribbean which are independent countries.* A visa is not required of a British, French, or Netherlands national, or of a national of an independent country of the Western Hemisphere not named in section 101(a)(27)(C) of the Act, who has his residence in British, French, or Netherlands territory, or in an independent country not named in section 101(a)(27)(C) of the Act, located in the adjacent islands of the Caribbean area, for admission or stay in Puerto Rico, the Virgin Islands of the United States, or as an agricultural worker in the United States.

(c) *Mexican nationals.* A visa and a passport are not required of a Mexican national who is a military or civilian official or employee of the Mexican national, state, or municipal government, or of a member of the family of any such official or employee; or is in possession of a border crossing card on Form I-186 and is applying for admission in accordance with the terms thereon and the provisions of § 212.6; or is entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border. A visa is not required of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States, or is an alien embraced within the provisions of § 214.2(k) of this chapter.

(d) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(e) *Direct transits.* A visa and a passport are not required of an alien embraced within the provisions of § 214.2(c) of this chapter. If an alien is of the class described in section 212(d)(8) of the Act, only a valid unexpired visa and a travel document valid for entry into a foreign country for at least 30 days from the date of admission to the United States are required.

(f) *Unforeseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry (after consultation with and concurrence by the Director of the Visa Office of the Department of State) that, because of an unforeseen emergency, he was unable to obtain the required documents, in which case a waiver application shall be made on Form I-193. The district director or the Assistant Commissioner, Examinations, may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect. Any waiver of the visa requirement heretofore or hereafter granted pursuant to section 212(d)(4)(A) of the Act in the case of a national or resident of Cuba who embarks for the United States on or after November 16, 1963, shall not be valid unless such national or resident proceeds directly from Cuba to the United States and has been inspected in Cuba

by officials of the United States Immigration and Naturalization Service and of the United States Public Health Service immediately prior to his departure for the United States, irrespective of whether such national or resident had prior notice of these conditions.

§ 212.2 *Consent to reapply for admission after deportation, removal, or departure at Government expense.* An application for permission to reapply for admission to the United States after deportation or removal and to remove the bar to inadmissibility contained in paragraph (16) or (17) of section 212(a) of the Act shall be filed on Form I-212. If the applicant is abroad, the application shall be filed with the district director having jurisdiction over the place where the deportation or removal proceedings were held, or with the immigration officer in charge stationed abroad having jurisdiction over the place where the applicant is residing, when the application is filed in connection with a request for waiver under section 212(g) or (h) of the Act. If the applicant is seeking admission to the United States at a port of entry, he shall file the application with the district director having jurisdiction over that port. When the applicant is within the United States and is concurrently applying for adjustment of status under section 245 of the Act and Part 245 of this chapter, he shall file Form I-212 with the district director having jurisdiction over his application for adjustment of status, or, if the application for adjustment of status is pending in a proceeding before a special inquiry officer, the applicant shall file Form I-212 with the district director having jurisdiction over the place where the applicant is residing. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. The approval of a Form I-212 application filed by an alien seeking admission to the United States at a port of entry, or by an alien in conjunction with an application for adjustment of status under section 245 of the Act, shall be considered as retroactive to the date on which the alien embarked or reembarked at a place outside the United States or attempted to be admitted from foreign contiguous territory.

Mr. SOURWINE. If you are through with that point, I believe you had one or two matters with regard to which you wished to supplement testimony you gave earlier.

Mr. AUERBACH. Yes, Mr. Sourwine. You asked me yesterday who writes regulations in the Visa Office, if I recall your question correctly.

Mr. SOURWINE. I think I did.

Mr. AUERBACH. I want to make it clear that the primary responsibility for the writing of regulations rests with the Chief of the Regulations and Legislation Division of the Visa Office, who is directly responsible to me, and rests also with her deputy.

Mr. SOURWINE. Who are those individuals?

Mr. AUERBACH. The Chief of the Regulations and Legislation Division, Mrs. Hallie May Johnson. The deputy position is at this time vacant.

Mr. SOURWINE. All right.

Mr. AUERBACH. There is a second point I would like to amplify, I believe you asked me yesterday what effect the reorganization of the Visa Office had on Mr. Valenza's position, and I answered that to the best of my recollection at that time. After checking this point, I believe I should clarify that prior to the reorganization of the Visa Office in September of 1962, Mr. Valenza as Chief of the Security and Accreditations Branch, reported to me, and I reported to the Director.

Now, under the present organization, Mr. Valenza's title is Chief of the Security Branch. He reports to the Chief of the Advisory Opinions Division who reports to the Deputy Director for Operations, who reports to the Director of the Visa Office.

Mr. SOURWINE. I would like to express at this point the wish of the counsel—I don't ask for an order of the Chair—that there be a reference placed at this point in the record to the point at which you answered that question previously and a reference there to this point in the record.¹

Does that conclude the points on which you desire to supplement your prior testimony?

Mr. AUERBACH. Yes, sir.

Mr. SOURWINE. To your knowledge, Mr. Auerbach, is it true that Mr. Schwartz, since he became Administrator, has been concerned that the issuance of visas should be facilitated as much as possible?

Mr. AUERBACH. He has not expressed the view to me.

Mr. SOURWINE. And you are not aware that he has expressed it?

Mr. AUERBACH. I am not aware of it.

Mr. SOURWINE. Speaking as a matter of policy with regard to all such cases and not with regard to particular cases, isn't it true that Mr. Schwartz has sought consistently to speed up the handling of visa issuances?

Mr. AUERBACH. It has not come to my attention.

Mr. SOURWINE. All right.

Can you tell us what proportion of the visas are issued by mail?

Mr. AUERBACH. This is a matter of record which I do not have here but I think this information can be supplied.

Mr. SOURWINE. Can you tell us whether the incidence of mail visas—that is, the proportion of such visas to all visas—has increased in recent years?

Mr. AUERBACH. The procedure authorizing the issuance of non-immigrant visas without personal appearance became effective only in August of 1962 and then was broadened later that year, I believe in October of that year. By necessity the number of issuances without personal appearance has increased during that period of time.

Mr. SOURWINE. In other words, there were no visas issued by mail prior to the time Mr. Schwartz became Administrator?

Mr. AUERBACH. Visas were issued without personal appearance before Mr. Schwartz became Administrator. To the best of my recollection—

Mr. SOURWINE. What was the date when you said this was first authorized?

Mr. AUERBACH. As I recall, it was first authorized in the summer of 1962 and, of course, as I testified earlier, there were certain types of categories of foreign government officials, international organization aliens, and children under a certain age who could get visas without personal appearance before that.

Mr. SOURWINE. Well, I am referring now only to the categories of cases outside of these diplomatic and the others you have named.

Mr. AUERBACH. The first.

Mr. SOURWINE. There have been no mailed visas issued in such cases except since Mr. Schwartz—

Mr. AUERBACH. I should like to repeat that, to the best of my recollection, the first amendment of regulations authorizing the issuance of

¹ Mr. Valenza's title was previously discussed in the Aug. 11, 1964, hearings at p. 1103.

visas without personal appearance took effect before Mr. Schwartz took office.

Mr. SOURWINE. You said it was in, you thought, August of 1962?

Mr. AUERBACH. I believe so.

Mr. SOURWINE. When did Mr. Schwartz come with the Department?

Mr. AUERBACH. To the best of my recollection, I believe it was in October.

Mr. SOURWINE. Of 1962?

Mr. AUERBACH. I believe so.

Mr. SOURWINE. It wasn't October 1961?

Mr. AUERBACH. To the best of my recollection, no.

Mr. SOURWINE. I am not challenging you. I just want to get this clear for the record.

Mr. AUERBACH. I—

Mr. SOURWINE. So this was authorized and was, therefore, a policy of the Department prior to the time that Mr. Schwartz became Administrator?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Now, you mentioned earlier, sir, something about the possibility of the issuance of a nonimmigrant visa in an emergency or emergency case within 15 or 20 minutes. That is right; isn't it?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Now, do you know of any case in which a visa was ever issued within 15 or 20 minutes from the time of application?

Mr. AUERBACH. I do not know of specifically named cases but I do know that this occurs if an alien who is well known or known and a resident of the place of his visa application applies at a post which is well equipped to make the necessary checks preceding the issuance of the visa.

Mr. SOURWINE. Well, that would necessarily be a case in which none or virtually no security checks of any kind could be made between the application and the issuance of visa and would, therefore, have to be a case, would it not, in which the alien had either applied before and recently enough so that they had the data and knew about it or, as you say, a case in which he was well and favorably known to the post, so that there would be no question of any need for a security check?

Mr. AUERBACH. It could be this kind of case or it could be the case in which the alien is checked out against the Lookout Book and the locally maintained Lookout Cards.

Mr. SOURWINE. And you think this could be done within 15 or 20 minutes even in the case of an alien who was not known to the station and who had not had a visa before?

Mr. AUERBACH. Yes.

Mr. SOURWINE. It could, then, I suppose, become a purely mechanical thing which could be handled clerically so that an application could be received in the mail and a stack of such applications could be put before a clerk and the clerk could turn to the left and run through the file of the local lookouts and turn to the right and look at the Lookout Book and, not finding the name in either one, could OK the application and it would go for the issuance of a visa?

Mr. AUERBACH. Let me add here that we have recently amended the visa application form to strengthen the security protection in these cases by asking certain additional information of the alien who applies without personal appearance. Also, after the local clerk has made these checks, the application goes before a consular officer who then has to use his judgment based on the finding of the visa clerk and based on the application which is before him whether he should issue the visa or invite the alien in for personal appearance.

Mr. SOURWINE. I understand this, but it would be perfectly possible to have a production line, wouldn't it, with one clerk checking the local visa lookout file and the next one checking the Look-out Book, and the consular officer right next who would act on the basis of what they found or didn't find?

Mr. AUERBACH. He would have to take into consideration the data contained in the application form.

Mr. SOURWINE. But this is discretionary with him and there is no rule as to how long he should take for it.

Mr. AUERBACH. He is certainly required to use good judgment.

Mr. SOURWINE. I understand this. But isn't it conceivable that, in a situation where emphasis has been laid on the public relations aspect and where there is a desire to facilitate the matter as much as possible consistent with the law, and where he is permitted to issue visas for postaudit, so to speak, this may be done very rapidly without necessarily misuse of discretion?

Mr. AUERBACH. It can be done very rapidly; yes.

Mr. SOURWINE. Yes. Now, is it required in every instance that a visa application be on the prescribed form in order to be considered?

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. Can't a person ever apply for a visa over the telephone?

Mr. AUERBACH. The law requires that the visa be applied for on the form prescribed by the Secretary of State.

The Secretary of State has prescribed two forms at this point: one which is a shorter form specifying the statutorily required questions in the case of aliens who apply in person; and the other for persons who apply without personal appearance.

Mr. SOURWINE. Now, if an alien does not apply in person, is he required personally to fill out that form?

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. It can't be filled out by his attorney, or a relative, or a next friend, or by a consular officer?

Mr. AUERBACH. I should qualify my answer. I presume the mechanical process of filling out the form could be done by someone for him but he certainly has to sign it and, by so doing, signs that he has understood all questions.

Mr. SOURWINE. Does the law require his personal signature?

Mr. AUERBACH. Indeed.

Mr. SOURWINE. It can't be signed by an attorney?

Mr. AUERBACH. It cannot be signed by an attorney.

Mr. SOURWINE. Or someone with the power of attorney?

Mr. AUERBACH. It can't be signed by one with a power of attorney.
Mr. SOURWINE. It can't be signed by a consular officer on behalf of the alien?

Mr. AUERBACH. No.

Mr. SOURWINE. Well, suppose a diplomat of a friendly country, who is well known to the post, has an emergency requirement for a visa. Couldn't he call up on the telephone and say: I want a visa and I am going to send my aid around for it in 10 minutes?

Mr. AUERBACH. Mr. Sourwine, I was under the impression that we were discussing the new procedure of issuing visas without personal appearance, but not the old classes to which I referred to before.

Mr. SOURWINE. Well, first—I am willing to limit it but just let the record speak clearly.

Mr. AUERBACH. I will be glad to come back to that.

Mr. SOURWINE. Let's get this in right now. In the case of diplomatic visas, can they be issued on the basis of an application signed by a consular officer of the United States?

Mr. AUERBACH. In the case of a foreign government official or international organization alien, the visa is issued based on a note ordinarily received from the Foreign Office or Foreign Mission—

Mr. SOURWINE. But as a matter of—

Mr. AUERBACH. And then the application is filled out to the extent possible at the consulate.

Mr. SOURWINE. But as a matter of practicality, if the diplomat is well and favorably known—he is in a friendly country—wouldn't that be done on the basis of a phone call and they take his word that they will get a note later? The formalities wouldn't take care of that?

Mr. AUERBACH. I have no field experience but I have no reason to believe that such action would be taken on the call of the alien. It might be done at a telephonic request from the Foreign Ministry which is then confirmed, but I would defer to my Foreign Service colleagues who can speak from experience.

Mr. SOURWINE. It wouldn't be a serious violation if it was done on a telephone call from the Foreign Minister, would it?

Mr. AUERBACH. I don't think so; not in the case of a foreign government official.

Mr. SOURWINE. As long as the records were eventually completed, at least there would be no question about it.

Mr. AUERBACH. I would say in the case of a friendly country—in the case of a foreign government official—I would say this would not seem to be a violation.

Mr. SOURWINE. All right.

Now, before we get down to the situation of new applicants for visas, not in these other categories, are there any others of these special categories where visas could be issued without personal appearance at the earlier date, and which are not diplomatic visas where personal signature on the application form is not always required?

Mr. AUERBACH. I should like to refer here to section 41.117 of title 22 of the Code of Federal Regulations which states:

When personal appearance is required, Form FS 257 shall be signed by or on behalf of the applicant in the presence of consular officer. The application shall be verified by the applicant before the consular officer who shall then sign

the Form FS 257. If personal appearance is waived and the submission of an application form by the alien is required, the form shall be signed by the applicant.

Does this answer your question, Mr. Sourwine?

Mr. SOURWINE. It partially answers it but it appears to indicate that there may be instances in which personal appearance is waived and the submission of an application form is not required. Is this true?

Mr. AUERBACH. I believe I indicated that in the case of foreign government officials and international organization aliens—

Mr. SOURWINE. Does this regulation, you are reading, apply on diplomatic passports as well as all others?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Would it be your judgment, then, that except in the case of a diplomatic passport, there would not be any instance in which personal appearance was waived but an application form was not required?

Mr. AUERBACH. To the best of my knowledge, Mr. Sourwine, an application form is always required. In the case of foreign government officials and international organization aliens, the form is completed by the consulate based on the note received.

Mr. SOURWINE. Well, now, what you just read says, as I heard it, that in any case where personal appearance is waived and in which an application form is required—

Mr. AUERBACH. Right.

Mr. SOURWINE (continuing). —the form must be signed by the applicant?

Mr. AUERBACH. Right.

Mr. SOURWINE. It is a principle of statutory construction that a statute is never presumed to contain a needless provision. If an application form were required in every case where personal appearance was waived, why are the two factors of waiver of personal appearance and requirement of application form both mentioned in this section of the regulations?

Mr. AUERBACH. Because the personal appearance is also waived, as I indicated before, in the case of foreign government officials and international organization aliens.

Mr. SOURWINE. Who are not required to file applications?

Mr. AUERBACH. Who are not required to sign the application which is filled out for them.

Mr. SOURWINE. But you said there was a requirement for an application form in every case where there was a waiver of personal appearance?

Mr. AUERBACH. Indeed, but in the case of these two groups, I attempted to make it clear, the form is completed by the consular officer.

Mr. SOURWINE. And not signed by the applicant?

Mr. AUERBACH. Not in the case of the foreign government official and international organization alien.

Mr. SOURWINE. Doesn't that regulation you just read require that every application form be signed by the applicant? If it doesn't, say so, and explain why?

Mr. AUERBACH. Mr. Sourwine, I respectfully request that I may be permitted to supply the answer to this particular question in writing.

Mr. SOURWINE. Is this something that will have to be cleared with the Secretary and which we should request of the Secretary or is it something that you can just send over?

Mr. HOOVER. I presume it would follow the same normal channel and I would request that it be included in a letter with the other requests.

Mr. SOURWINE. All right. You can't supply the answer now?

Mr. AUERBACH. No, I cannot.

Mr. SOURWINE. As you read this statute, doesn't it appear to you to require that in every case the application be signed by the applicant? That "statute" is incorrect; the regulation?

Mr. AUERBACH. The statute in section 222(e) provides for exceptions from the requirement that every application be signed because it reads, "Except as may be otherwise prescribed by regulations, each copy of an application required by this section shall be signed by the applicant."

Mr. SOURWINE. You don't know what other exceptions there may be?

Mr. AUERBACH. And I cannot find at this point the particular—

Mr. SOURWINE. That is the point you want to clear up to prepare your written answer?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. All right. And I take it that there may be some regulation giving exemption from this requirement in the case of diplomatic passports?

Mr. AUERBACH. Foreign government officials and international organization aliens.

Mr. SOURWINE. Yes. If there is not such a regulation, outside of the one you have read here, would you then say that what is in the one you have read would require signature by the applicant even in such cases?

Mr. AUERBACH. Yes.

Mr. SOURWINE. All right. And your answer will clear this up for me?

Mr. AUERBACH. We will clear that up.

(In a letter to the chairman of the subcommittee dated December 10, 1964, Acting Assistant Secretary Mr. Robert E. Lee stated: "Before his death, Mr. Auerbach prepared a note indicating that he considered the authorization to posts in Italy to accept visitor visa applications by mail in accordance with the provisions of 22 CFR 41.114(a)(8) was an instruction in which consular officers were encouraged to be lenient in distinguishing between immigrants and nonimmigrants. A copy of 22 CFR 41.114(a)(8) is attached.")

22 CFR 41.114(a)(8)

§ 41.114 *Personal appearance.*

(a) Except as otherwise provided in this section, every alien who makes application for a nonimmigrant visa shall be required to appear in person before a consular officer. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien who is:

(1) A child under ten years of age,

(2) Within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, A-3, C-2, C-3, G-1, G-2, G-3, G-4, G-5, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7.

(3) An applicant for a diplomatic or official visa,

(4) An applicant for a nonimmigrant visa under the provisions of section 101(a)(15)(B) of the Act if (i) within the preceding 24 months he was issued a nonimmigrant visa of a classification requiring the alien's personal appearance, or (ii) he is well and favorably known at the foreign service establishment at which he is applying, and is a resident of the consular district in which the foreign service establishment is located,

(5) Within a class of nonimmigrants classifiable under the visa symbols C-1, H-1, or I,

(6) Within a class of nonimmigrants classifiable under the visa symbol J-1, who qualifies as a leader in a field of specialized knowledge or skill and who is the recipient of a United States Government grant, and the spouse and children of such an alien who qualify for J-2 classification,

(7) Within any other nonimmigrant class not included in subparagraphs (1) through (6) of this paragraph in whose case the principal officer or, at a diplomatic mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the Supervising Consul General determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant, or

(8) Within a class of nonimmigrants classifiable under the visa symbols B-1 or B-2, if he is applying at a post which has been authorized by the Department to accept temporary visitor visa applications by mail.

(b) In the categories described in subparagraphs (1) through (3) of paragraph (a) of this section, the visa application shall be made on Form FS-257. In any case in which personal appearance is waived, pursuant to subparagraph (8) of paragraph (a) of this section, application for a visa shall be made on Form FS-257a. In all other cases in which personal appearance is waived the consular officer may, in his discretion, require that the application be submitted on Form FS-257a.

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

(Amended 10-2-62, 27 F.R. 9723)

Mr. SOURWINE. All right.

Now, what happens in the case of an applicant for a visa who is unable to sign his name? Is he required to mark an "X" on the paper and the consular officer then certifies that it was him that signed it or how is that handled?

I might point out, sir, that it might seem easy to say that there would be no such case because a person who can't write can't come in, but I don't believe there is any rule that says a person who can't write can't file an application for a visa.

Mr. AUERBACH. The literacy requirement applies only to immigrants, if I may point out.

Mr. SOURWINE. Correct.

Mr. AUERBACH. We are speaking now I believe of nonimmigrants.

Mr. SOURWINE. That is correct.

Mr. AUERBACH. All right. As I pointed out before, 22 CFR 41.117 prescribes that when personal appearance is required, the application form shall be signed by or on behalf of the applicant in the presence of the consular officer.

Mr. SOURWINE. Yes.

Mr. AUERBACH. This regulation is elaborated on by notes to this regulation and I should like to ask for permission to supply this note in answer to your question.

Mr. SOURWINE. You think that is necessary to answer the question?

Mr. AUERBACH. In order to answer it accurately and precisely.

Mr. SOURWINE. Well, would you read that as meaning that personal appearances may not be waived in the case of an applicant who is unable to sign his name?

Mr. AUERBACH. The regulation continues to require that if personal appearance is waived, and the submission of an application form by the alien is required, the form shall be signed by the applicant.

Mr. SOURWINE. I think we have covered the point that if personal appearance is waived, an application form is required except in diplomatic cases or did you still say that an application form is required even in diplomatic cases but that it need not be signed and that you would explain that with a written statement?

Mr. AUERBACH. It will be completed by the consular officer but we will explain this in the written statement.

Mr. SOURWINE. All right.

Now we have another situation in which it seems to me it must be the case either that a person who cannot sign his name may not have a waiver of appearance, personally, in connection with an application for visa, or in which we shall have to find a regulation granting such a person an exemption. Would that be true in your judgment?

Mr. AUERBACH. If you take the case of a child who cannot write, the parent or his guardian could sign.

Mr. SOURWINE. I am talking about adults. Now, that could only be done in personal appearance cases, couldn't it? Can a parent or guardian sign for the child in a case where personal appearance is waived?

Mr. AUERBACH. The regulation seems to suggest that it cannot be done.

Mr. SOURWINE. Again, there would have to be some other regulation granting an exemption in the case of the child, wouldn't there?

Mr. AUERBACH. I should like to cover this entire complex in writing.

Mr. SOURWINE. I wish you would; yes, cover it for me.

Mr. AUERBACH. If I may.

Mr. SOURWINE. And with special regard to this last question of whether personal appearance may be waived in the case of a person unable to sign his name, who is an adult, and if so, how that would be done?

All right.

Mr. AUERBACH. Right.

(Under cover of letter dated February 19, 1965, Acting Assistant Secretary Lee supplied the following document:)

Subject: Signature requirements for nonimmigrant visa applicants prepared at the request of the Senate Subcommittee on Internal Security.

Section 222(c) of the Immigration and Nationality Act provides in part that, "Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed." Section 222(e) of the act provides that, "Except as may be otherwise prescribed by regulations, each copy of an application required by this section shall be signed by the applicant in the presence of the consular officer."

The statutory requirement relating to the signing of the visa application is implemented by 22 CFR 41.117 which provides in part: "When personal appearance is required, form FS-257 shall be signed by or on behalf of the applicant in the presence of the consular officer," and, "If personal appearance is waived, and the submission of an application form by the alien is required, the form shall be signed by the applicant." Although this section does not specifically refer to 22 CFR 41.115(a) entitled "Aliens Required To Execute Applications," it is, of course, affected by its provisions which read in part: "In the case of an alien under 16 years of age, or one physically incapable of making an application, the application may be made by the alien's parent or guardian, or if

the alien has no parent or guardian, by any person having a legitimate interest in, the alien."

The classes of aliens in whose cases personal appearance may be waived are set out in 22 CFR 41.114. The first three classes, namely, children under 10, foreign government officials and international organization aliens, and applicants for diplomatic visas have been in effect since December 24, 1952, the effective date of the Immigration and Nationality Act. In August of 1962 certain additional classes were added, such as visitors reapplying within 2 years of prior visa issuance with personal appearance or who are well and favorably known at the consular office, H-1 or I visa applicants and leaders in a field of specialized knowledge or skill qualified as exchange visitors and their spouses and children. In October 1962 provision was made for cases involving national interest or unusual hardship and for visitors permitted to apply without personal appearance under the program for facilitating international travel. In the latter category of cases it was anticipated that the application form FS-257a would be signed by the visa applicant. However, the Department is now considering amendment of the provisions of 22 CFR 41.117 to permit the signature of such applications by the parent, guardian, or person having legal custody of a child under the age of 16 or of a person physically incapable of signing the application.

With regard to foreign government officials and international organization aliens, instructions provide that visas will be issued to such persons only upon receipt of a note from the appropriate foreign office or other official authority, except that, under unusual circumstances the visa may be issued upon the oral request of a competent foreign authority, to be later confirmed in writing.

With regard to aliens permitted to apply without personal appearance pursuant to the travel facilitation program, the majority of posts are authorized to issue visitor visas under this program except those in Iron Curtain countries and in certain areas where mail facilities are unreliable.

§ 41.115 *Application forms.*

(a) *Aliens required to execute applications.*

Every alien applying for a nonimmigrant visa shall make application therefor on Form FS-257 (Application for Nonimmigrant Visa and Alien Registration) or Form FS-257a (see definition of Form FS-257 contained in § 41.1) unless personal appearance is waived and submission of the application form by the applicant is not required or unless there is a Form FS-257 on file at the consular office which can be appropriately amended to bring the application up to date. In such cases the application form shall be completed by the consular officer from available information. In the case of an alien under 16 years of age, or one physically incapable of making an application, the application may be made by the alien's parent or guardian, or if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien. (Amended 1-10-63, 28 F.R. 274; 5-30-63, 28 F.R. 5375)

(b) *Additional information as part of application.*

In any case in which the consular officer believes that the information provided in Form FS-257 is inadequate to determine the alien's eligibility to receive a nonimmigrant visa he may require the submission of such additional information as may be necessary or interrogate the alien on any matter which is deemed material. Any additional statements made by the alien shall become a part of the visa application. All documents required under the authority of § 41.111(a) shall be considered papers submitted with the alien's application within the meaning of section 221(g) (1) of the Act.

(Sec. 222, 66 Stat. 193, 75 Stat. 653; 8 U.S.C. 1202)

(Former paragraph (c) deleted 10-26-61, 26 F.R. 10051)

§ 41.117 *Signature.*

When personal appearance is required, Form FS-257 shall be signed by or on behalf of the applicant in the presence of the consular officer. The application shall be verified by the applicant before the consular officer who shall then sign the Form FS-257. If personal appearance is waived,

and the submission of an application form by the alien is required, the form shall be signed by the applicant. (Amended 5-30-63; 28 F.R. 5375) (Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

* * * * *

Mr. SOURWINE. Mr. Auerbach, Mr. Valenza told us that the Visa Division is today, to use his words, "circumventing or shortcutting"—that is the end of the quotation—the security screening of visa cases. Do you agree with this?

Mr. AUERBACH. I do not handle individual cases and therefore have no experience with the procedures with which Mr. Valenza is concerned now. Consequently, I cannot answer that question.

Mr. SOURWINE. Do you have sufficient confidence in him to say that if he says it it is probably true, or does the statement strike you as possibly inaccurate?

Mr. AUERBACH. All I can say in answer to this question is that I have great respect for Mr. Valenza's judgment but I cannot evaluate a particular statement he made without the benefit of the facts.

Mr. SOURWINE. You are not going to buy anybody's statement without knowing it is right, huh?

Mr. AUERBACH. I would be reluctant.

Mr. SOURWINE. All right, sir. I don't condemn you for that.

Has the Visa Division, to your knowledge, or have any officers of the Visa Division or any consular officers in the field been required to cut corners in order to facilitate the issuance of visitors' visas?

Mr. AUERBACH. I do not recall at this point any specific instruction to this effect.

Mr. SOURWINE. Do you know if it is true that the established and supposedly mandatory check of all physical files in a consulate or an embassy in connection with a visa application is departed from in order to speed up issuance or facilitate the handling of the case?

Mr. AUERBACH. My impression is that the checking of the Lookout Book and of local cards is done in every case.

Mr. SOURWINE. All right.

Is it your opinion that the Visa Division and the work of consular officers in the field with respect to visas is being operated today entirely in accordance with the provisions of applicable laws and regulations. You are in doubt about that? I see you hesitated a long time.

Mr. AUERBACH. I have no doubt about that. I believe that visas are issued consistent with existing regulations and the law.

Mr. SOURWINE. All right.

Do you know, sir, of an incident involving a refugee or at least a nonimmigrant entry from abroad on a diplomatic passport or purported diplomatic passport by an individual not entitled to such a passport?

Mr. AUERBACH. No, I don't.

Mr. SOURWINE. Now, referring to cases where there has been a waiver of visa by action to the Attorney General on the recommendation of the Secretary of State, or by action of an immigration officer on recommendation of the Secretary or of a consular officer, who fixes the period of time for which the alien may be admitted and what is the maximum time which may be so fixed?

Mr. AUERBACH. In all cases of nonimmigrants, the period of admission is fixed by the Immigration and Naturalization Service at the time the alien applies for admission at a port of entry.

Mr. SOURWINE. And what is the maximum time for which an alien may be admitted?

Mr. AUERBACH. To the best of my knowledge, it is 6 months. It may in certain categories be 1 year. There has been a change in policies on the part of the Immigration Service at times, so I would not want to make that a definite statement.

Mr. SOURWINE. This would be governed by regulations of the Immigration and Naturalization Service and not by regulations of the State Department?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. All right.

Do you know of any cases in—let me strike that and ask this question.

Who has under the statutes authority to recommend the waiver of a visa by the Attorney General or by someone with power delegated from him?

Mr. AUERBACH. As we discussed before, the authority to waive the visa requirement is contained in section 212(d)(4), and is based on joint action by the Attorney General and the Secretary of State.

Mr. SOURWINE. I am now talking about cases of the waiver of a visa where there has been an eligibility found. This is a waiver, as I understand it, which may be granted only by the Attorney General or by an immigration officer. Or is it limited only to the Attorney General himself?

Mr. AUERBACH. I am not sure I follow you, sir. You speak of the documentary—

Mr. SOURWINE. No, sir; I do not.

Mr. AUERBACH. I am sorry.

Mr. SOURWINE. I am talking about in the case of a documentary, as we have pointed out, there can be a waiver of the requirement for documentation by joint action of the Secretary and the Attorney General.

Mr. AUERBACH. Correct.

Mr. SOURWINE. I am talking about a case of the waiver of a visa where a visa cannot be issued because the alien has been found ineligible under a number of clauses; 212, 212(d).

Mr. AUERBACH. The Attorney General has delegated this authority to the Commissioner of Immigration who in turn has delegated this authority further down the line. I would not feel competent to identify the lowest level—

Mr. SOURWINE. All right.

Mr. AUERBACH (continuing). Which—

Mr. SOURWINE. And the recommendation—

Mr. AUERBACH (continuing). —at which it can be made.

Mr. SOURWINE. And the recommendation power of the Secretary of State has been delegated by him to visa officers and consular officers abroad?

Mr. AUERBACH. The answer has to be qualified, Mr. Sourwine. As we discussed yesterday, in certain types of cases, this authority has been reserved by the Secretary of State to himself and I think a request

has been made yesterday that we submit to you the classified information on this point.

Mr. SOURWINE. This is correct. But I am trying to find out now whether the Secretary's delegation of power in instances where such power may be exercised by a consular officer has been delegated by him to all consular officers of the class or to all visa officers or whether the Secretary's power has been delegated by him to some immediate subordinate who has then delegated it further down.

Perhaps I didn't ask the question in the best possible way. Do you know the answer?

Mr. AUERBACH. I believe, Mr. Sourwine, the answer is that the Secretary of State has delegated his authority under the Immigration and Nationality Act to the Administrator of the Bureau of Security and Consular Affairs.

Mr. SOURWINE. His complete authority. Or do you mean only his authority to make recommendation?

Mr. AUERBACH. Section 104(b) of the Immigration and Nationality Act provides in part that the Administrator "shall be charged with any and all responsibility and authority in the administration of the Bureau and of this act which are conferred on the Secretary of State as may be delegated to him by the Secretary of State or which may be prescribed by the Secretary of State."

Mr. SOURWINE. That doesn't answer the question.

Mr. AUERBACH. I am aware of that, sir. I would like to ask permission that we submit the delegations by the Secretary of State to the—

Mr. SOURWINE. Could you do this, and cover the point with respect to delegation to consular officers, whether it goes through the Administrator or is direct from the Secretary. And cover the point also, if you will, whether the power of the Secretary to act with respect to those cases where he has reserved action to himself has been delegated to the Administrator.

Is that clear, Mr. Hoover?

Mr. HOOVER. The last part of it was where the Secretary has reserved the power to himself?

Mr. SOURWINE. Yes. Mr. Auerbach had told us that there was a certain category of cases which, as he said, we asked yesterday be furnished to us and which was identified as a classified list.

Mr. HOOVER. Yes.

Mr. SOURWINE. Of instances or cases or classes of cases, as the case may be, which the Secretary has reserved for action by himself; in other words, has required to come into Washington for his action.

And I am asking whether action in those cases has been delegated by the Secretary to the Administrator?

Mr. AUERBACH. The answer to this questions is "Yes."

Mr. SOURWINE. You know that?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Then we needn't ask that further.

Does the Administrator have power to delegate that power further down? In other words, did the Secretary delegate his full power in this area to the Administrator?

Mr. AUERBACH. Yes. I may explain here that under the statute as we have covered it before—

Mr. SOURWINE. Yes.

Mr. AUERBACH (continuing). —the consular officer and the Secretary of State have concurrent authority to make the recommendation under section 212(d) (3).

Mr. SOURWINE. I understand.

Mr. AUERBACH. But by instruction, the Secretary of State has required that the consular officer in certain types of cases which will be submitted—refer these recommendations through the Department of State.

Mr. SOURWINE. I understand. Now, you are plowing old ground.

Mr. AUERBACH. Yes.

Mr. SOURWINE. What I am trying to find out is whether the Secretary has delegated to the Administrator his full power with respect to such cases?

Mr. AUERBACH. The answer is, "Yes."

Mr. SOURWINE. In other words, then, the Administrator is in a position himself under his delegated power to add to or subtract from the cases or categories or classes of cases which must be submitted to Washington?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Or in a particular case even though it is within such a category, to delegate the power to make a recommendation to some subordinate to him?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Yes. He has as much power as the Secretary would have with respect to that.

Mr. AUERBACH. In this field, yes.

Mr. SOURWINE. In this field.

Off the record.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

Mr. Auerbach, with respect to procedures for processing visa waiver cases, do you have any knowledge about a switch in approval or review of these cases or the responsibility for approval or review from political areas to the country desk officer?

Mr. AUERBACH. I am not aware of that.

Mr. SOURWINE. Are you aware of any switch in this responsibility for approval or review or the power to approve or review from the country desk officer to the political area?

Mr. AUERBACH. I am not aware of that.

Mr. SOURWINE. I will say that the committee has information to the effect that there has been a switch, a change, and that such cases instead of being reviewed or sent for approval and forwarding to the country desk officers are now sent for that purpose to political areas, political area officers.

You do not know of this?

Mr. AUERBACH. If I understand your question correctly, it is that the requests for opinions and recommendations by political areas are now handled on a higher level than they used to be?

Mr. SOURWINE. No. I do not mean that at all. At least I don't understand what I am saying to mean that. I will state it another way.

Obviously when these cases come in, either for a visa at the option of the field or because they are one of these cases reserved for the

Secretary, the Secretary or his deputy, the Administrator, is not to act in a vacuum and he can't himself do all the checking and so he sends it somewhere for checking.

It is our understanding, at least it is our information, that at some former time and over a number of years as a matter of course, these cases went to the country desk officer in each instance for a clearance or a recommendation or an approval or whatever he might put on it, informatory to the Secretary or to the man who is going to make the decision under delegated power from the Secretary, and that at some time in the recent past, certainly within a few years, this procedure or practice has been changed, that they no longer go to the country desk officer but that they go to political officers.

Mr. AUERBACH. Can we go off the record for a minute?

Mr. SOURWINE. Sure.

Off the record.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

(Question read.)

Mr. AUERBACH. Mr. Sourwine, may I say in reply to this question that we consider the desk officers to be political officers and speaking from my past experience, I recall that cases in which the advice of the political area was sought, were referred to the appropriate level, depending on the importance of the particular case.

I am not aware of any recent development for the mere—for the simple reason that I have not been involved in the procedural handling of cases of this kind.

Mr. SOURWINE. As far as you know, is it handled now the same way it was when you were involved in handling cases like that?

Mr. AUERBACH. I do not know whether there have been any changes in selecting the level in the political area at which cases of this type are handled.

Mr. SOURWINE. Well, there was, of course, in my question an inference or an implication, I should say, an implication that country desk officers were not political officers or at least that there was something known as a political area which was different from the officer of the desk officer.

If this implication is wrong, I don't want the record to stand uncorrected in that regard.

Do I understand you correctly that this implication is wrong and that to the best of your knowledge, desk officers are political officers and there is no separate political area to which recommendations with regard to visa waiver cases could be asked, from which it could be asked as a switch from asking that the matter be cleared by the desk officer?

Mr. AUERBACH. To the best of my knowledge, I am not aware of any such switch and from an organizational point of view, I could see only that any change would mean that the advice or information is sought on a higher level within the Department.

Mr. SOURWINE. Rather than taking it away from the desk officers. Or do you mean that it is taken away from them or maybe not sent to them for a recommendation but sent to some higher level?

Mr. AUERBACH. It is entirely conceivable that a case is sent to higher level in view of the importance of the case.

Mr. SOURWINE. Now, where a case is sent to a higher level, would this still be in the same area, under the same Deputy Assistant Secretary, that the country desk officer would come under or would it be in another area under another Deputy Assistant Secretary?

Mr. AUERBACH. To the best of my knowledge, the case would be referred to the Assistant Secretary under whose jurisdiction the particular geographic area is located.

Mr. SOURWINE. Right.

Now, Mr. Harriman is Deputy Under Secretary for Political Affairs, is he not?

Mr. AUERBACH. Mr. Harriman [Averell] is Under Secretary for Political Affairs.

Mr. SOURWINE. Now, does he have a substantial staff, a number of people under him?

Mr. AUERBACH. I am not familiar with the organization of Mr. Harriman's office.

Mr. SOURWINE. Do you comprehend the possibility that recommendations with respect to visa waiver cases might be sought in an increasing number of cases now from someone in Mr. Harriman's office rather than from the political desk officer or someone higher up but under the same Deputy Assistant Secretary that the political desk officer would come under?

Mr. AUERBACH. I cannot speak from experience and consequently I don't feel—

Mr. SOURWINE. I only ask if you comprehended the possibility, not if you know whether it is done.

Mr. AUERBACH. I cannot comprehend of the possibility of any large-scale shift of responsibility in this area, because of the work volume involved. I am not aware there is any particular machinery set up for this purpose.

Mr. SOURWINE. All right. I think that answers the question.

Let me nail it down this way: Would it be possible to furnish the committee with a tabulation showing the number of visa waiver cases, if any, which in the course of processing have been sent to Mr. Harriman's office or someone in his office for a recommendation for a clearance?

Mr. AUERBACH. I will submit this request.

Mr. SOURWINE. Well, it could be done, couldn't it? I am trying to find out how much trouble it would be to do it. I don't want to ask for something that will be impossible to attain. It may be that records are not kept in that area and I wouldn't care to ask that this committee request something that would require the Department to go back and go through the files of every visa case. That would be wasteful of the time of the Department.

Mr. AUERBACH. To the best of my knowledge, and again based on my past experience, I think it would be extremely difficult, if not impossible, to trace cases by category and by referral to particular officers within the Department.

Mr. SOURWINE. Wouldn't it be fairly simple to make an inquiry of Mr. Harriman's office as to whether they ever got such cases and how many within a given period of time?

Mr. AUERBACH. I think such an inquiry could be made.

Mr. SOURWINE. Well, may we make the request that inquiry be made of Mr. Harriman's office as to how many visa waiver cases have been referred there or to somebody in that office for a recommendation or a clearance within, say, the last 2 years. Or each of the last 2 years. That could be done, couldn't it?

Mr. HOOVER. It could be done, the request made, but I personally would think it quite likely that it would be much the process that you indicate; that is, the files searched individually to see whether it was sent to a particular office.

Mr. SOURWINE. No, no. You won't have to do that.

Off the record.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

To recapitulate, if the request may be that Mr. Harriman and the top half dozen people in his office be asked if any visa waiver cases have been referred to them in the last 2 years for a recommendation or a clearance, and if we can be told the result of that check, I think it will—certainly if the situation is as you have indicated it may be that there have been no such referrals, we could establish that fact.

All right.

Mr. AUERBACH, do you recall any specific policy directive from Mr. Schwartz' office with respect to visa waiver cases where Communist affiliations were involved?

Mr. AUERBACH. I have not seen any such instruction.

Mr. SOURWINE. May I ask that the committee be informed for the record whether there is any such policy directive from Mr. Schwartz' office which deals with responsibility for approval or clearance of visa waiver cases?

Mr. AUERBACH. Yes.

Mr. SOURWINE. The request will be repeated by mail.

(In a letter to the subcommittee dated February 19, 1965, Acting Assistant Secretary Lee stated:)

Mr. Schwartz' office is, of course, involved in visa waiver cases. His office has issued directives which deal with responsibility for approval of clearance of visa waiver cases.

Mr. SOURWINE. Is there any policy in the Visa Office or in SCA under which visa procedures with respect to applicants from a country which has come under Communist domination or control are tightened up immediately and adequately when that Communist control becomes effective or is known?

Mr. AUERBACH. To the best of my recollection, Mr. Sourwine, the pertinent instructions enumerate the countries to which special procedures apply but this is part of the confidential appendix to the visa handbook and I cannot be more specific than that, not for reasons of classification but because I do not recall more than to say that to the best of my knowledge, this is an enumeration by country.

Mr. SOURWINE. That is something we have not asked for yet; isn't it? It is not embraced—

Mr. AUERBACH. If you ask me—

Mr. SOURWINE. It was not embraced within the request made to you earlier.

Mr. AUERBACH. Not to me.

Mr. SOURWINE. May we also note the request that we be furnished under proper classification with the list of countries to which as you say special procedures apply. By that you mean a tightening up of the visa procedures?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Now, my question goes to whether there is any policy for putting the country on this list as soon as the Communists gain power or whether the matter just stays up in the air, there is no recognition of the Communist power in the country until somebody orders it put on the list.

Do I make myself clear?

Mr. AUERBACH. I believe you do, Mr. Sourwine.

Mr. SOURWINE. Do you know the answer?

Mr. AUERBACH. I believe the answer I can give you is that a determination is made in each individual case.

Mr. SOURWINE. But is there a policy or practice which calls for such a determination as soon as there is a Communist takeover or is it a matter which is not of substance until somebody decides to make the determination? In other words, is there some assurance as a matter of policy and practice or by directive or regulation for addition of a country to this list as soon as there is a Communist takeover?

Mr. AUERBACH. Relying on my recollection when I was responsible for this work, I believe as soon as we had reason to believe that a country was Communist controlled or became Communist controlled, we would seek the concurrence of the interested political areas for the implementation of the particular procedures which are applicable to Communist-controlled countries.

Mr. SOURWINE. Now, I take it from your answer that you are no longer concerned with doing this work?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Who does it now?

Mr. AUERBACH. This would be the responsibility of the Director of the Visa Office, and under him, of the Deputy Director for Operations.

Mr. SOURWINE. Who is?

Mr. AUERBACH. Mr. Raymond Ylitalo.

Mr. SOURWINE. Do you know whether the same practice which was yours, as you have explained it, is followed by Mr. Ylitalo?

Mr. AUERBACH. I do not know.

Mr. SOURWINE. All right.

Off the record.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

May the request be that Mr. Ylitalo be asked to furnish the committee with a brief statement for the record answering this last question?

Mr. AUERBACH. Yes, sir.

Mr. HOOVER. That is, the practice.

Mr. SOURWINE. Yes.

Mr. HOOVER. His practice.

Mr. SOURWINE. Yes.

(EDITOR'S NOTE.—At the time of going to press the answer to this question had not been received by the committee.)

Mr. Auerbach, are you familiar with so-called crew list visas?

Mr. AUERBACH. In general terms.

Mr. SOURWINE. Are these truly visas or are they waivers in lieu of visas?

Mr. AUERBACH. They are visas.

Mr. SOURWINE. They are visas?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Are they visas given individually or are they visas given by ship to all of the persons on the crew list?

Mr. AUERBACH. They are given to all persons of the crew list who are aliens, who are eligible to receive a nonimmigrant visa, and do not have an individual crewman visa.

Mr. SOURWINE. This is done at what time? Is it when the ship docks or makes port?

Mr. AUERBACH. This is usually done before the ship's departure.

Mr. SOURWINE. From the foreign port?

Mr. AUERBACH. Indeed.

Mr. SOURWINE. If they are going to call here?

Mr. AUERBACH. Indeed.

Mr. SOURWINE. It is done by a visa officer abroad, then?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Who has a chance to make the security checks with respect to each individual?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Does this procedure for crew list visas involve separate applications by each individual on the crew?

Mr. AUERBACH. No; it does not.

Mr. SOURWINE. Are individual members of the crew asked to sign applications for these visas?

Mr. AUERBACH. No.

Mr. SOURWINE. Are the visas issued to and in the names of the individual persons on the crew list?

Mr. AUERBACH. The visa, as I recall, is placed below the listing of the crew on the crew list and the names of those aliens who are found ineligible are listed below as being not covered by the visa.

Mr. SOURWINE. In other words, it is one visa that covers a number of individuals?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. What do they do, then, each one carries a copy?

Mr. AUERBACH. No.

Mr. SOURWINE. Well, what does he present in order to get into the country?

Mr. AUERBACH. The crew list visa is surrendered to the Immigration Service and the Immigration Service checks each crewmember out against this list.

Mr. SOURWINE. I see. There is, then, a separate exercise of discretion with respect to each individual?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Is that more than an attempted identification of them as the persons named in the crew list?

Mr. AUERBACH. On the part of the Immigration Service?

Mr. SOURWINE. Yes.

Mr. AUERBACH. I cannot speak for the Immigration Service but I understand that it checks out very carefully these names against its

own lookout material, and as you no doubt know, the Immigration Service has engaged in the issuance of landing cards to crewmen which facilitate the handling of these cases.

Mr. SOURWINE. In other words, they check them out against the crew list and if they check out, they give them individual landing cards which the man may then carry?

Mr. AUERBACH. After they satisfy themselves that the alien is so qualified, but I would rather refer this question to the Immigration Service.

Mr. SOURWINE. Who satisfies himself that the person who eventually is going to get a landing card or gets a landing card is, in fact, the individual whose name is on the crew list?

Mr. AUERBACH. I am not familiar with this procedure of the Immigration Service.

Mr. SOURWINE. Would this be an obligation of the consular officer to satisfy himself that each individual whose name appeared on the crew list was, in fact, the individual who bore that name?

Mr. AUERBACH. Since the consular officer does not see the member of the crew, he cannot, of course, identify——

Mr. SOURWINE. That was my point.

Mr. AUERBACH (continuing). ——the alien.

Mr. SOURWINE. You know it is not a completely unique situation for a man to sign on a crew of a vessel under a name other than his own name?

Mr. AUERBACH. I am not familiar with the crew list practices or the practices of seamen.

Mr. SOURWINE. You don't even know that this is ever done?

Mr. AUERBACH. Oh, I am sure that this is done.

Mr. SOURWINE. I am sure it is, too.

Mr. AUERBACH. But I cannot speak from experience.

Mr. SOURWINE. Where it is done, what possible chance is there for the consular officer to do more than check the name he is given against his records? How can he possibly answer the question of identity as to whether the individual is, in fact, the person whose name is on the list?

Mr. AUERBACH. I believe that is all he can do; namely, to check that the person——

Mr. SOURWINE. Checks the name?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. This is a case in which personal appearance is not required?

Mr. AUERBACH. That is right.

Mr. SOURWINE. An individual application is not required. There is no signature required. There is no evidence of identity ever furnished. The only evidence he gets is that there is an individual in the crew who has signed on under such and such a name and he then checks the name.

Mr. AUERBACH. That is right.

Mr. SOURWINE. And in the event there is a vessel whose captain, for any reason, is unable to fully satisfy himself as to the identity of the crewman or finds it unnecessary to do so, then there is no check on that identity at all, is there?

Mr. AUERBACH. The check of identity will have to be made by the Immigration and Naturalization Service.

Mr. SOURWINE. Can the Immigration and Naturalization Service possibly check the identity of the individual to see that he is, in fact, the person whose name is on the crew list?

Mr. AUERBACH. I am satisfied that the Immigration Service makes every effort to undertake this task.

Mr. SOURWINE. You don't know how they do it?

Mr. AUERBACH. I do not.

Mr. SOURWINE. Here is a man they have never seen before. He has a name they have never heard before. The name is on the crew list. They have no signature for comparison. They have no fingerprints for comparison. They have no photographs. How in the world are they going to check?

Mr. AUERBACH. I have to defer this question to more competent witnesses.

Mr. SOURWINE. Well, you can't think of any way, can you, that you can tell me about?

Mr. AUERBACH. I do not recall, Mr. Sourwine, how many identifying data, if any, are on the crew list.

Mr. SOURWINE. Don't you know that as a matter of fact, all there is on the crew list is a name signed? In most instances. It is true that certain passenger liners are more careful about their crews, particularly stewards and things like that, but a merchant vessel coming in, all you have is a list of names.

Mr. AUERBACH. I am not sufficiently familiar with the operations to give you a substantive answer.

Mr. SOURWINE. All right. It would be possible, of course, for the Immigration Service to have someone at the dock who is familiar with the faces of at least a good many known subversives or persons who are known to have come in under assumed names and he might spot one now and then.

It is my understanding this is done. But that is not a positive check of any nature on the identity of every individual on the crew list, is it?

Mr. AUERBACH. I am not familiar with the various security procedures and arrangements of the Immigration Service to be able to answer this question.

Mr. SOURWINE. Mr. Auerbach, has the work of the visa division been made more difficult by any recent court decisions? By recent, I mean in the last couple of years.

Mr. AUERBACH. I do not recall any court decision which had direct application to visa work.

Mr. SOURWINE. Do you know of any court decisions within the last 2 years which have substantially changed the immigration laws of the country, insofar as their interpretation or application or both may be concerned?

Mr. AUERBACH. One decision comes to my mind, and that is a Supreme Court decision defining the term "entry."

Mr. SOURWINE. Tell us about it. You referred to this in the recent revision of your book.

Mr. AUERBACH. I did.

Mr. SOURWINE. Do you want to tell us about it or do you think a citation of the passage from the book will be sufficient to answer the question?

Mr. AUERBACH. I believe it would.

Mr. SOURWINE. Will you cite that passage at this point in the record when you are correcting your testimony?

Mr. AUERBACH. I would be glad to.

Mr. SOURWINE. If you cite the passage, the page, and the paragraph, we can then insert it up here.

That book is now published, so that there is no problem of clearance required for you to do that.

Mr. AUERBACH. That is correct.

(EDITOR'S NOTE.—Mr. Auerbach later supplied the following citation: 1964 Supplement to Second Edition of Immigration Laws of the United States, Ch. 5, sec. 3a and footnote 6A (pp. 8 and 9). The text appears below as a footnote.)*

Mr. SOURWINE. Off the record.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

Mr. Auerbach, Mr. Valenza told us that 99 out of 100 individuals who come to this country under the Soviet and Eastern European exchange program are considered to be ineligible for entry and, therefore, require waivers from the Attorney General.

Do you concur in that statement?

Mr. AUERBACH. I have not handled any of these in recent years, and consequently cannot express a current opinion.

Mr. SOURWINE. Was this true during the period in which you were cognizant of what was going on in this area?

Mr. AUERBACH. As far as I recall, Mr. Sourwine, we considered most of these people to be ineligible under section 212(2)(28) of the Immigration and Nationality Act.

Mr. SOURWINE. Was it as high as 99 out of 100?

*CHAPTER 5. APPLICATION AND ORGANIZATION OF IMMIGRATION LAWS—DEFINITIONS

1964 Supplement to Second Edition of Immigration Laws of U.S.

3. Definitions.

(a) Entry. (ADD) In a far-reaching, precedent-breaking decision the Supreme Court held that a returning resident alien does not make a new "entry", as that term is used in Section 101(a)(13), unless his preceding departure reflected "an intent to depart in a manner which can be regarded as meaningfully interruptive of the alien's permanent residence." According to the majority opinion, written by Justice Goldberg, factors relevant to this determination are the length of time the alien is absent, the purpose of the visit, the procurement of travel documents in order to make the trip. The court ruled that "an innocent, casual, and brief excursion by a resident alien outside this country's borders may not have been 'intended' as a departure disruptive of his resident alien status and, therefore, may not subject him to the consequences of an 'entry' into the country on his return."^{6a} Following this decision the Board of Immigration Appeals held that a lawful permanent resident, upon return to the United States following an innocent, casual absence to Mexico for a few hours to visit relatives, did not make an entry upon which to predicate a ground of deportation. Earlier, the Board held that the return to the United States of a nineteen-year-old alien, who departed from the United States at the age of sixteen with his mother and step-father to Germany where the latter was assigned to a tour of military duty, did not constitute an "entry." The Board found that the alien "was an unemancipated minor under the legal compulsion to follow and accompany his parents." His departure to, and his presence in a foreign place, therefore, was not voluntary and not intended by him.

^{6a} *Rosenberg v. Fleuti* (1963), 374 U.S. 449, 10 L. ed. (2d) 1000, 83 Sup. Ct. 1804. Justice Clark, in a dissenting opinion in which he was joined by Justices Harlan, Stewart, and White, held that the language of the statute is clear and requires a finding that "a resident alien who leaves the country for any period, however brief, does make a new entry on his return," as held previously by the court in *Bonetti v. Rogers* (1958), 356 U.S. 691, 698, 2 L. ed. (2d) 1087, 78 Sup. Ct. 976.

Mr. AUERBACH. I could not pinpoint that to that extent.

Mr. SOURWINE. By definition, a Soviet citizen would be ineligible, wouldn't he? At least unless he has submitted proof he wasn't a member of the party?

Mr. AUERBACH. I would say as a general policy, someone who is selected by a Communist-controlled country most likely would be considered to be affiliated.

Mr. SOURWINE. Well, it is a well-known fact that the Soviets don't let anybody out unless they have a reason at stake for doing it.

Either it will advantage them or they are willing to let the person go. They consider them reliable. That wouldn't be true of a man who sneaked out but it would be true of anyone who came in under a cultural exchange program.

Do you consider, sir, that the cultural exchange program is being adequately handled from a security standpoint?

Mr. AUERBACH. I have no direct contact with it. I, therefore, cannot express an opinion.

Mr. SOURWINE. Do you know if it is true under the cultural exchange program officials of the U.S.S.R. or of the particular Iron Curtain country from which an individual may come are given a virtually free hand to select who is coming to the United States under the program?

Mr. AUERBACH. I have no familiarity with the selection procedures.

Mr. SOURWINE. Would you attempt to get an answer or may the request be that the State Department furnish the committee for the record with an answer to whether there are any checks by the United States or its officials on who may be selected by the officials of the particular Iron Curtain country or the U.S.S.R. to to come to the United States under the cultural exchange program.

(In a letter to the subcommittee dated February 19, 1965, Acting Assistant Secretary Lee wrote:)

It is the policy and practice of the Visa Office, whenever there is reason to believe that a country has become Communist controlled, to consult the appropriate political office in charge of relations with the country concerned in order to determine whether the special visa procedure relating to Communist-controlled countries should be applied with regard to that country.

Mr. SOURWINE. Mr. Auerbach, since Mr. Schwartz became Administrator, have you made any recommendations with respect to visa procedures?

Mr. AUERBACH. Do you refer to recommendations to Mr. Schwartz?

Mr. SOURWINE. Or to Mr. Moreland, who is your immediate superior. I would imagine most of your recommendations went to Mr. Moreland, didn't they, if there were any?

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. Have you made recommendations to Mr. Moreland with respect to these matters? I will differentiate other than for action with regard to particular cases. Any recommendations with respect, therefore, to practices, procedures, policies, in such matters?

Mr. AUERBACH. Yes. I have made recommendations to Mr. Moreland.

Mr. SOURWINE. Have you made many?

Mr. AUERBACH. I have made a number.

Mr. SOURWINE. How big a number? One is a number.

Mr. AUERBACH. Of course, the entire relationship between me and Mr. Moreland requires that I make recommendations on various matters—

Mr. SOURWINE. Well, I am not—

Mr. AUERBACH (continuing). —relating to visas.

Mr. SOURWINE. I am not asking you for the precise number, but approximately. Five, ten, twenty, fifty?

Mr. AUERBACH. This covers a period of 2 years.

Mr. SOURWINE. Yes.

Mr. AUERBACH. I would find it extremely difficult even to give you an approximate number. If I said 50, or 100—

Mr. SOURWINE. All right.

Mr. AUERBACH (continuing). —I may be—

Mr. SOURWINE. Let me nail this down, then. Have you made any recommendations which you considered matters of major importance with respect to policies, practices, or procedures in connection with these matters during the past 2 years?

Mr. AUERBACH. I have, yes.

Mr. SOURWINE. Many of those?

Mr. AUERBACH. Several.

Mr. SOURWINE. Three, four, perhaps? Not a large number?

Mr. AUERBACH. Depending on where you draw the line of importance.

Mr. SOURWINE. Well, putting this thing on the basis of your evaluation in making recommendations of major importance, how many, in your judgment, of major importance?

Mr. AUERBACH. I find it extremely difficult to answer this question. I have made suggestions which originated with me. I have made others which were in response to requests for recommendations. I may have made 10 important ones but without being able to identify them because this covers a period of time, and the number may not be accurate.

Mr. SOURWINE. All right. Have these been written recommendations?

Mr. AUERBACH. I have made written recommendations, yes, indeed.

Mr. SOURWINE. Well, limiting it, then, to recommendations which you consider of major importance, and which were written, may the request be that you furnish the committee with a sufficient summary of each such recommendation to indicate the nature of it. Certainly less than 10.

Mr. AUERBACH. This will be, I understand, made as a formal—

Mr. SOURWINE. Would this be very difficult?

Mr. AUERBACH. I don't think it will be very difficult. I am not familiar with the Department's policy in making available internal procedures.

Mr. SOURWINE. I understand.

Mr. AUERBACH. And I have to defer to—

Mr. SOURWINE. All of these things will have to be requested of the Secretary.

Mr. AUERBACH. I have to defer to the—

Mr. SOURWINE. I am only asking if you can prepare a summary showing your understanding of your own recommendations as briefly

as possible, just sufficient to show the nature of the subject matter. With respect only to recommendations made in the last 2 years and in writing, and which you considered of major importance.

Mr. AUERBACH. I can.

Mr. SOURWINE. Whether the Secretary lets us have the list is up to the Secretary.

Mr. AUERBACH. Yes; I can prepare such a memorandum.

Mr. SOURWINE. All right.

(EDITOR'S NOTE.—Mr. Auerbach prepared such a summary and a copy was supplied to the Committee, but Deputy Under Secretary Crockett wrote the subcommittee as follows:)

Mr. French* has advised me that you have requested that the classification "Limited Official Use" be removed from the document entitled "A 'Sufficient Summary' of Recommendations of Major Importance Made by Mr. Auerbach to Mr. Moreland Indicating the Nature of His Recommendations Over the Last 2 Years." I have reviewed this document and feel the information contained therein should not be published in an unclassified publication. Certain recommendations contained in this document are out of context and deal with matters which should not be made public. You are welcome to use the document as long as it is treated in accordance with its classification.

(EDITOR'S NOTE: Though aware that "Limited Official Use" is not a classification, the subcommittee did not contest Mr. Crockett's position further. For preceding correspondence, see pp. 1171, 1172.)

Mr. SOURWINE. Have any of your recommendations dealt specifically with security matters or security factors of visa procedures?

Mr. AUERBACH. I am not certain, Mr. Sourwine, whether I am permitted to answer that question in view of the departmental policy.

Mr. SOURWINE. What possible departmental policy could prohibit you from answering that question?

Mr. AUERBACH. I was informed yesterday by the Acting Legal Adviser, Mr. Meeker, that as a witness I should be guided by an instruction that names of U.S. Government personnel who are concerned with security cases or any communications, written or oral, not be discussed.

Mr. SOURWINE. Do you think this question calls for any names?

Mr. HOOVER. Would you like for me to comment?

Mr. SOURWINE. Do you want to talk off the record?

Mr. HOOVER. Sure.

Mr. SOURWINE. Off the record.

(Discussion off the record.)

Mr. SOURWINE. May we go back on the record?

Mr. AUERBACH. At Mr. Hoover's advice, I answer this question in the affirmative.

Mr. SOURWINE. How many such recommendations have you made?

Mr. AUERBACH. A limited number, but I cannot recall at this—

Mr. SOURWINE. A few.

Mr. AUERBACH. A few, yes.

Mr. SOURWINE. Can you tell us whether in the case of any of these recommendations involving security or security factors the recommendations were rejected or ignored? I will define "ignored" to mean a situation in which you have not heard from the recommendation since you made it, have not heard of any action on it.'

Mr. AUERBACH. Can we go off the record?

Mr. SOURWINE. Go ahead.

*Col. George W. French, Jr., special assistant to Mr. Crockett.

(Discussion off the record.)

Mr. AUERBACH. Mr. Hoover has advised me off the record that I am permitted to answer this question by Mr. Sourwine, and I answer this question to indicate that some of these recommendations were acted upon, others were not.

Mr. SOURWINE. That is a partial answer. In the cases of any of these recommendations which were acted upon, was the action adverse to the recommendation, contrary to the recommendation, or in the nature of a rejection of the recommendation?

Mr. AUERBACH. Some were acted upon along the lines of my recommendations and in some cases my recommendations were not followed, which, of course, is the prerogative of my superiors.

Mr. SOURWINE. I understand this.

All right. I won't go further with that line of questioning.

Do you know of any instances in which the requirements of the Administrator's office under Mr. Schwartz have operated to slow up or hamper the functioning of the Visa Office?

Mr. AUERBACH. The requirement to which I referred earlier; namely that notes to the visa handbook be submitted for approval, of course, will lead to a slowup in the handling of these notes.

Mr. SOURWINE. All right. Any other instance?

Mr. AUERBACH. I do not recall any other in my area of responsibility.

Mr. SOURWINE. All right, sir. Is morale good in the Visa Division?

Mr. AUERBACH. My staff is so small at this point that I find it difficult to pass judgment on the general state of morale in the Visa Office.

Mr. SOURWINE. You mean you don't have contacts with the Office? You don't know enough about what is going on? You don't know enough people there to—

Mr. AUERBACH. Yes, indeed.

Mr. SOURWINE. This is an opinion question. You are in a position to know about the morale of the Office, or at least have an opinion about it, aren't you?

Mr. AUERBACH. Yes.

Mr. SOURWINE. Well, in your opinion is morale in the Office good?

Mr. AUERBACH. I think it is quite good, yes.

Mr. SOURWINE. All right.

Is the Visa Office getting adequate supervision today? Again that is an opinion question. You are a person who has been there a number of years and have held a high position, and I am only asking for your opinion regarding this matter.

Mr. AUERBACH. I can discuss this only to the extent as I personally am concerned, and I think I get adequate supervision and my staff gets adequate supervision.

Mr. SOURWINE. All right.

Is there adequate and satisfactory communication from the top to the bottom and the bottom to the top with respect to visa matters?

Mr. AUERBACH. When you refer to from top to bottom you mean within the Visa Office or within the Department?

Mr. SOURWINE. All the way in the Department. If there is any lack of communication or inadequacy of communication, and there would be any way that you know about it, I want you to tell us. I understand that the question of adequacy, whether it is satisfactory, is subjective

and not objective. We can only have your opinion and the ultimate decision is for the Secretary and others below him and superior to you, and I am not asking you to substitute your judgment for theirs. I am only asking what your own opinion is.

Mr. AUERBACH. This is an extremely difficult question to answer, Mr. Sourwine.

Mr. SOURWINE. All right. I will withdraw it and I will substitute this question.

Would you like to see more or better communication, either up or down, anywhere in the Department with regard to—with respect to visa matters?

Mr. AUERBACH. I would like to give you an example. It would be beneficial to have general staff meetings, for example, to discuss substantive matters of interpretation of the law. This would be an example of an area of improvement I can cite.

Mr. SOURWINE. Do you know of any others? I mean an area of possible improvement.

Mr. AUERBACH. At this point I can't think of any other areas.

Mr. SOURWINE. You did mean areas of possible improvement?

Mr. AUERBACH. That is right.

Mr. SOURWINE. All right. Do you think all the people in all the branches and divisions of visa, all the officers in the visa, used in the sense of a room rather than formally Office with a capital "O" know promptly what they need to know about the operations elsewhere in the Visa Division in order to most effectively perform their work?

Mr. AUERBACH. I cannot answer this question, again beyond my area of competence.

Mr. SOURWINE. All right. Answer it for yourself.

Mr. AUERBACH. I think there are areas where the communications can be improved but this is true of every operation we come in contact with.

Mr. SOURWINE. All right. Is there any more need for improvement now than there was, say, 3 years ago? In that sense are communications as good now as they were 3 years ago?

Mr. AUERBACH. The organization of the Visa Office before September 1962 permitted a more ready interplay between the various substantive areas than it does now.

Mr. SOURWINE. Is that a good thing?

Mr. AUERBACH. Yes, it was. In my opinion it was. I can only speak—

Mr. SOURWINE. I understand.

Mr. AUERBACH (continuing). —for myself. I am sure that my superiors who have made different arrangements must be of the opinion that the present arrangement is better.

Mr. SOURWINE. May I say I am not asking you to criticize your superiors. I do not understand that what you say is intended as criticism of any individual. Just talking about a situation.

Mr. AUERBACH. I want to make this very clear because this puts me in a very difficult and embarrassing position in the Department.

Mr. SOURWINE. It is a position which is not peculiar to you. Anyone in any department who should be asked this kind of question would be in just as embarrassing a position.

My object I am sure is not to embarrass you but to try to get a total picture.

All right. Leaving that subject, during your employment in the Visa Office, which covers a great many years, have you noticed any irregularities in the conduct of the work of the Office?

Mr. AUERBACH. I don't recall any.

Mr. SOURWINE. Never.

Mr. AUERBACH. I do not recall any.

Mr. SOURWINE. You never had to correct any while you were Deputy.

Mr. AUERBACH. I have no—

Mr. SOURWINE. All right. Have you, during the past 3 years, noted any mishandling or improper handling of visa matters?

Mr. AUERBACH. No, I have not.

Mr. SOURWINE. Do you know of any case in which an individual who could not have entered the United States under any other circumstances, except an action by some person superior to Mr. Schwartz, was allowed to come into this country by action or order of Mr. Schwartz?

Mr. AUERBACH. I am not familiar with any such case.

Mr. SOURWINE. All right. Are you aware of any shift in policy with respect to the issuance of visas since Mr. Schwartz became Administrator of SCA which you have not already discussed here?

Mr. AUERBACH. I do not recall any.

Mr. SOURWINE. Are you, sir, familiar with the situation in which an individual desired for employment at a grade GS-13 job in the Visa Division was informed by order of higher authority that in order to come over to the State Department and take that job, it would be necessary to accept appointment as a Foreign Service Reserve officer?

Mr. AUERBACH. Yes. I am familiar with this.

Mr. SOURWINE. What was that case?

Mr. AUERBACH. I am not sure you are referring to the same case I have in mind. I am familiar with—

Mr. SOURWINE. Well, I happen to be. I asked you if you knew of such a case and you said you did, and I am asking you for the case you know about.

Mr. AUERBACH. I will tell you of the case I know of. That is the case of the Deputy Chief of the Regulations and Legislation Division.

Mr. SOURWINE. That is the position you told us earlier is now vacant?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Was the person who had been selected to fill that job a well-qualified individual?

Mr. AUERBACH. The person who was tentatively selected was recommended as a qualified individual.

Mr. SOURWINE. Do you know this person yourself?

Mr. AUERBACH. I interviewed that person.

Mr. SOURWINE. In your judgment was the person well qualified?

Mr. AUERBACH. I recommended that this person be considered for this position.

Mr. SOURWINE. Was that recommendation approved by Mr. Moreland?

Mr. AUERBACH. I cannot answer that question because all I know, Mr. Sourwine, is that when this recommendation reached Mr. Moreland, he apparently was informed that no civil service position in the Department which is considered interchangeable may be filled from outside the Department—

Mr. SOURWINE. First, what do you mean by “interchangeable”?

Mr. AUERBACH. May I finish the sentence?

Mr. SOURWINE. All right.

Mr. AUERBACH (continuing). —may be filled from outside the Department by anyone who is not either a Foreign Service officer or Foreign Service Staff officer.

Mr. SOURWINE. Well, since Foreign Service officers and Foreign Service Staff officers are not outside the Department, that means it couldn't be filled from outside the Department, period, doesn't it?

Mr. AUERBACH. Well, someone could, of course, join the Foreign Service Staff in order to fill such a position.

Mr. SOURWINE. Yes. What you mean, then, is that it is your understanding that Mr. Moreland was informed that the job could not be filled except by transfer into it of an FSO or an FSR or by a person who would accept appointment as an FSO or an FSR.

Mr. AUERBACH. Unless we could find a civil service person within the Department who could be promoted or put into that position.

Mr. SOURWINE. Now, how do you know Mr. Moreland was informed of this? Did he tell you so?

Mr. AUERBACH. He informed me so; yes. And the administrative officer informed me so.

Mr. SOURWINE. That is, this was a policy applicable to the entire Department, not just to this position or not just to the Visa Division?

Mr. AUERBACH. That is my understanding.

Mr. SOURWINE. Is it your understanding that this policy is still in effect?

Mr. AUERBACH. I am not informed that it has been rescinded.

Mr. SOURWINE. Have you seen it in operation in connection with other vacancies?

Mr. AUERBACH. This is the only vacancy I had on my staff in which this became known to me.

Mr. SOURWINE. In the case of the individual whom you recommended, was appointment approved by Mr. Moreland or higher authority on condition that the individual accept an FSR appointment?

Mr. AUERBACH. I was authorized to inform this person that if she were willing to accept a Foreign Service Staff appointment, she could be considered.

Mr. SOURWINE. In other words, I have been limiting my questions to FSR and FSO. You include FSS also.

Mr. AUERBACH. Foreign Service Staff, yes.

Mr. SOURWINE. Are Foreign Service Staff people considered Foreign Service officers?

Mr. AUERBACH. There are three categories. Foreign Service officers, Foreign Service Staff officers, and Foreign Service Reserve officers.

Mr. SOURWINE. They are all officers.

Mr. AUERBACH. Yes.

Mr. SOURWINE. All right.

Off the record.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

Foreign Service officers, Foreign Service Reserve officers, and Foreign Service Staff. In other words, you do not know or at least you are not sure that Foreign Service Staff people are considered officers.

Mr. AUERBACH. Foreign Service officers, of course, are in an entirely different category from Foreign Service Staff.

Mr. SOURWINE. Yes. And Foreign Service Reserves, FSR's, are considered officers.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. You do not know whether it is true that Foreign Service Staff people are considered officers?

Mr. HOOVER. I know they are not.

Mr. AUERBACH. They are not considered Foreign Service officers.

Mr. SOURWINE. All right. Foreign Service Staff people are primarily administrative—clerical-administrative or just administrative?

Mr. AUERBACH. I am no expert on personnel management of the Foreign Service, but there are Foreign Service Staff who perform consular functions.

Mr. SOURWINE. In any event, they all have one thing in common, FSO's, FSR's, and FSS's. They are all under the discipline of the Foreign Service. They are all subject to be moved on short notice by direction, by an order through the Foreign Service.

Mr. AUERBACH. They are subject to transfer, yes.

Mr. SOURWINE. Yes. Without their permission. The acceptance of such a position involves an assent to being transferred wherever the proper authorities wish to transfer the individual.

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Is that correct?

Mr. AUERBACH. That is right.

Mr. SOURWINE. Now, in this particular incident, was the lady—you have identified her as "she"—who had been tentatively selected, at least recommended by you for the position, willing and able to accept an FSS appointment?

Mr. AUERBACH. She was not interested in accepting such an appointment since she was not prepared to leave the United States.

Mr. SOURWINE. As a result, the job had to be filled by another, or at least another person had to be sought.

Mr. AUERBACH. Another person would have to be sought, yes.

Mr. SOURWINE. And I presume that process is underway?

Mr. AUERBACH. I presume so, yes.

Mr. SOURWINE. The job has not yet been filled?

Mr. AUERBACH. That is correct.

Mr. SOURWINE. Have you any information or have you been told whether it is to be filled by a Foreign Service officer or an FSS or an FSR?

Mr. AUERBACH. We are making every effort to find a qualified person for this position, yes.

Mr. SOURWINE. In the civil service?

Mr. AUERBACH. At this point in the Foreign Service Staff or Foreign Service officer class.

Mr. SOURWINE. Do you people seek out people in Foreign Service or FSR or FSS's for a job like this, or do you simply let somebody upstairs know that the job is open and let them designate somebody from the Foreign Service to come in?

Mr. AUERBACH. Well, this is handled by the personnel people and they will come up with suggestions and we are given opportunity to express our opinion whether the particular person is qualified for a given job.

Mr. SOURWINE. Are Foreign Service personnel and civil service personnel handled by the same personnel office?

Mr. AUERBACH. The assignment of Foreign Service officers, to the best of my understanding is handled by a different unit of the Personnel Office.

Mr. SOURWINE. Yes. So that what is under consideration now is under consideration by the Foreign Service Personnel Office, they are presently seeking an individual to be recommended or suggested for the post and you would then be allowed to comment on the individual.

Mr. AUERBACH. I am not sufficiently qualified to say whether the particular unit which is seeking a qualified candidate for this position also would handle civil service personnel if there were civil service personnel available. I do know that at this point an effort is being made to find a qualified Foreign Service officer or Foreign Service Staff person.

Mr. SOURWINE. I gather from that that you have been told directly or informed at least by necessary implication that a Foreign Service person, FSO, FSR, or FSS, will be transferred in to fill this vacant job. Is that your understanding?

Mr. AUERBACH. My understanding is that efforts will be made to find a person who is qualified to fill the position from these——

Mr. SOURWINE. From the Foreign Service.

Mr. AUERBACH (continuing). ——categories.

Mr. SOURWINE. FSO, FSR, FSS.

Mr. AUERBACH. That is right.

Mr. SOURWINE. And at the present time no further search is being made among civil service persons. At least as far as you know.

Mr. AUERBACH. As far as I know.

Mr. SOURWINE. Under procedures with respect to the assignment of Foreign Service personnel in all three of these classes, where they are to be assigned to a job in the Department in Washington, is the head of that department or unit or office given the right of acceptance or refusal or is he limited only to comment on the suggestion, leaving the final decision still with the people who control transfers in the Foreign Service?

Mr. AUERBACH. I am not qualified to answer that question. I am certain, however, that the Personnel Office would take very seriously the finding of the responsible officer that a particular person is not qualified for the position.

Mr. SOURWINE. Do you know the answer to that question?

Mr. HOOVER. I don't know it. I really don't.

Mr. SOURWINE. All right.

I have no more questions of this witness. Is there anything, Mr. Auerbach, that you want to add by way of expansion or supplement to anything you have said or anything you want to say in the interest

of this committee's major objective which is better security in the Department of State?

Mr. AUERBACH. I believe I have answered all your questions, sir. I have previously commented on the conflict between facilitation of tourism and internal security, and on the difficulties in drawing a clear line between nonimmigrants and immigrants. I have responded to your question about the significance of the double check system. These three areas are in need of a thorough and independent study.

Mr. SOURWINE. I want to say the examination has been more exhaustive than that of most witnesses, far more technical than that of most witnesses. You have defended yourself against the assault most admirably. I personally express my thanks for your patience with me.*

Mr. AUERBACH. Thank you.

Mr. SOURWINE. Thank you, Mr. Hoover. You have been of great assistance this afternoon.

Mr. HOOVER. Thank you, sir.

Mr. SOURWINE. Let the record show that it is adjourned subject to the call of the Chair.

(Whereupon, at 5:05 p.m., the committee adjourned subject to the call of the Chair.)

(The following correspondence was later ordered printed at the conclusion of Mr. Auerbach's testimony on Aug. 12, 1964:)

AUGUST 31, 1964.

Mr. ROBERT E. LEE,
*Acting Assistant Secretary for Congressional Relations,
Department of State, Washington, D.C.*

DEAR MR. LEE: This acknowledges return of the executive session transcripts of testimony of Mr. Loughton and Mr. Auerbach; and also the memorandum from Mr. Auerbach which was forwarded with your letter. The corrections made by these two witnesses have been incorporated in the master copy of the transcript; and Mr. Auerbach's memorandum is being appended as a footnote.

The last paragraph of your letter expresses the thanks of the Department for making this transcript available. The transcript was furnished for review and correction by the witnesses, which is a courtesy extended to all witnesses, so there is nothing for the Department to be grateful for in this connection. The fact that these transcripts were transmitted to the witnesses through Mr. Leahy of your office was not intended as an indication that they were being furnished for departmental use, or as an indication of approval of any handling of previous executive session transcripts of the subcommittee beyond their transmittal to the witnesses for correction and their return to the committee after having been corrected.

Sincerely,

JAMES O. EASTLAND,
Chairman, Internal Security Subcommittee.

DEPARTMENT OF STATE,
Washington, August 28, 1964.

HON. JAMES O. EASTLAND,
*Chairman, Subcommittee on Internal Security,
Committee on the Judiciary,*

DEAR MR. CHAIRMAN: Returned herewith is the transcript of hearings held in executive session before the Internal Security Subcommittee on August 11, 1964.

*See footnote 1 on p. 1042.

The transcript has been reviewed by the witnesses, Robert L. Berry, Frank L. Auerbach, and Richard A. Frank, who have made certain minor factual and grammatical corrections.

The Department appreciates your kindness in making this transcript available for review and correction.

Sincerely,

ROBERT E. LEE,
Acting Assistant Secretary for Congressional Relations.

DEPARTMENT OF STATE,
Washington, D.C., August 26, 1964.

HON. JAMES O. EASTLAND,
*Chairman, Subcommittee on Internal Security,
Committee on the Judiciary, U.S. Senate.*

DEAR MR. CHAIRMAN: Returned herewith is the transcript of hearings held in executive session before the Internal Security Subcommittee on August 12, 1964.

The transcript has been reviewed by the witnesses, Raymond A. Loughton and Frank L. Auerbach, who have made certain minor factual and grammatical corrections. Also enclosed herewith is a memorandum from Mr. Auerbach which he requested be forwarded to the subcommittee.

The Department appreciates your kindness in making this transcript available for review and correction.

Sincerely,

ROBERT E. LEE,
Acting Assistant Secretary for Congressional Relations.

U.S. GOVERNMENT MEMORANDUM

AUGUST 24, 1964.

To: H—Mr. John S. Leahy, Jr.
From: VO—Frank L. Auerbach.

Subject: Testimony before Senate Subcommittee on Internal Security.

Please find attached the edited pages of my testimony before the Senate Subcommittee on Internal Security on August 11 and August 12, pages 3478 through 3484, pages 3532 through 3557, and pages 3597 through 3713.

As you will note, Mr. Sourwine observed at the end of my testimony that "the examination has been more exhaustive than that of most witnesses, far more technical than that of most witnesses." You will also see that according to the transcript I testified in the afternoon of August 12 for almost 4 hours after having been a witness on the morning of the same day as well as on the previous day. I point out these facts because my testimony, particularly toward its end, shows the wear of a long period of testifying on rather technical and complex matters, some of which were not in the area of my own competence.

I edited my testimony to iron out some of the rough spots resulting from this combination of facts. I have added a brief sentence on the last page of the testimony which pulls together the salient answers I gave to the counsel's questions during the four sessions of my testimony before the subcommittee.

DEPARTMENT OF STATE,
Washington, December 10, 1964.

[CONFIDENTIAL]¹

HON. JAMES O. EASTLAND,
*Chairman, Subcommittee on Internal Security,
Committee on the Judiciary,
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your letter of September 4, 1964, to the Secretary in which you request information and documents concerning the testimony of various Department officials before the subcommittee.

The documents mentioned in Mr. Berry's testimony are classified internal Department memorandums which contain information provided by another executive agency, and, for this reason, the Department is unable to furnish them to the subcommittee.

¹Though marked "Confidential" this letter was ordered printed after oral advice from the State Department that the letter should be considered declassified upon removal of all classified material enclosed therewith.

In response to the questions concerning Mr. Frank's testimony, the Department knew of the Department of Justice's decision not to seek rehearing in the *Aptheker-Flynn* cases as of June 26, 1964. In answer to your second question concerning Mr. Frank's testimony, the Passport Office, noting that the judgment of the Supreme Court in the *Aptheker* case would not become effective until July 16, 1964, prior to that date requested the concurrence of higher officials in the Department to the issuance of passports in those cases where the sole reason for withholding passports was the applicant's refusal to complete his application by executing the Communist statement. This position was concurred in by the higher officials of the Department.

The following information relating to Mr. Auerbach's testimony and requested by the subcommittee is submitted in attachments to this letter:

1. Before his death, Mr. Auerbach prepared a note indicating that the enclosed were all the regulations and instructions issued during the last 5 years regarding delegation of authority to consular officers to recommend the waiver of ineligibility under section 212(d) (3) (A) of the act.

2. The number of aliens who were granted waivers in each of the past 2 years.

3. A confidential regulation describing the types of waiver cases which are required to be transmitted to the Department in Washington.

4. Directives or instructions to visa officers during the past 2 years which according to Mr. Auerbach stressed public relations aspects of their jobs.

5. Before his death, Mr. Auerbach prepared a note indicating that he considered the authorization to posts in Italy to accept visitor visa applications by mail in accordance with the provisions of 22 CFR 41.114(a) (8) was an instruction in which consular officers were encouraged to be lenient in distinguishing between immigrants and nonimmigrants. A copy of 22 CFR 41.114(a) (8) is attached.

If I can be of any further assistance in this matter, please do not hesitate to call on me.

Sincerely yours,

(CSS) R. E. LEE,
ROBERT E. LEE.

Acting Assistant Secretary for Congressional Relations.

SEPTEMBER 4, 1964.

HON. DEAN RUSK,
The Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: Following established procedure we submit for departmental action the following list of items requested of three officials of the State Department, but not provided during recent hearings.

Sincerely yours,

JAMES O. EASTLAND,
Chairman, Internal Security Subcommittee.

FROM THE TESTIMONY OF MR. AUERBACH

Furnish any and all instructions or memorandums or directives or changes in regulations during the last 5 years which Mr. Auerbach believes accomplished a broadening of authority to issue waivers on visas.

How many ineligible aliens asked for and were granted waivers in each of the past 2 years.

Describe the types of waiver cases which are required to be submitted to the Department in Washington.

Furnish the committee with a record of any directives or instructions to visa officers during the past 2 years which stressed public relations aspects of their jobs.

Furnish the committee with copies of any instructions or indications to visa officers stressing desirability of leniency in the issuance of visas, especially in the area of distinguishing between immigrants and nonimmigrants.

(EDITOR'S NOTE.—Requests made of Mr. Berry and Mr. Frank and submitted to the Secretary with this letter are not pertinent to Mr. Auerbach's testimony and are not included here.)

(EDITOR'S NOTE.—The following correspondence preceded Mr. Crockett's communication (on p. 1161) about Mr. Auerbach's "Sufficient Summary.")

DEPARTMENT OF STATE,
Washington, May 27, 1965.

HON. JAMES O. EASTLAND,
Chairman, Subcommittee on Internal Security,
Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of April 29, 1965, in which you inquire whether items provided to the subcommittee in Mr. Lee's letter of February 19, 1965, and designated "Confidential" and "Limited Official Use," could be declassified.

These items were the subject of your letter of February 20, 1965, and of Mr. White's letter of March 4, 1965. As we noted in Mr. White's letter, the items had been classified "Confidential" or had been given the administrative control designation "Limited Official Use," since their disclosure would be prejudicial to the conduct of U.S. foreign relations or to the defense interests or since the information could offend foreign governments or peoples. We further noted that, in light of the above, we would appreciate the subcommittee's respecting these classifications and control designations by not disclosing the items to unauthorized persons. We have again reviewed this matter, and continue to believe that the items should be handled in the confidential manner mentioned in Mr. White's letter.

If I can be of any further assistance in this matter, please do not hesitate to call on me.

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations
(For the Secretary of State).

APRIL 29, 1965.

HON. DEAN RUSK,
The Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: Among the materials supplied us in connection with the testimony of the late Frank L. Auerbach, then Deputy Director for Visa Policies and Special Programs, are two classified documents. They are:

(1) Appendix A, part 4, volume 9 visas, from the Foreign Affairs Manual of April 20, 1964. This deals with "Criteria to be considered in recommending 212 (d) (3) (A) action for aliens ineligible on security grounds." It is marked "Confidential."

(2) A "Sufficient Summary" (Counsel Sourwine's term) of recommendations of major importance made by Mr. Auerbach to Mr. Moreland, indicating the nature of his recommendations over the last 2 years. The selection, as supplied by Assistant Secretary Lee in his letter of February 19, is marked "Limited Official Use."

Acting Assistant Secretary White, in a letter of March 4, replying to my request of February 20, declined to remove the embargo. It would be a courtesy to the committee if you would consider personally declassifying these documents so that we may use them. At the least the Auerbach summary, prepared for the subcommittee at our request, should be made available.

Sincerely,

JAMES O. EASTLAND,
Chairman, Internal Security Subcommittee.

DEPARTMENT OF STATE,
Washington, D.C., March 4, 1965.

HON. JAMES O. EASTLAND,
Chairman, Subcommittee on Internal Security,
Committee on the Judiciary,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 20, 1965, to Mr. Lee in which you inquire whether items, provided in Mr. Lee's letter of February 19, 1965, and designated "Confidential" and "Limited Official Use," would be declassified.

These items had been classified "Confidential" or had been given the administrative control designation, "Limited Official Use," since their disclosure would be prejudicial to the conduct of U.S. foreign relations and to the defense interests or since the information could offend foreign governments or peoples. In light of this, the Department would appreciate the subcommittee's respecting these classifications and control designations by not disclosing the items to unauthorized persons.

If I can be of any further assistance in this matter, please do not hesitate to call on me.

Sincerely yours,

JOHN P. WHITE,

Acting Assistant Secretary for Congressional Relations.

FEBRUARY 20, 1965.

HON. ROBERT E. LEE,
*Acting Assistant Secretary for Congressional Relations,
Department of State,
Washington, D.C.*

DEAR MR. LEE: This acknowledges your letter of February 19 submitting various items requested in connection with earlier hearings of the subcommittee.

This submission included, under tab F, certain instructions from the Foreign Affairs Manual bearing various dates from 1960 through 1964 and the classification "Confidential." Please advise whether the Department desires the committee to respect this classification strictly by keeping this material out of any record which may be made public, or whether the Department is willing that these particular pages may be declassified at the committee's request.

Your attention is also called to the fact that under tab F there was submitted material described in your letter as "the classified instructions which Mr. Auerbach * * * indicated relate to countries to which special procedures apply." This bears the marking "Limited Official Use." Ordinarily this is not considered a classification, but I should like to know positively whether the Department considers that this notation on this material inhibits the committee in any way with respect to its use of the material.

Thanks for your attention to the committee's requests.

Sincerely

JAMES O. EASTLAND,

Chairman, Internal Security Subcommittee.

TESTIMONY OF ABBA P. SCHWARTZ¹

THURSDAY, AUGUST 13, 1964

Senator Roman L. Hruska presiding.

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

For the Department: Richard Frank.

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Does the Department maintain complete files on visa waiver cases? Is a file completed before the case is brought to you? Do you get the file? What material has to be in one of these files, as a minimum? How thick do these files run? How long does it take to read one?

Mr. SCHWARTZ. The Department does maintain complete files on visa waiver cases. All the basic information is part of the file before it is brought to me. In some instances I develop additional information and views from other officers within the Department who may have knowledge of the circumstances as to why a waiver should be requested.

The minimum contents of such a file are the request from the field

¹ Many of Mr. Schwartz' answers, as printed on this and succeeding pages, were supplied in writing when he corrected his testimony.

post, together with all background data on the applicant available to the consular officer; the views and recommendations of the geographic and other bureaus within the Department who might have an interest in the case; and the results of the Washington agency checks.

The files run from 10 pages to hundreds of pages. A file can be read from 5 minutes to several hours.

Mr. SOURWINE. How many of these waiver cases have been handled by SCA since you became Administrator?

Mr. SCHWARTZ. I came into the Department in October 1962, which was during the second quarter of fiscal year 1963. During fiscal year 1963 there were 1,415 cases involving 2,211 individuals which were processed in Washington. In fiscal year 1964 there were 1,582 cases involving 3,553 persons.

(NOTE: On the basis of these figures it appears the number of cases increased 11 percent while the number of persons getting waivers increased 62 percent.)

Mr. SOURWINE. How many of these cases have come to you? How many of them have you read?

Mr. SCHWARTZ. I don't have an exact record of the number of cases I have read personally. Since July 1963 until recently all such cases were referred to my office and either my deputy or I read the files before requesting the Immigration and Naturalization Service for a waiver order.

Mr. SOURWINE. Mr. Schwartz, are you familiar with visa security procedures?

Mr. SCHWARTZ. I think we have discussed that, to some extent.

Mr. SOURWINE. We have discussed that.

Mr. SCHWARTZ. I am generally familiar: yes, sir.

Mr. SOURWINE. This is just as a qualification, preliminary to an additional question in that area.

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Is a visa a personal document?

Mr. SCHWARTZ. Personal in the sense that it is issued to an individual and can be used only by that individual.

Mr. SOURWINE. Is a visa ever issued to more than one person or for more than one person?

Mr. SCHWARTZ. A visa in connection with minor children—I don't know whether they would be included on one visa or not.

Mr. SOURWINE. All right, talking about adults, all adults, is a visa ever issued for more than one person?

Mr. SCHWARTZ. Not to my knowledge, I have never come across a visa issued to more than one person. Again, I would put this caveat. I do not know of such a case—whether or not a man and wife would be on one visa.

Mr. SOURWINE. Suppose these are people totally unrelated to one another?

Mr. SCHWARTZ. I have no knowledge of—

Mr. SOURWINE. By birth or blood or marriage?

Mr. SCHWARTZ. No, not to my knowledge is a visa issued to more than one person.

(Mr. Schwartz later supplied the following answer:)

If the spouse and unmarried minor children of a nonimmigrant visa applicant are included in one passport, a single visa may be issued to include all eligible family members.

Mr. SOURWINE. Mr. Schwartz, are you familiar with ship list visas?

Mr. SCHWARTZ. I am sorry, you have refreshed my memory, Mr. Sourwine. Crew list visas.

Mr. SOURWINE. Crew list visas, yes.

Mr. SCHWARTZ. Crew lists, I am familiar with, are in a sense, I suppose, I think it is called a multiple crew list type of visa.

Mr. SOURWINE. It is a visa, is it not?

Mr. SCHWARTZ. It is a visa; yes, sir.

Mr. SOURWINE. And the visa is written below a list of names?

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. Which represents the names of the crew, and below that are written the names of any other crewmembers who are not to be covered by the visa.

Mr. SCHWARTZ. I think that is correct.

Mr. SOURWINE. The document is given to the captain of the vessel and surrendered by him to the immigration official at the port and it covers all of the members of the crew who are not, in terms on its face, excluded?

Mr. SCHWARTZ. That I believe is correct, Mr. Sourwine. I have not, myself, seen one of those lists.

Mr. SOURWINE. Here is my question: Speaking of what you call crew list visas, isn't it true that the application for these visas is made by the master of the vessel, so that there is no personal appearance required by any of the individuals?

Mr. SCHWARTZ. I believe that is correct.

Mr. SOURWINE. That the individuals are not seen prior to the issuance of the visa by any consular officer?

Mr. SCHWARTZ. Subject to correction by my checking, I believe there is no requirement that they be seen.

Mr. SOURWINE. Yes; that is all I meant.

Mr. SCHWARTZ. Yes; I believe so.

Mr. SOURWINE. A chance meeting would not affect your answer, and isn't it true that when these members of a crew go ashore under a crew list visa, there is no possible way of checking their identity even to the extent of determining that the man who goes ashore as John Jones is really John Jones?

All you know is that he is a human being who is on the crew of a particular merchant vessel and that he signed on to that crew under the name of John Jones.

Mr. SCHWARTZ. On that, Mr. Sourwine, I would like to confer with the Immigration Service because when a person comes off a ship, he is then in the hands of the Immigration Service. I don't know whether they give him a card or how carefully or how they check when he comes off that ship.

Mr. SOURWINE. They do give him a so-called seaman's card, but that is another matter.

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. I wasn't asking you to testify about what they do.

Mr. SCHWARTZ. No.

Mr. SOURWINE. But whether you know of any way from the time the application comes in until the man gets off the ship that anybody can check his identity.

Mr. SCHWARTZ. I would have to check with the Service, because I would assume that the Immigration Service does check on the people who come off, but I would like to supply that after I confer with them. I have not had the occasion to do that.

Mr. SOURWINE. I ask that the witness be given leave to amend that answer, if he wishes, because I think on consideration he will find out that there isn't any way to check on identity except possibly putting an Immigration inspector there who knows certain faces of certain known subversives, and might be able to spot them. But that is not a check on any individual as such.

Senator HRUSKA. Leave is hereby granted, and not only in that respect but also to record any other information he is able to elicit.

Mr. SOURWINE. My final question about this is whether there is any possibility for the State Department or its officers in connection with the issuance of these visas, to do more than make a check through the files abroad with respect to the names there are on a crew list, without any knowledge as to whether they are the true names of the people?

Mr. SCHWARTZ. If I may, I would like to check into this in detail, because I am not offhand familiar with the exact procedures on the crew list visa. I would prefer, if I could—

Mr. SOURWINE. I hope this will be done because the knowledge of existence of individual cases in which subversives have gotten here on a crew visa under a false name and later jumped ship, indicates there is an area here involving a security problem.

Mr. SCHWARTZ. I would be very pleased to look into that.

(Mr. Schwartz subsequently submitted the following statement for inclusion in the record at this point:)

Names of all foreign crewmen who require visas to enter the United States are contained on a crew list (form I-418) and sent to the nearest American consul for visaing before the vessel proceeds to the United States. This form I-418 contains data regarding the vessel and its voyage including ports of departure and arrival in the United States, as well as the full names of each member of the alien crew, complete information regarding their passports (including nationality and passport identification), position in the crew, and where each was shipped or engaged.

It is true that the consular offices do not normally personally interview these aliens. However, the officer does subject every name to a complete consular file check which includes, among other things, searching the worldwide visa "Look Out Book," checking the extensive lookout card indexes at the post and any other selective checks that may be appropriate. If any seaman is found ineligible, he is excluded from the visa by an appropriate notation identifying the seaman and the provision of law. Additionally, if the vessel has as its home port a city other than the one in which the visa is being issued, the consul issuing the visa will send a copy of the form I-418 to the American consular officer having consular jurisdiction over that city for additional checking. Should derogatory information be discovered on any member of the crew from this source, it is sent telegraphically to the port of arrival of the vessel in the United States for proper disposition of the Immigration and Naturalization Service.

This system has been in effect for many years, and shipping companies, labor unions, ship operators, and the captains of vessels are well aware that American consular offices abroad will identify names of visa ineligible by appropriate notations on the crew lists which will alert the Immigration Service to the presence of a crewmember who is ineligible to land in this country under any of the provisions of section 212(a) of the Immigration and Nationality Act. This knowledge acts as a deterrent to engaging persons known to be ineligible for visas on vessels going to the United States. It is our experience that the worldwide shipping industry makes a concerted effort to prevent the engaging of known visa

ineligibles as crewmen on vessels destined for the United States. The seamen themselves are aware of this system and consciously try to avoid sailing to this country when they have some knowledge that they may be denied admittance to the United States, thereby limiting their usefulness to the ship operators which, if known, would of course limit their employment.

During the voyage to the United States a member of the crew prepares individual crewmen landing permits (form I-95) which repeats the basic identifying information already contained on form I-418. When the vessel arrives in the United States, an Immigration and Naturalization Service inspector interviews every member of the crew with particular emphasis on aliens. During the interview he requires that every alien produce the travel document specified in forms I-418 and I-95. He also checks the data contained in form I-95 against the data in form I-418 and the travel document. He particularly stresses identifying the individual before him as being the legal possessor of the travel document that he has there before him.

Mr. SOURWINE. Do you know of any waivers of normal visa procedures granted to alien Communists to facilitate their admission to the United States?

Mr. SCHWARTZ. I am not aware of any cases of waivers of normal visa procedures granted to alien Communists to facilitate their admission to the United States. A waiver of ineligibility under section 212(d) (3) of the Immigration and Nationality Act is, of course, not a waiver of normal visa procedures.

Mr. SOURWINE. Do you know of any paroles of Communists into the United States? If so, please give details.

Mr. SCHWARTZ. I do not know of any.

Mr. SOURWINE. Thank you, sir.

Senator HRUSKA. We will recess subject to call.

(Whereupon, the meeting recessed at 2:55 p.m.)

TESTIMONY OF ABBA P. SCHWARTZ

SATURDAY, AUGUST 15, 1964

The subcommittee met, pursuant to recess, at 11:20 a.m., in room 105, Old Senate Office Building, Senator Thomas J. Dodd presiding.
Present: Senator Dodd.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Senator DODD. The hearing will come to order.

Mr. SOURWINE. Mr. Schwartz, I show you a memorandum from the committee files, a memorandum prepared by a staff member on the basis of information he obtained.

I would like to have you read it first, and then if you have any comment you want to make on it—and whether or not you have any objection to laying it in the record.

Mr. SCHWARTZ. I have read it. What was the question?

Mr. SOURWINE. Do you have objection to having this laid in the record?

Mr. SCHWARTZ. I have no objection to anything you put in the record, Senator.

Senator DODD. I would raise some question about putting that in the record, and I will tell you why. Anybody can make an allegation. This is an anonymous allegation.

Mr. SOURWINE. This is the reason I showed it to Mr. Schwartz first. Senator DODD. Then an allegation goes into the record, and we don't know who made it, whether there is anything to it or not. I don't think we should put that in the record.

Mr. SOURWINE. Very good. May I ask questions about it without putting anything in the sense of an allegation?

Mr. Schwartz, are you familiar with the issuance of visa waivers to any individuals from Iron Curtain nations who were not eligible for visas under the present laws and regulations?

Mr. SCHWARTZ. Well, all persons who come in under a waiver are not eligible. Therefore, I am certainly familiar with the granting of waivers to persons who are basically ineligible.

Mr. SOURWINE. Has there been any substantial number of such waivers from Eastern European nations?

Mr. SCHWARTZ. I would have to supply for the record the numbers. Everyone coming in from Eastern Europe comes in under a waiver—whether it is higher or lower this fiscal year than last, I would not know.

It may largely be affected by the exchange program—anyone who comes under the exchange program comes under a waiver. But we would have statistics of the exact number issued each fiscal year.

Mr. SOURWINE. Could you, from those statistics, prepare a statement that would show the number of visa waivers to individuals from Eastern European nations by months from the beginning of 1963 down to date?

Mr. SCHWARTZ. I would assume they are on a monthly basis, and I will certainly furnish—

Mr. SOURWINE. Could you show the countries involved in each case?

Mr. SCHWARTZ. I believe that the statistics are so maintained.

Mr. SOURWINE. Are the Department records such and are your rules such that you would be able to give us the names of these individuals?

Mr. SCHWARTZ. That I would have to check. I would assume since they have statistics that they keep some record. I would have to check with the visa office.

Mr. SOURWINE. You don't know of any objection to furnishing the names if they are available?

Mr. SCHWARTZ. I know of no objection; no, sir.

Mr. SOURWINE. May the request be, Mr. Chairman, that we have that information?

Senator DODD. Yes.

When you give a waiver it is for a temporary time?

Mr. SCHWARTZ. That is right. For nonimmigrant visits; yes, sir.

Senator DODD. Then I should think there would be a record.

Mr. SCHWARTZ. Yes, sir.

(The information referred to follows:)

Attached are statistics of the number of visa waivers to individuals from Eastern European nations by month from the beginning of 1963 through July 1964 showing the countries involved.

The Department's records are such that the Department is not able to furnish the names of individuals who have received waivers by month and country.

Waivers for nationals from Eastern European nations

	Bulgaria	Czecho- slovakia	Hungary	Poland	Rumania	Yugoslavia	U.S.S.R.
January 1963.....	3	9	7	40	1	17	31
February 1963.....	2	9	5	28	9	9	46
March 1963.....	1	24	8	28	24	12	0
April 1963.....	1	13	8	15	0	50	93
May 1963.....	3	13	14	29	5	40	42
June 1963.....	2	23	39	54	1	52	78
July 1963.....	0	50	12	29	3	19	24
August 1963.....	1	47	22	50	10	6	249
September 1963.....	91	47	16	42	6	8	156
October 1963.....	0	29	42	38	18	47	173
November 1963.....	0	19	7	24	16	5	94
December 1963.....	1	60	17	121	34	7	59
Total.....	105	343	197	498	127	272	1,045
January 1964.....	1	20	14	27	27	14	58
February 1964.....	0	17	14	36	5	55	27
March 1964.....	0	75	29	34	0	9	50
April 1964.....	2	28	16	33	13	12	95
May 1964.....	2	42	39	48	17	20	99
June 1964.....	1	102	51	64	9	28	93
July 1964.....	2	134	42	84	4	52	242
Total.....	8	418	205	326	75	190	664

NOTE.—During the calendar year 1963, waivers were granted to 8 East German nationals; grand total of waivers for nationals from Eastern European nations, 2,595. From January through July 1964 there were 15 East German nationals who were granted waivers; grand total of waivers for nationals from Eastern European nations, 1,901.

Mr. SOURWINE. Did you, sir, personally handle waiver cases or any waiver cases from Eastern European nations in 1963?

Mr. SCHWARTZ. I don't know what "personally" means. There are certain cases that cross my desk from the visa office in the normal channel of events.

Mr. SOURWINE. No. I am talking about cases which did not get processed through the visa division.

Mr. SCHWARTZ. I know of no cases that would come to me that have not been processed through the visa office and through the geographic bureau involved.

Mr. SOURWINE. You never made any arrangements to have such cases come directly to you from Mr. Harold C. Vedeler, or Mr. Robert M. McKisson, respectively, the Director and the Deputy Director of the Eastern European Affairs Office?

Mr. SCHWARTZ. No, sir. Those gentlemen would get cases only if they came in through the visa office. I know of no case that would be routed as you describe.

Mr. SOURWINE. Well, they come in through the visa office. But was there some arrangement whereby, if it was a case that Mr. Vedeler or Mr. McKisson OK'd, the processing would be direct by your office rather than being processed on the basis of an investigation and recommendation by the visa office?

Mr. SCHWARTZ. I have no recollection of any such case.

* * * * *

Mr. SOURWINE. Do you know of any aliens who have been brought into the United States as a result of political pressure or political influence?

Mr. SCHWARTZ. No, the law has been uniformly applied. There have, of course, been cases where a file would never have been reviewed

without a reflection of interest on the part of the U.S. relatives, Members of Congress, and others. In some instances a careful review of the files has resulted in consular officers reversing their original findings.

Mr. SOURWINE. Has political interest ever been expressed to you with respect to the case of any individual seeking entry into the United States?

Mr. SCHWARTZ. The Department receives thousands of inquiries annually from Members of Congress in regard to individual visa cases.

Mr. SOURWINE. Do you recall the case of Ann Petluck?

Mr. SCHWARTZ. I presume you refer to a case in which the United Hebrew Immigrant Aid Society (HIAS) was interested.

Mr. SOURWINE. Who is she?

Mr. SCHWARTZ. Ann Petluck is an official in the Office of the U.N. High Commissioner for Refugees. She was formerly an official of the United Hebrew Immigrant Aid Society (HIAS).

Mr. SOURWINE. Do you recall the case of a Mrs. Fabius and her daughter?

Mr. SCHWARTZ. Yes, after reviewing the file.

Mr. SOURWINE. Can you supply the full names of these two individuals?

Mr. SCHWARTZ. The file indicates that the full names are: Dumitru Fabius and daughter, Silvia Dorina Alexandrescu, nee Fabius.

Mr. SOURWINE. Ann Petluck of the United HIAS was interested in this matter?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. What is United HIAS?

Mr. SCHWARTZ. United HIAS is a private U.S. voluntary charitable agency, headquartered in New York, whose basic purpose is to provide migration assistance to Jewish refugees and migrants on a worldwide basis.

Mr. SOURWINE. Who are Mrs. and Miss Fabius?

Mr. SCHWARTZ. They are Rumanians who succeeded in leaving Rumania. They are the mother and sister, respectively, of a resident of the United States.

Mr. SOURWINE. What was their problem with regard to coming to the United States?

Mr. SCHWARTZ. Mrs. Fabius and her daughter wished to qualify as refugee-escapees for admission to the United States under the "fair share" parole law (act of July 14, 1960, Public Law 648).

Mr. SOURWINE. Why was it necessary for them to be declared refugees by the United Nations High Commission for Refugees?

Mr. SCHWARTZ. To qualify as refugees under the "fair share" parole law (act of July 14, 1960, Public Law 648), it was necessary for them to be declared so by the United Nations High Commissioner for Refugees.

Mr. SOURWINE. Why was it necessary that they should be paroled into the United States?

Mr. SCHWARTZ. That is the procedure set forth in Public Law 648, the act of July 14, 1960.

Mr. SOURWINE. Was there any political interest or influence in this case? If not, why was it necessary for you to make a report regarding this case to Mrs. Louchheim?

Mr. SCHWARTZ. No. Mrs. Louchheim had an inquiry concerning this matter and asked me, as Administrator of the Bureau of Security and Consular Affairs, for information.

Mr. SOURWINE. Who is Mrs. Louchheim?

Mr. SCHWARTZ. Mrs. Katie Louchheim is Deputy Assistant Secretary for Community Advisory Services. She was formerly Deputy Assistant Secretary for Public Affairs.

Mr. SOURWINE. What does the designation "P" stand for in the Department of State?

Mr. SCHWARTZ. "P" stands for Bureau of Public Affairs.

Mr. SOURWINE. Didn't you send Mrs. Louchheim a memorandum under date of July 16, 1963, stating you had recently been in touch with Ann Petluck of United HIAS to find out about processing in the cases of Mrs. Fabius and her daughter?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. In that memorandum, did you not state that Mrs. and Miss Fabius had been declared refugees by the United Nations High Commission for Refugees?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. That they were scheduled for their interview for parole with U.S. Immigration and Naturalization Service (INS) officials in Paris on July 22, 1963?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. Did you not further state that when their parole had been granted, the only remaining step would be for them to get transportation to the United States?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. In this memorandum, did you not state that you had been informed by a Mr. Scully that a Mrs. Dann had called several times about this case, reporting information which she (Mrs. Dann) had received direct from her mother and sister in Paris and from Ann Petluck's assistant, Mrs. Rabinowitz?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. Who is Mr. Scully?

Mr. SCHWARTZ. Mr. Scully is a Foreign Service officer who was formerly assigned to my office as my staff assistant. He is now assigned to the consulate at Nice.

Mr. SOURWINE. Who is Mrs. Dann?

Mr. SCHWARTZ. Mrs. Dann is the daughter of Mrs. Fabius and it is on her behalf, through an acquaintance, that Mrs. Louchheim inquired of me, as Administrator of the Bureau of Security and Consular Affairs, concerning the procedure Mrs. Fabius and her daughter should follow to join Mrs. Dann in the United States. I suggested that Mrs. Dann request the assistance of one of the voluntary agencies which assists immigrants and gave her the name of United HIAS. This organization was very helpful in assisting this family to be reunited in the United States.

Mr. SOURWINE. Who is Mrs. Rabinowitz?

Mr. SCHWARTZ. Mrs. Rabinowitz was an assistant to Miss Petluck in the migration department of United HIAS when Miss Petluck was an official of United HIAS.

* * * * *

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

WEDNESDAY, AUGUST 19, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Crockett was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Crockett, is Mr. Herman Pollack, P-o-l-l-a-c-k, in your office?

Mr. CROCKETT. No, he's not. At one time he was Deputy Assistant Secretary for Personnel. Last year, he went to the War College, I believe. Now he has recently been assigned as a sort of executive assistant to the science officer—I can't think of the right word—well, the Department's science adviser. That is the name.

Mr. SOURWINE. He is under another deputy—

Mr. CROCKETT. Well, the science adviser. He would be working, beginning immediately, for the Science Adviser.

Mr. SOURWINE. That is under a different Deputy Under Secretary?

Mr. CROCKETT. I'm trying to think where he is on our organization chart. He either reports to the Secretary or to the Deputy Under Secretary for Political Affairs. I'm not sure, but he doesn't report to me.

Mr. SOURWINE. Mr. Crockett, did you ever ask for Mr. Pollack's services or for his assignment to your office?

Mr. CROCKETT. Well, let me answer this indirectly. When I became Assistant Secretary for Administration, Mr. Pollack was in charge of the management staff in the administrative area, so he was already in the administrative area. All I did was reassign him to the personnel.

Mr. SOURWINE. Did you ever have an opportunity to see Mr. Pollack's security file?

Mr. CROCKETT. Yes, sir; I reviewed his security file.

Mr. SOURWINE. Do you know if it contains any substantial derogatory information?

Mr. CROCKETT. There are certainly allegations.

Mr. SOURWINE. Has this information been evaluated?

Mr. CROCKETT. Yes; it was evaluated a number of times.

Mr. SOURWINE. When you last looked at it, did that involve in any sense an evaluation?

Mr. CROCKETT. Yes, I looked at it for Mr. Jones at the time I was appointed Assistant Secretary. One of the first things Mr. Jones' predecessor in this job asked me to do was look at the file and give him my evaluation, which I did, in writing.

Mr. SOURWINE. Did you have the benefit of any recommendations by one of the Department's security evaluators in connection with that, or did you do it yourself?

Mr. CROCKETT. I had available all the information in the file, but I did the job myself.

Mr. SOURWINE. Yes, sir. When was Mr. Pollack's file last updated, do you know?

Mr. CROCKETT. I can't answer that with knowledge. I can make a guess, and it is only a guess. That is, I think in the War College assignments there is a security clearance that requires an updating. So I think it would have been updated about a year ago.

Mr. SOURWINE. Did that involve a reinvestigation?

Mr. CROCKETT. No, sir; I don't think so.

Mr. SOURWINE. Did that involve a formal reevaluation?

Mr. CROCKETT. Yes, sir. If it were done, I think so; yes, sir.

Mr. SOURWINE. By the Office of Security?

Mr. CROCKETT. Yes, sir.

Mr. SOURWINE. Mr. Crockett, are you generally familiar with the personnel security forms used in the Department of State?

Mr. CROCKETT. No, sir; I'm not.

Mr. SOURWINE. Are you familiar with the personnel forms other than in the security area?

Mr. CROCKETT. Not really; no, sir.

Mr. SOURWINE. Do you know of any security form in the Department which contains a question asking whether any member of the applicant's family ever advocated the overthrow of the Government of the United States or attempted such overthrow?

Mr. CROCKETT. I suspect it may be in there, but I couldn't say of my own knowledge. I don't think I have seen such a form—I have seen some of these forms but I don't think I have examined them.

Mr. SOURWINE. I'll tell you, Mr. Chairman, we do not—by "we" I mean my staff does not have a complete file of all the Department's forms. But may we ask that Mr. Crockett have someone check and if there is a form which contains this question, whatever the words are, a question calling for an answer as to whether the applicant's family or any member of his family ever advocated the overthrow of the Government of the United States or attempted such overthrow, we may be furnished with a copy of that form, and the question be identified by number, in each.*

Senator HRUSKA. It is so ordered.

(In answering the above question, Assistant Secretary MacArthur, in a letter to the Chairman stated: "* * * enclosed are copies of three forms used by the Department containing a question concerning the advocacy of the overthrow of the Government of the United States. The Department does not by form ask for information of this nature in regard to the applicant's family; however, such information would result from name checks." The three forms, Form DS-944: Application for Federal Employment Standard Form 57; and Standard Form 86, are reproduced below:)

* * * * *

*The question appears as No. 27 on Form 57 and as Nos. 21 and 22 on Form 86.

FORM DS-944
8-18-59DEPARTMENT OF STATE
CERTIFICATE OF NONMEMBERSHIP IN CERTAIN ORGANIZATIONS

Listed below are names of foreign or domestic organizations, movements, groups, or combination of persons which, after appropriate investigation and determination are identified and designated by the Department of Justice under Executive Order No. 10450 as Totalitarian, Fascist, Communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means:

Each applicant must review the following list of organizations for certification purposes, and sign on the last page.

Abraham Lincoln Brigade
Abraham Lincoln School, Chicago, Illinois
Action Committee to Free Spain Now
Alabama People's Educational Association (see Communist Political Association)
American Association for Reconstruction in Yugoslavia, Inc.
American Branch of the Federation of Greek Maritime Unions
American Christian Nationalist Party
American Committee for European Workers' Relief (see Socialist Workers Party)
American Committee for Protection of Foreign Born
American Committee for Spanish Freedom
American Committee for the Settlement of Jews in Birobidjan, Inc.
American Committee for Yugoslav Relief, Inc.
American Committee to Survey Labor Conditions in Europe
American Council for a Democratic Greece, formerly known as the Greek American Council; Greek American Committee for National Unity
American Council on Soviet Relations
American Croatian Congress
American Jewish Labor Council
American League Against War and Fascism
American League for Peace and Democracy
American National Labor Party
American National Socialist League
American National Socialist Party
American Nationalist Party
American Patriots, Inc.
American Peace Crusade
American Peace Mobilization
American Poles for Peace
American Polish Labor Council
American Polish League
American Rescue Ship Mission (a project of the United American Spanish Aid Committee)
American-Russian Fraternal Society
American Russian Institute, New York, also known as the American Russian Institute for Cultural Relations with the Soviet Union
American Russian Institute, Philadelphia
American Russian Institute of San Francisco
American Russian Institute of Southern California, Los Angeles
American Slav Congress
American Women for Peace
American Youth Congress
American Youth for Democracy
Armenian Progressive League of America
Associated Klans of America
Association of Georgia Klans
Association of German Nationals (Reichsdeutsche Vereinigung)
Ausland-Organisation der NSDAP, Overseas Branch of Nazi Party
Baltimore Forum
Benjamin Davis Freedom Committee
Black Dragon Society
Boston School for Marxist Studies, Boston, Massachusetts
Bridges-Robertson-Schmidt Defense Committee
Bulgarian American People's League of the United States of America
California Labor School, Inc., 321 Divisadero Street, San Francisco, California
Carpatho-Russian People's Society
Central Council of American Women of Croatian Descent, also known as Central Council of American Croatian Women, National Council of Croatian Women
Central Japanese Association (Beikoku Chuo Nipponjin Kai)
Central Japanese Association of Southern California
Central Organization of the German-American National Alliance (Deutsche-Amerikanische Einheitsfront)
Cervantes Fraternal Society
China Welfare Appeal, Inc.
Chopin Cultural Center
Citizens Committee for Harry Bridges
Citizens Committee of the Upper West Side (New York City)
Citizens Committee to Free Earl Browder
Citizens Emergency Defense Conference
Citizens Protective League
Civil Liberties Sponsoring Committee of Pittsburgh
Civil Rights Congress and its affiliated organizations, including:
Civil Rights Congress for Texas
Veterans Against Discrimination of Civil Rights Congress of New York
Civil Rights Congress for Texas (see Civil Rights Congress)
Columbians
Comite Coordinador Pro Republica Espanola

Comite Pro Derechos Civiles
(See Puerto Rican Comite Pro Libertades Civiles)
Committee for a Democratic Far Eastern Policy
Committee for Constitutional and Political Freedom
Committee for Nationalist Action
Committee for Peace and Brotherhood Festival in Philadelphia
Committee for the Defense of the Pittsburgh Six
Committee for the Negro in the Arts
Committee for the Protection of the Bill of Rights
Committee for World Youth Friendship and Cultural Exchange
Committee to Abolish Discrimination in Maryland
(See Congress Against Discrimination; Maryland Congress Against Discrimination; Provisional Committee to Abolish Discrimination in the State of Maryland)
Committee to Aid the Fighting South
Committee to Defend Marie Richardson
Committee to Defend the Rights and Freedom of Pittsburgh's Political Prisoners
Committee to Uphold the Bill of Rights
Commonwealth College, Mena, Arkansas
Communist Party, U. S. A., its subdivisions, subsidiaries and affiliates
Communist Political Association, its subdivisions, subsidiaries and affiliates, including:
Alabama People's Educational Association
Florida Press and Educational League
Oklahoma League for Political Education
People's Educational and Press Association of Texas
Virginia League for People's Education
Congress Against Discrimination
(See Committee to Abolish Discrimination in Maryland)
Congress of American Revolutionary Writers
Congress of American Women
Congress of the Unemployed
Connecticut Committee to Aid Victims of the Smith Act
Connecticut State Youth Conference
Council for Jobs, Relief and Housing
Council for Pan-American Democracy
Council of Greek Americans
Council on African Affairs
Croatian Benevolent Fraternity
Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan)
Daily Worker Press Club
Daniels Defense Committee
Dante Alighieri Society (between 1935 and 1940)
Dennis Defense Committee
Detroit Youth Assembly
East Bay Peace Committee
Eliason Progressive League
Emergency Conference to Save Spanish Refugees (founding body of the North American Spanish Aid Committee)
Everybody's Committee to Outlaw War
Families of the Baltimore Smith Act Victims
Families of the Smith Act Victims
Federation of Italian War Veterans in the U. S. A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America)
Finnish-American Mutual Aid Society
Florida Press and Educational League (see Communist Political Association)
Frederick Douglass Educational Center
Freedom Stage, Inc.
Friends of the New Germany (Freunde des Neuen Deutschlands)
Friends of the Soviet Union
Garibaldi American Fraternal Society
George Washington Carver School, New York City
German-American Bund (Amerikadeutscher Volksbund)
German-American Republican League
German-American Vocational League (Deutsche-Amerikanische Berufsgemeinschaft)
Guardian Club
Harlem Trade Union Council
Hawaii Civil Liberties Committee
Heimusha Kai, also known as Nokubi Heikei Gimusha Kai, Zaibei Nihonjin, Heikei Gimusha Kai, and Zaibei Heimusha Kai (Japanese Residing in America Military Conscripts Association)
Hellenic-American Brotherhood
Hinode Kai (Imperial Japanese Reservists)
Hinomaru Kai (Rising Sun Flag Society—a group of Japanese War Veterans)
Hokubei Zaigo Shoke Dan (North American Reserve Officers Association)

FORM DS-944	8-18-59	PAGE 2
<p>Hollywood Writers Mobilization for Defense Hungarian-American Council for Democracy Hungarian Brotherhood Idaho Pension Union Independent Party (Seattle, Washington) (See Independent People's Party) Independent People's Party (See Independent Party) Industrial Workers of the World International Labor Defense International Workers Order, its subdivisions, subsidiaries and affiliates Japanese Association of America Japanese Overseas Central Society (Kaigai Dobo Chuo Kai) Japanese Overseas Convention, Tokyo, Japan, 1940 Japanese Protective Association (Recruiting Organization) Jefferson School of Social Science, New York City Jewish Culture Society Jewish People's Committee Jewish People's Fraternal Order Ikyoku Inokai (The Committee for the Crisis) Johnson-Forest Group (See Johnsonites) Johnsonites (See Johnson-Forest Group) Joint Anti-Fascist Refugee Committee Joint Council of Progressive Italian-Americans, Inc. Joseph Weydemeyer School of Social Science, St. Louis, Missouri Kibei Seinen Kai (Association of U. S. Citizens of Japanese Ancestry who have returned to America after studying in Japan) Knights of the White Camellia Ku Klux Klan Kyffhaeuser, also known as Kyffhaeuser League (Kyffhaeuser Bund). Kyffhaeuser Fellowship (Kyffhaeuser Kameradschaft) Kyffhaeuser War Relief (Kyffhaeuser Kriegshilfswerk) Labor Council for Negro Rights Labor Research Association, Inc. Labor Youth League League for Common Sense League of American Writers Lictor Society (Italian Black Shirts) Macedonian-American People's League Mario Morganini Circle Maritime Labor Committee to Defend Al Lannon Maryland Congress Against Discrimination (See Committee to Abolish Discrimination in Maryland) Massachusetts Committee for the Bill of Rights Massachusetts Minute Women for Peace (not connected with the Minute Women of the U. S. A., Inc.) Maurice Braverman Defense Committee Michigan Civil Rights Federation Michigan Council for Peace Michigan School of Social Science Nanka Teikoku Gyunudan (Imperial Military Friends Group or Southern California War Veterans) National Association of Mexican Americans (also known as Asociacion Nacional Mexico-Americana) National Blue Star Mothers of America (not to be confused with the Blue Star Mothers of America organized in February 1942) National Committee for Freedom of the Press National Committee for the Defense of Political Prisoners National Committee to Win Amnesty for Smith Act Victims National Committee to Win the Peace National Conference on American Policy in China and the Far East (a Conference called by the Committee for a Democratic Far Eastern Policy) National Council of Americans of Croatian Descent National Council of American-Soviet Friendship National Federation for Constitutional Liberties National Labor Conference for Peace National Negro Congress National Negro Labor Council Nationalist Action League Nationalist Party of Puerto Rico Nature Friends of America (since 1935) Negro Labor Victory Committee New Committee for Publications Nichibei Kogyo Kaisha (The Great Fujii Theatre) North American Committee to Aid Spanish Democracy North American Spanish Aid Committee North Philadelphia Forum Northwest Japanese Association Ohio School of Social Sciences Oklahoma Committee to Defend Political Prisoners Oklahoma League for Political Education (see Communist Political Association) Original Southern Klans, Incorporated Pacific Northwest Labor School, Seattle, Washington Palo Alto Peace Club Partido del Pueblo of Panama (operating in the Canal Zone) Peace Information Center Peace Movement of Ethiopia</p>	<p>People's Drama, Inc. People's Educational and Press Association of Texas (see Communist Political Association) People's Educational Association (incorporated under name Los Angeles Educational Association, Inc.), also known as People's Educational Center, People's University, People's School People's Institute of Applied Religion Peoples Programs (Seattle, Washington) People's Radio Foundation, Inc. People's Rights Party Philadelphia Labor Committee for Negro Rights Philadelphia School of Social Science and Art Photo League (New York City) Pittsburgh Arts Club Political Prisoners' Welfare Committee Polonia Society of the IWO Progressive German-Americans, also known as Progressive German-Americans of Chicago Proletarian Party of America Protestant War Veterans of the United States, Inc. Provisional Committee of Citizens for Peace, Southwest Area Provisional Committee on Latin American Affairs Provisional Committee to Abolish Discrimination in the State of Maryland (See Committee to Abolish Discrimination in Maryland) Puerto Rican Comite Pro Libertades Civiles (CLC) (See Comite Pro Derechos Civiles) PuertoRiquenos Unidos (Puerto Ricans United) Quad City Committee for Peace Queensbridge Tenants League Revolutionary Workers League Romanian-American Fraternal Society Russian American Society, Inc. Sakura Kai (Patriotic Society, or Cherry Association—composed of veterans of Russo-Japanese War) Samuel Adams School, Boston, Massachusetts Santa Barbara Peace Forum Schappes Defense Committee Schneiderman-Darcy Defense Committee School of Jewish Studies, New York City Seattle Labor School, Seattle, Washington Serbian-American Fraternal Society Serbian Vidovdan Council Shinto Temples (limited to State Shinto abolished in 1945) Silver Shirt Legion of America Slavic Council of Southern California Slovak Workers Society Slovenian-American National Council Socialist Workers Party, including American Committee for European Workers' Relief Sokoku Kai (Fatherland Society) Southern Negro Youth Congress Suiko Sha (Reserve Officers Association, Los Angeles) Syracuse Women for Peace Tom Paine School of Social Science, Philadelphia, Pennsylvania Tom Paine School of Westchester, New York Trade Union Committee for Peace (See Trade Unionists for Peace) Trade Unionists for Peace (See Trade Union Committee for Peace) Tri-State Negro Trade Union Council Ukrainian-American Fraternal Union Union of American Croatsians Union of New York Veterans United American Spanish Aid Committee United Committee of Jewish Societies and Landsmanschaft Federations, also known as Coordination Committee of Jewish Landsmanschaften and Fraternal Organizations United Committee of South Slavic Americans United Defense Council of Southern California United Harlem Tenants and Consumers Organization United May Day Committee United Negro and Allied Veterans of America Veterans Against Discrimination of Civil Rights Congress of New York (see Civil Rights Congress) Veterans of the Abraham Lincoln Brigade Virginia League for People's Education (see Communist Political Association) Voice of Freedom Committee Walt Whitman School of Social Science, Newark, New Jersey Washington Bookshop Association Washington Committee for Democratic Action Washington Committee to Defend the Bill of Rights Washington Commonwealth Federation Washington Pension Union Wisconsin Conference on Social Legislation Workers Alliance (since April 1936) Yiddisher Kultur Farband Young Communist League Yugoslav-American Cooperative Home, Inc. Yugoslav Seamen's Club, Inc.</p>	

FORM DS-944		L-18-59	PAGE 2
<p>I certify that I have read the names of the above-listed organizations, and that I am not now, nor have I ever been, a member of, in association with, or affiliated with, or that I have not contributed to any of such organizations, except as indicated and explained below:</p>			
ORGANIZATION		DATES OF MEMBERSHIP	
REMARKS:			
SIGNED AT (City and State)		DATE	SIGNATURE



APPLICATION FOR FEDERAL EMPLOYMENT



IMPORTANT

READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE FILLING OUT YOUR APPLICATION

All requested information must be furnished. The information you give will be used to determine your qualifications for employment.

It is **IMPORTANT** that you answer all questions on your application *fully and accurately*; failure to do so

may delay its consideration and could mean loss of employment opportunities.

If an item does not apply to you, or if there is no information to be given, please write in the letters "N.A." for Not Applicable.

GENERAL INSTRUCTIONS

- Use typewriter if available. Otherwise, write legibly or print clearly in dark ink.
- If you are applying for a specific civil service examination, follow exactly the directions in the examination announcement as well as the instructions for filling out this form.
- For a written examination, the admission card tells you what to do with this application.
- If the examination involves no written test, mail this application to the office named in the examination announcement. Be sure to mail to the same office any other forms required in the announcement.
- Notify the office with which you file this application of any change in your name or address.

INSTRUCTIONS RELATING TO SPECIFIC ITEMS

ITEM 18. ACTIVE MILITARY SERVICE AND VETERAN PREFERENCE

- Five-point preference is granted to veterans if honorably separated: (a) after active wartime service during the periods April 6, 1917 to July 2, 1921 or December 7, 1941 to July 1, 1955, or (b) after peacetime campaign service in the Armed Forces of the United States for which a campaign badge has been authorized.
- Ten-point preference is granted in some cases to disabled veterans, including veterans awarded the Purple Heart, to widows of veterans, to wives of disabled veterans, and to mothers of deceased or disabled veterans. See Standard Form 15—Veteran Preference Claim.
- If you claim five-point preference as a wartime veteran, you are not required to furnish proof of honorable separation until the time of appointment.
- If you claim (a) ten-point preference or (b) five-point preference as a peacetime campaign veteran, complete and attach to this application Standard Form 15—Veteran Preference Claim, and the proof called for in that form.

PLEASE READ ADDITIONAL INSTRUCTIONS ON BACK OF THIS SHEET

16-78413-2

ITEM 19. EXPERIENCE

- Take time to fill in these experience blocks carefully and completely. Your qualifications rating depends in a large part on your experience and employment history. Failure to give complete details may delay consideration of your application. Answers given in this item may be verified with former employers.
- When the block contains experience in more than one type of work (Example: carpentry, painting; personnel-budget) estimate and indicate the approximate percentage of time spent in each type of work. Place these percentages in parentheses at the end of the description of the duties.
- *Block 1*—Describe your *present* position in this block. Indicate in this block if you are now unemployed or if you have never been employed.
- *Blocks 2 and 3*—Describe in *Block 2* the position you held just before your present position, and continue to work backwards using *Block 3*.
- *Need for additional blocks*—If you need more experience blocks, use Standard Form 57-A—Continuation Sheet or a plain piece of paper. If you use plain paper, each experience block must contain all of the information requested in Item 19 of the printed application. If there is not enough space in any of the experience blocks to describe the positions held, continue the description on a plain piece of paper. Identify each plain sheet at the top by showing your name, date of birth, examination title, and the block under Item 19 from which the description is continued. Attach these supplemental sheets to the top of page 3 at place marked, "Attach Supplemental Sheets or Forms Here."
- *General Information*—If supervision over other employees was one of your duties, be sure to indicate the number and kind (and grades, if Federal Government) of employees supervised by you, and explain your duties as a supervisor under description of duties.
- Indicate in each block of Item 19 the name under which you were employed if it was different from the name in Item 4 of this application. Show former name in parenthesis after "Description of Work."
- Use separate blocks if your duties, responsibilities, or salary level changed materially while working for the same employer. Treat each such change as a separate position.
- Include your military or merchant marine service in separate blocks in its proper order and describe major duty assignments.
- Summarize in one or more of the blocks any experience acquired more than 15 years ago, unless it is the type of work for which you are applying.
- Account for periods of unemployment in separate blocks in order.
- You may include at the end of your employment history any pertinent religious, civic, welfare, or organizational activity which you have performed, either with or without compensation. Show actual time spent in such activity.
- Indicate estimated number of hours worked per week if you were on part-time work.

ITEMS 26 AND 27. MEMBERSHIP IN ORGANIZATIONS

- A list of organizations designated by the Attorney General under Executive Order 10450, Security Requirements for Government Employment, is available in Federal offices where applications are customarily given out. This list is supplied for your convenience, and is not intended to indicate what weight will be given to past or present membership in any listed organization in determining eligibility for Government employment. This may vary, depending upon the nature of the organization and the individual's participation. Your use of this list does not release you from the responsibility of listing your past or present membership in any other organization which you have reason to believe comes within the meaning of these questions.

CERTIFICATION

- Be careful that you have answered all questions on your application correctly and considered all statements fully so that your eligibility can be decided on all the facts. Read the certification carefully before you sign and date your application.
- Sign your name in ink.
- Use one given name, initial or initials, and surname.

PLEASE DETACH THIS INSTRUCTION SHEET BEFORE SUBMITTING YOUR APPLICATION

STANDARD FORM 57
REVISED MARCH 1961
U.S. CIVIL SERVICE COMMISSION

APPLICATION FOR FEDERAL EMPLOYMENT

37-105

1. Kind of position applied for, or name of examination Announcement No.		DO NOT WRITE IN THIS BLOCK For Use of Examining Office Only				
2. Options for which you wish to be considered (if listed in examination announcement)		<input type="checkbox"/> Appor. <input type="checkbox"/> Nonappor.	Material <input type="checkbox"/> Submitted <input type="checkbox"/> Returned	Entered Register:		
3. Primary place(s) of employment applied for (City and State)		Notations:				
4. (First name) (Middle) (Maiden, if any) (Last) Mr. Mrs. Miss		App. Reviewed:				
5. Address (Number, Street, City, State and Zip Code)		App. Approved:				
6. Home phone 7. Office phone		Option	Grade	Earned Rating	Preference	Augm. Rating
8. Legal or voting residence (State)					<input type="checkbox"/> 5 points (Tent.) <input type="checkbox"/> 10 points Comp. Dis. <input type="checkbox"/> Other 10 Point <input type="checkbox"/> Disal. <input type="checkbox"/> Being Investigated	
9. Height without shoes _____ feet _____ inches 10. Weight						
11. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female 12. Marital status <input type="checkbox"/> Married <input type="checkbox"/> Single (Incl. widowed, divorced)						
13. Birthplace (City and State, or foreign country)						
14. Birth date (Month, day, year)		15. Social Security Number				
16. If you have ever been employed by the Federal Government, indicate last grade and job title: Dates of service in that grade From _____ To _____						

ANNOUNCEMENT NO.

APPLICATION NO.

17. AVAILABILITY INFORMATION

A. Lowest grade or pay you will accept \$ _____ Per _____ or grade	B. Will you accept temporary appointment? (Acceptance or refusal of temporary employment will not affect your consideration for other appointments.) <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," indicate by "X" in appropriate box or boxes. <input type="checkbox"/> 1 mo. or less <input type="checkbox"/> 1 to 4 months <input type="checkbox"/> 4 to 12 months
C. Will you accept less than full-time employment (less than 40 hours per week)? <input type="checkbox"/> Yes <input type="checkbox"/> No	D. Are you willing to travel? <input type="checkbox"/> Not at all <input type="checkbox"/> Occasionally <input type="checkbox"/> Frequently
E. Will you accept employment: In Washington, D.C.? <input type="checkbox"/> Yes <input type="checkbox"/> No Outside U.S.? <input type="checkbox"/> Yes <input type="checkbox"/> No	
F. Will you accept appointment only in certain locations? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," list locations:	

18. ACTIVE MILITARY SERVICE AND VETERAN PREFERENCE

A. List Dates, Branch, and Serial or Service Number of All Active Service From _____ To _____ Branch of Service _____ Serial or Service Number _____		
B. Have you ever been discharged from the armed forces under other than honorable conditions? <input type="checkbox"/> Yes (Give details in Item 39) <input type="checkbox"/> No		
C. Do you claim 5-point preference based on wartime military service? <input type="checkbox"/> Yes <input type="checkbox"/> No	D. Do you claim 5-point preference based on service during peacetime campaign? <input type="checkbox"/> Yes (Complete and attach Standard Form 15) <input type="checkbox"/> No	
E. Do you claim 10-point preference? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," check type of preference claimed and complete and attach Standard Form 15. "Veteran Preference Claim" TYPE: <input type="checkbox"/> Compensable disability <input type="checkbox"/> Disability <input type="checkbox"/> Wife <input type="checkbox"/> Widow <input type="checkbox"/> Mother		

THIS SPACE FOR USE OF APPOINTING OFFICER ONLY

The information given in answer to Question 18 has been verified with the discharge certificate and/or other proof which shows that the separation was under honorable conditions.		
VETERAN PREFERENCE ALLOWED: <input type="checkbox"/> 5-point <input type="checkbox"/> 10-point Comp. Disab. <input type="checkbox"/> Other 10-point <input type="checkbox"/> None		
Signature and title	Agency	Date

ANSWER ALL QUESTIONS BY PLACING "X" IN PROPER COLUMN		YES	NO
25. Are you a citizen of the United States of America?..... If "No," give country of which you are a citizen:			
26. Are you now, or have you ever been, a member of the Communist Party, U.S.A., the Communist Political Association, the Young Communist League, or any Communist organization?.....			
27. Are you now or have you ever been a member of any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means?..... <i>If your answer to 26 and/or 27 above is "Yes," state on a separate sheet attached to and made a part of this application the names of all such organizations, associations, movements, groups or combination of persons and date of membership. Give complete details of your activities therein and make any explanation you desire regarding your membership or activities. (See Instruction Sheet.)</i>			
28. Have you any physical handicap, chronic disease, or other disability?.....			
29. Have you ever had a nervous breakdown?.....			
30. Have you ever had tuberculosis?..... <i>If your answer to 28, 29, or 30 above is "Yes," give details in Item 39.</i>			
31. Have you ever been barred by the U.S. Civil Service Commission from taking examinations or accepting civil service appointment? (If your answer is "Yes," give dates of and reasons for such debarment in Item 39.)			
32. Does the United States Government employ in a civilian capacity any relative of yours (by blood or marriage) with whom you live or have lived within the past 24 months?..... <i>If your answer is "Yes," give in Item 39 for EACH such relative (1) full name; (2) present address; (3) relationship; (4) department or agency by which employed; and (5) kind of appointment.</i>			
33. Do you receive or have you applied for an annuity from the United States or District of Columbia Government under any retirement act or any pension or other compensation for military or naval service?..... <i>If your answer is "Yes," give details in Item 39.</i>			
34. Are you an official or employee of any State, territory, county, or municipality?..... <i>If your answer is "Yes," give details in Item 39.</i>			
35. Have you ever been discharged (fired) from employment for any reason?.....			
36. Have you ever resigned (quit) after being informed that your employer intended to discharge (fire) you for any reason?..... <i>If your answer is 35 or 36 above is "Yes," give details in Item 39. Show the name and address of employer, approximate date, and reasons in each case. This information should agree with statements made in Item 19—Experience.</i>			
37. Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority (You may omit: (1) Traffic violations for which you paid a fine of \$30.00 or less; and (2) anything that happened before your 16th birthday. All other incidents must be included, even though they were dismissed or you merely forfeited collateral.).....			
38. While in the military service were you ever arrested for an offense which resulted in a trial by deck court or by summary, special, or general court-martial?..... <i>If your answer to 37 or 38 is "Yes," give details in Item 39, showing for each incident: (1) date, (2) charge, (3) place, (4) law enforcing authority or type of court or court-martial, and (5) action taken.</i>			
39. SPACE FOR DETAILED ANSWERS TO OTHER QUESTIONS. Indicate item numbers to which answers apply.			
Item No.		Item No.	
If more space is required, use full sheets of paper approximately the same size as this page. Write on each sheet your name, date of birth, and examination title. Attach on inside of this application.			
ATTENTION: READ THE FOLLOWING PARAGRAPH CAREFULLY BEFORE SIGNING THIS APPLICATION			
A false or dishonest answer to any question in this application may be grounds for rating you ineligible for Federal employment, or for dismissing you after appointment, and may be punishable by fine or imprisonment (U.S. Code, Title 18, Sec. 1001). All statements made in the application are subject to investigation, including a check of your fingerprints, police records, and former employers. All information will be considered in determining your present fitness for Federal employment.			
CERTIFICATION			
I CERTIFY that all of the statements made in this application are true, complete, and correct to the best of my knowledge and belief and are made in good faith.			
Signature of applicant:		Date	
<i>(Sign in ink)</i>			

ATTACH SUPPLEMENTAL SHEETS OR FORMS HERE
• ANSWER ALL QUESTIONS CORRECTLY AND FULLY

20. SPECIAL QUALIFICATIONS AND SKILLS

A. Kind of License or Certificate (For example, pilot, teacher, registered nurse, lawyer, radio operator, C.P.A., etc.)	B. State or other licensing authority	C. Year of first license or certificate	D. Year of latest license or certificate
E. Special skills you possess and machines and equipment you can use. (For example, short wave radio, multilith, comptometer, key punch, turret lathe, transcribing machine, scientific or professional devices)		F. Approximate number of words per minute: Typing _____ Shorthand _____	
G. Special qualifications not covered in application. (For example, your most important publications (do not submit copies, unless requested); your patents or inventions; public speaking and publications experience; membership in professional or scientific societies, etc.; and honors and fellowships received.)			

21. EDUCATION

A. Place "X" in column indicating highest grade completed <table style="width:100%; text-align: center;"> <tr> <td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td> </tr> </table>												1	2	3	4	5	6	7	8	9	10	11	12	B. If you graduated from high school, give date		C. Name and location of last high school attended							
1	2	3	4	5	6	7	8	9	10	11	12																						
D. Name and location of college or university												Dates attended From _____ To _____		Years completed Day _____ Night _____		Credit hours' Semester _____ Quarter _____		Degree received	Year received														
E. Chief undergraduate college subjects												Semester Hours Credit	Quarter Hours Credit	F. Chief graduate college subjects				Semester Hours Credit	Quarter Hours Credit														
G. State major field of study at highest level of college work																																	
H. Other schools or training (for example, trade, vocational, Armed Forces, or business). Give for each the name and location of school, dates attended, subjects studied, certificates, and any other pertinent data.																																	

22. FOREIGN TRAVEL

Have you lived or traveled in any foreign countries?
 Yes No

If "Yes," give in Item 39 names of countries, dates and length of time spent there and reason or purpose (military service, business, education, or vacation).

23. FOREIGN LANGUAGES

Enter foreign language and indicate your knowledge of each by placing "X" in proper column	Reading			Speaking			Understanding			Writing		
	Exc.	Good	Fair	Exc.	Good	Fair	Exc.	Good	Fair	Exc.	Good	Fair

24. REFERENCES

List three persons living in the United States or territories of the United States who are NOT RELATED TO YOU AND WHO HAVE DEFINITE KNOWLEDGE of your qualifications and fitness for the position for which you are applying. Do not repeat names of supervisors listed under Item 19.

FULL NAME	PRESENT BUSINESS OR HOME ADDRESS <i>(Number, Street, City, State and Zip Code)</i>	BUSINESS OR OCCUPATION

PLEASE BE SURE TO READ ATTACHED INSTRUCTIONS BEFORE COMPLETING ITEM 19

19. EXPERIENCE (Start with your PRESENT position and work back)

May inquiry be made of your present employer regarding your character, qualifications, and record of employment? <input type="checkbox"/> Yes <input type="checkbox"/> No				
1	Dates of employment (month, year) From _____ To present time _____		Exact title of position _____	Number and kind of employees you supervise _____
	Salary or earnings Starting \$ _____ per _____ Present \$ _____ per _____	Classification Grade (If in Federal service) _____	Place of employment (City & State) _____	Kind of business or organization, (Manufacturing, accounting, insurance, etc.) _____
Name and address of employer (firm, organization, etc.) _____			Name, title, and present address of immediate supervisor _____	
Reason for wanting to leave _____				
Description of work _____				
2	Dates of employment (month, year) From _____ To _____		Exact title of position _____	Number and kind of employees you supervised _____
	Salary or earnings Starting \$ _____ per _____ Final \$ _____ per _____	Classification Grade (If in Federal service) _____	Place of employment (City & State) _____	Kind of business or organization, (Manufacturing, accounting, insurance, etc.) _____
Name and address of employer (firm, organization, etc.) _____			Name, title, and present address of immediate supervisor _____	
Reason for leaving _____				
Description of work _____				
3	Dates of employment (month, year) From _____ To _____		Exact title of position _____	Number and kind of employees you supervised _____
	Salary or earnings Starting \$ _____ per _____ Final \$ _____ per _____	Classification Grade (If in Federal service) _____	Place of employment (City & State) _____	Kind of business or organization, (Manufacturing, accounting, insurance, etc.) _____
Name and address of employer (firm, organization, etc.) _____			Name, title, and present address of immediate supervisor _____	
Reason for leaving _____				
Description of work _____				

IF YOU NEED ADDITIONAL EXPERIENCE BLOCKS USE STANDARD FORM 57-A OR BLANK SHEETS
SEE INSTRUCTION SHEET

Standard Form 88 MAY 1953 U.S. CIVIL SERVICE COMMISSION (F.P.M. CHAPTER 736) M-195		SECURITY INVESTIGATION DATA FOR SENSITIVE POSITION			CASE SERIAL NO. (CSC use only)			
INSTRUCTIONS.—Prepare in triplicate, using a typewriter. Fill in all items. If the answer is "No" or "None," so state. If more space is needed for any item, continue under item 28.								
1. FULL NAME <i>(Initials and abridgements of full name are not acceptable. If no middle names, show "(NMN)"; if initials only, show "(no given or middle name)"</i>		(LAST NAME)	(FIRST NAME)	(MIDDLE NAME)	2. DATE OF BIRTH			
OTHER NAMES USED. <i>(Maiden name, names by former marriages, former names changed legally or otherwise, aliases, nicknames, etc. Specify which, and show dates used.)</i>		3. PLACE OF BIRTH			4. <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE			
6. <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOW(ER) <input type="checkbox"/> DIVORCED		7. IF MARRIED, WIDOWED, OR DIVORCED, GIVE FULL NAME AND DATE AND PLACE OF BIRTH OF SPOUSE OR FORMER SPOUSE. INCLUDE WIFE'S MAIDEN NAME. GIVE DATE AND PLACE OF MARRIAGE OR DIVORCE. <i>(Give same information regarding all previous marriages and divorces.)</i>			5. HEIGHT	WEIGHT	COLOR EYES	COLOR HAIR
8. DATES AND PLACES OF RESIDENCE. <i>(If actual places of residence differ from the mailing addresses, furnish and identify both. Begin with present and go back to January 1, 1937. Continue under item 28 on other side if necessary.)</i>								
FROM		TO		NUMBER AND STREET	CITY	STATE		
9. <input type="checkbox"/> U.S. CITIZEN		<input type="checkbox"/> BY BIRTH	<input type="checkbox"/> NATURALIZED	ALIEN REGISTRATION NO.	DATE, PLACE, AND COURT			
		CERT. NO.		PETITION NO.				
		<input type="checkbox"/> DERIVED-PARENTS CERT. NO(S)						
<input type="checkbox"/> ALIEN		REGISTRATION NO.	NATIVE COUNTRY		DATE AND PORT OF ENTRY			
10. EDUCATION. <i>(All schools above elementary.)</i>								
NAME OF SCHOOL		ADDRESS		FROM (Year)	TO (Year)	DEGREES		
11. THIS SPACE FOR FBI USE. <i>(See also item 29.)</i>				12. SOCIAL SECURITY NUMBER				
				13. MILITARY SERVICE <i>(Past or present)</i>				
				SERIAL NO. <i>(If none, give grade or rating at separation)</i>	BRANCH OF SERVICE <i>(Army, Navy, Air Force, etc.)</i>	FROM (Yr.)	TO (Yr.)	

14. HAVE YOU EVER BEEN DISCHARGED FROM THE ARMED FORCES UNDER OTHER THAN HONORABLE CONDITIONS? YES NO.
(If answer is "Yes," give details in item 28.)

15. EMPLOYMENT. (List ALL employment dates starting with your present employment. Give both month and year for all dates. Show ALL dates and addresses when unemployed. Give name under which employed if different from name now used.)

<u>FROM</u>	<u>TO</u>	<u>NAME OF EMPLOYER (Firm or agency) AND SUPERVISOR (Full name, if known)</u>	<u>ADDRESS (Where employed)</u>	<u>TYPE OF WORK</u>	<u>REASON FOR LEAVING</u>
-------------	-----------	---	-------------------------------------	---------------------	---------------------------

16. HAVE YOU EVER BEEN DISCHARGED (FIRED) FROM EMPLOYMENT FOR ANY REASON? YES NO.

17. HAVE YOU EVER RESIGNED (QUIT) AFTER BEING INFORMED THAT YOUR EMPLOYER INTENDED TO DISCHARGE (FIRE) YOU FOR ANY REASON? YES NO.
(If your answer to 16 or 17 above is "Yes," give details in item 28. Show the name and address of employer, approximate date, and reasons in each case. This information should agree with the statements made in item 15—EMPLOYMENT.)

18. HAVE YOU EVER BEEN ARRESTED, TAKEN INTO CUSTODY, HELD FOR INVESTIGATION OR QUESTIONING, OR CHARGED BY ANY LAW ENFORCEMENT AUTHORITY? (You may omit: (1) Traffic violations for which you paid a fine of \$30 or less; and (2) anything that happened before your 16th birthday. All other incidents must be included, even though they were dismissed or you merely forfeited collateral.) YES NO.

IF YOUR ANSWER IS "YES," GIVE FULL DETAILS BELOW:

<u>DATE</u>	<u>CHARGE</u>	<u>PLACE</u>	<u>LAW ENFORCEMENT AUTHORITY</u>	<u>ACTION TAKEN</u>
-------------	---------------	--------------	--------------------------------------	---------------------

19. HAVE YOU EVER HAD A NERVOUS BREAKDOWN OR HAVE YOU EVER HAD MEDICAL TREATMENT FOR A MENTAL CONDITION? YES NO.
(If your answer is "Yes," give details in Item 26.)

20. FOREIGN COUNTRIES VISITED (SINCE 1930). (Exclusive of military service.)

COUNTRY	DATE LEFT U.S.A.	DATE RETURNED U.S.A.	PURPOSE

21. ARE YOU NOW, OR HAVE YOU EVER BEEN, A MEMBER OF THE COMMUNIST PARTY, U.S.A., OR ANY COMMUNIST OR FASCIST ORGANIZATION? YES NO.

22. ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF ANY FOREIGN OR DOMESTIC ORGANIZATION, ASSOCIATION, MOVEMENT, GROUP, OR COMBINATION OF PERSONS WHICH IS TOTALITARIAN, FASCIST, COMMUNIST, OR SUBVERSIVE, OR WHICH HAS ADOPTED, OR SHOWS, A POLICY OF ADVOCATING OR APPROVING THE COMMISSION OF ACTS OF FORCE OR VIOLENCE TO DENY OTHER PERSONS THEIR RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES, OR WHICH SEEKS TO ALTER THE FORM OF GOVERNMENT OF THE UNITED STATES BY UNCONSTITUTIONAL MEANS? YES NO.

23. IF YOUR ANSWER TO QUESTION 21 OR 22 ABOVE IS "YES," STATE THE NAMES OF ALL SUCH ORGANIZATIONS, ASSOCIATIONS, MOVEMENTS, GROUPS, OR COMBINATIONS OF PERSONS AND DATES OF MEMBERSHIP. IN ITEM 28 OR ON A SEPARATE SHEET TO BE ATTACHED TO AND MADE A PART OF THIS FORM, GIVE COMPLETE DETAILS OF YOUR ACTIVITIES THEREIN AND MAKE ANY EXPLANATION YOU DESIRE REGARDING YOUR MEMBERSHIP OR ACTIVITIES.

NAME	ADDRESS	FROM	TO	OFFICE HELD

24. MEMBERSHIP IN OTHER ORGANIZATIONS. (List all organizations in which you are now a member or have been a member, except those which show religious or political affiliations.) (If none, so state.)

NAME	ADDRESS	TYPE	FROM	TO	OFFICE HELD

25. RELATIVES. (Parents, spouse, divorced spouse, children, brothers, and sisters, living or dead. Name of spouse should include maiden name and any other names by previous marriage. If person is dead, state "dead" after relationship and furnish information for other columns as of time of death.)

RELATION	NAME IN FULL	YEAR OF BIRTH	ADDRESS	COUNTRY OF BIRTH	PRESENT CITIZENSHIP

26. REFERENCES. (Name three persons, not relatives or employers, who are well acquainted with you.)

NAME IN FULL	HOME ADDRESS	BUSINESS ADDRESS	YEARS KNOWN
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27. TO YOUR KNOWLEDGE, HAVE YOU EVER BEEN THE SUBJECT OF A FULL FIELD OR BACKGROUND PERSONAL INVESTIGATION BY ANY AGENCY OF THE FEDERAL GOVERNMENT? YES NO. (If your answer is "Yes," show in item 28, (1) the name of the investigating agency (2) the approximate date of investigation, and (3) the level of security clearance granted, if known.)

28. SPACE FOR CONTINUING ANSWERS TO OTHER QUESTIONS. (Show item numbers to which answers apply. Attach a separate sheet if there is not enough space here.)

29. REPORT OF INFORMATION DEVELOPED. (This space reserved for FBI use.) DATE:

Before signing this form check back over it to make sure you have answered all questions fully and correctly.

CERTIFICATION

I CERTIFY that the statements made by me on this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

False statement on this form is punishable by law.

(DATE)

(SIGNATURE—Sign original and first carbon copy)

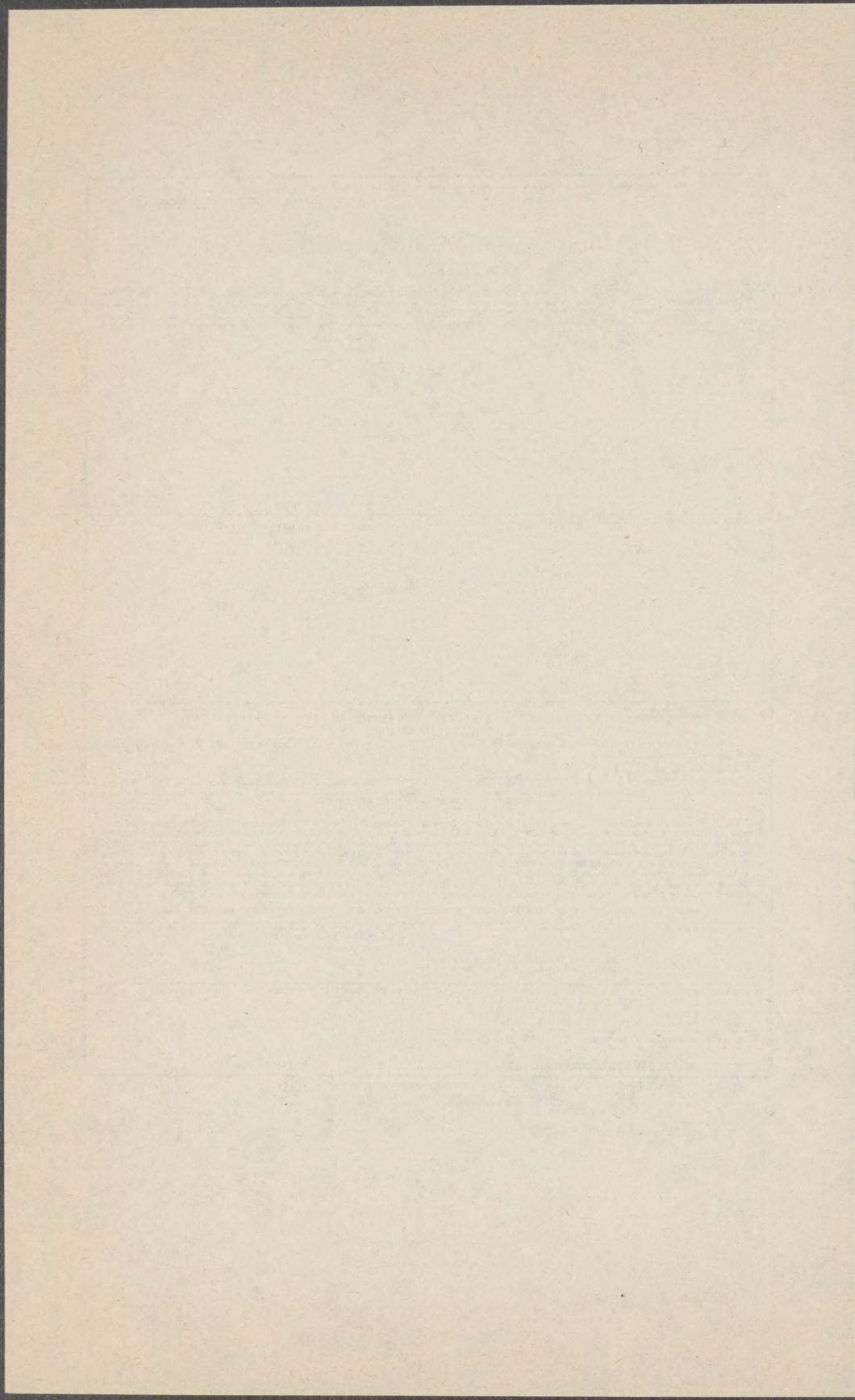
INFORMATION TO BE FURNISHED BY AGENCY

INSTRUCTIONS TO AGENCY: See Federal Personnel Manual Chapter 736 and FPM Supplement 296-31, Appendix A, for details on when this form is required and how it is used. If this is a request for investigation before appointment, insert "APPL" in the space for Date of Appointment and show information about the proposed appointment in the other spaces for appointment data. The original and the first carbon copy should be signed by the applicant or appointee. Submit the original and the unsigned carbon copy of the form, Standard Form 87 (Fingerprint Chart), and any investigative information about the person received on voucher forms or otherwise, to the United States Civil Service Commission, Bureau of Personnel Investigations, Washington 25, D.C. If this is a request for full field security investigation, submit these forms to the attention of the Division of Reimbursable Investigations; if this is a request for preappointment national agency checks, submit these forms to the attention of the Control Section.

RETAIN THE CARBON COPY OF STANDARD FORM 86 (SIGNED BY THE APPLICANT OR APPOINTEE) FOR YOUR FILES

DATE OF APPOINTMENT	TYPE OF APPOINTMENT <input type="checkbox"/> EXCEPTED <input type="checkbox"/> COMPETITIVE (include indefinite and temporary types of competitive appointments.)	CIVIL SERVICE REGULATION NUMBER OR OTHER APPOINTMENT AUTHORITY	TITLE OF POSITION AND GRADE OR SALARY
DEPARTMENT OR AGENCY	DUTY STATION	SEND RESULTS OF PREAPPOINTMENT CHECK TO:	
THIS IS A SENSITIVE POSITION			
(SIGNATURE AND TITLE OF AUTHORIZED AGENCY OFFICIAL)			

U.S. GOVERNMENT PRINTING OFFICE: 1963 O-699-088



TESTIMONY OF JOHN F. REILLY, DEPUTY ASSISTANT SECRETARY
OF STATE FOR SECURITY

TUESDAY, AUGUST 6, 1963

The subcommittee met, pursuant to notice, at 10:35 a.m., in room 2300, New Senate Office Building, Senator Roman L. Hruska presiding.

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

For the Department: John S. Leahy, Jr., legislative officer, congressional relations, observer.

* * * * *

Senator HRUSKA. The subcommittee will come to order.

Mr. Counsel, I understand the witness has been sworn previously.

Mr. SOURWINE. Yes, sir. The witness this morning is Mr. John Reilly, Assistant Secretary of State for Security, I believe.

Mr. REILLY. Deputy Assistant.

Senator HRUSKA. And he has been sworn and this is a continuation of previous testimony, is that correct?

Mr. SOURWINE. This is correct, sir.

Senator HRUSKA. Very well, you may proceed. The record will note that the witness is accompanied by Mr. John Leahy.

* * * * *

(EDITOR'S NOTE.—Eighty-four lines were deleted from the record at this point for security reasons.)

* * * * *

Mr. SOURWINE. Mr. Reilly, did any of the potential subversive agents who flew from Cuba to Grand Cayman Island and fanned out from there come to the United States?

Mr. REILLY. I have no knowledge on that.

Mr. SOURWINE. Does the State Department know the identity of these agents?

Mr. REILLY. I do not know the identity. Whether Visa Office, or other areas responsible for such matters, do or not, I could not say.

Mr. SOURWINE. Is it known whether they were all Cubans?

Mr. REILLY. Again, I personally have no direct knowledge on that, sir.

Mr. SOURWINE. What part did the State Department play in arranging for the granting of clearances to 50 Indians—that is, natives of India—to come to the United States to be given access to U.S. secrets in the fields of nuclear energy and missiles and rocketry, and miniaturization and electronics, and other fields?

Mr. REILLY. The Office of Security played no role in it. Whether other areas of the Department did or did not, again I—

Mr. SOURWINE. Do you know about this group?

Mr. REILLY. No; this has escaped my attention, Mr. Sourwine.

* * * * *

TESTIMONY OF ABBA P. SCHWARTZ

TUESDAY, NOVEMBER 19, 1963

Senator Roman L. Hruska presiding.

Present: Senators James O. Eastland, chairman; Hruska and Hugh Scott.

Also present: J. G. Sourwine, chief counsel; Alan D. McArthur, associate counsel; Samuel J. Scott, assistant counsel; A. Warren Littman, assistant counsel; and Benjamin Mandel, director of research.

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. May I open up a new subject?

Senator HRUSKA. Yes.

Mr. SOURWINE. As I said earlier, there are several relatively unrelated items and we might just as well get them out of the way this morning.

Are you aware of news stories as to a refugee from Cuba who was granted an entrance so that she could work as a chambermaid, and who was purported to be involved in a U.N. callgirl ring in New York City?

Mr. SCHWARTZ. I'm sorry. I am not, to my recollection. A Cuban girl?

Mr. SOURWINE. A person came here as a refugee from Cuba. I think she was originally a Yugoslav.

Mr. SCHWARTZ. I am not familiar with it. If I have the name I will be glad to check up on it.

Mr. SOURWINE. You have no present recollection of it?

Mr. SCHWARTZ. No, I have not.

Mr. SOURWINE. We will go into it later.

Mr. Schwartz, do you know who passed on the question of the visas for the writers and newspapermen invited by Fidel Castro to visit Cuba for the July 26 celebration this year?

Mr. SCHWARTZ. All writers, newspapermen who have passports validated for travel in Cuba, their status as newsmen is determined by the Office of the Assistant Secretary for Public Affairs, Mr. Manning—Robert Manning. Those applications come in to my office or to Mr. Manning. I do not pass on them. They go to Mr. Manning's office. I do not know actually who does it in his office, but it goes to Mr. Manning's office. I do not pass on whether a person is or is not an accredited newsmen.

Mr. SOURWINE. Is it the policy of the Department to allow travel to Cuba by anyone who is an accredited newspaper, magazine, or radio station man, without regard to any other facts?

Mr. SCHWARTZ. It is my impression, Mr. Sourwine, that the rule, I believe, is set forth in a press release. I would have to refer to it. It is that an accredited—I think the word is "accredited newsmen" is permitted to travel to Cuba, that he can apply and receive a validation for travel to Cuba.

Mr. SOURWINE. Without regard to the circumstances, that is, if the newspaper or the magazine or the radio station gives him credentials, he may have his passport validated for travel to Cuba without any further investigation of him or his bona fides?

Mr. SCHWARTZ. The bona fides and so forth are determined in Mr. Manning's office. Mr. Manning is considered the expert on who is and who is not a newsman. He would have the channels to check, and so forth, so that I rely on Mr. Manning's determination. I recall applications of persons who would appear to have represented what that office may not have considered an accredited newspaperman, such as school publications and things of that sort, but that determination of credibility of newsman or of his magazine or newspaper is something which I do not make. I get a memo back from Manning's office recommending accreditation or validation or not.

Mr. SOURWINE. You act on the basis of that memorandum?

Mr. SCHWARTZ. I act on the basis of Mr. Manning's determination—his office's determination whether the person and the magazine are accredited publications or news media.

Mr. SOURWINE. In other words, the decision with regard to who may travel to Cuba as newsmen is made by Mr. Manning's office?

Mr. SCHWARTZ. That is correct. I look at those. If we have any information in our files, of course, it is all made available to him. He gets the file, if we happen to have a file on the person, but the news aspect of it is determined by Mr. Manning.

Mr. SOURWINE. Suppose a man has credentials and you had knowledge or reason to believe that he was a Communist, would you still give him the validation to go to Cuba?

Mr. SCHWARTZ. I believe, Mr. Sourwine, that question has never come up, at least, not to my recollection.

Mr. SOURWINE. Are you saying that no validation for a passport to go to Cuba has been given to any person that the Department had reason to believe was a Communist?

Mr. SCHWARTZ. I can only tell you from my own recollection, Mr. Sourwine, that I do not recall any validation coming from Mr. Manning's office of a person whom we would have reason to believe or think was a Communist. I would have to check that. I am speaking completely from memory. Most of the cases are a New York Times man or Look magazine man, or, I remember that instance that you referred to of the July celebration, that there were some people from a Baltimore newspaper who, I believe, had applied. I do not know whether they went or not.

Mr. SOURWINE. You simply refer them—

Mr. SCHWARTZ. I refer them to Mr. Manning.

Mr. SOURWINE. Without a recommendation?

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. Then he makes a recommendation, on the basis of which you act, either to grant or not to grant?

Mr. SCHWARTZ. That is right. He does, I am sure, confer with others. I do not know just how he operates, who does that in his office, but he has a file. We will send—it is usually—I think invariably—a request from a newsman or his publication. I remember seeing requests from publications saying that they would like to send so and so to cover a certain thing. It is my recollection there have not been many of these. I did see quite a few, or some, during the time of that July celebration.

Mr. SOURWINE. If you knew that an applicant or a person named by a magazine as their nominee or a newspaper as its nominee to go to

Cuba, was a member of the Communist Party, would you include that information in the notification that you sent Mr. Manning?

Mr. SCHWARTZ. I certainly would. And I would, certainly, do more than that, Mr. Sourwine. I would bring that to the attention of some of my superiors, Mr. Crockett, for instance. I would think such a case would be carefully considered in the light of our total policy.

Mr. SOURWINE. You feel an obligation to inform your superiors of it?

Mr. SCHWARTZ. I certainly would. And I should think that Mr. Martin's office would be very much concerned, because we have a policy in relation to Cuba of doing everything to prevent subversion, to limit travel for that purpose. That is the basis, really, of our travel limitation on Cuba.

Mr. SOURWINE. If a man came up for validation for travel to Cuba and you knew he was a Communist, why send it to Mr. Manning's office at all, why not reject it?

Mr. SCHWARTZ. That of course would be—

Mr. SOURWINE. You have the authority to do that, do you not?

Mr. SCHWARTZ. Well, I guess I have the authority. That would be, first, a determination of, one, if he is a newsman. I would not know particularly—I can imagine if someone were a Communist and applied—I am very doubtful if it would be a well-known name that I would be familiar with.

Mr. SOURWINE. Do you know Joseph North? Do you know the name?

Mr. SCHWARTZ. No, sir; I do not.

Mr. SOURWINE. Do you know who he is?

Mr. SCHWARTZ. No.

Mr. SOURWINE. Joseph North is employed by the Worker, which is a Communist newspaper. Mr. North has made several trips to Cuba. Do you know whether he went with a validated passport as a representative of the Worker? ¹

Mr. SCHWARTZ. I would certainly have to check that, Mr. Sourwine. I have no recollection, whatsoever. I cannot remember all of these things, but I certainly think, if I saw a file that involved a representative of the Communist paper, of the Worker, I think I might remember it.

Mr. SOURWINE. There would be notice that the man was a Communist?

Mr. SCHWARTZ. That would certainly be some indication.

Mr. SOURWINE. And if a validation was granted under those conditions, it would be granted with knowledge, or at least reason to believe, that the man was a Communist?

Mr. SCHWARTZ. I would assume. I think—there is a problem with these matters. I would assume that that would raise several problems. And I would assume that not only would Mr. Manning's office, but the Legal Adviser's Office, Mr. Crockett's office, and all of us would be concerned. I am unaware of that case. I would like to look into it.

Mr. SOURWINE. Has there been no determination in the State De-

¹ Refer to Abba P. Schwartz' testimony of Nov. 20, 1963, which will appear in part 5 of this series.

partment with respect to this problem; has there been no consideration given to a decision as to whether a representative of a Communist paper or a known Communist representative of some other paper or magazine or radio station will be permitted to go to Cuba?

Mr. SCHWARTZ. I can only respond to that by saying that the question has not arisen—has not been brought to me—and that does not mean there may not have been consideration and a decision. I have never had, to my recollection, any such case put before me.

Senator EASTLAND. Who would it be besides you?

Mr. SCHWARTZ. If such a case came to me?

Senator EASTLAND. Would it not have to come to you?

Mr. SCHWARTZ. What do you say?

Senator EASTLAND. Would it not have to come to you?

Mr. SCHWARTZ. Not until—not too many months ago, when we did decide that validation to Cuba would have to come to my office; prior to that they never came to me—they were done in the Passport Office under a general directive of the types of persons who might be permitted to go; newspaper people, persons for compassionate reasons, and so forth. It is only in the last relatively few months that those cases do come to me. So now it would depend upon when this was.

Mr. SOURWINE. It does not come to you for decision; they come to you to pass the buck to Mr. Manning?

Mr. SCHWARTZ. Well, it is not a question of passing the buck. In the newspaper area Mr. Manning is expert in the news field and I take his advice on whether a man is an accredited newsman or whether the publication is accredited. In other areas—compassionate cases, where we have a Cuban relative here whose mother or grandmother or some close relative or child who could not leave Cuba is desperately ill—that comes to me. We do what checks we can in the United States; and until recently, through the American Red Cross, to find out if this is true. And the determination of whether we will validate for that person a visit to an ill relative is made by me. I will not go to Mr. Manning or anyone else on that. I will use my judgment of how best to check and reach a determination.

Mr. SOURWINE. Would the question of whether a Communist could go be determined by you?

Mr. SCHWARTZ. Whether a Communist could go?

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. Whether a Communist could go would be determined—first of all, a passport is required to a restricted area, so this would raise immediately the question of the issuance of a passport to a Communist.

Mr. SOURWINE. Do you know whether Mr. Joe North—

Senator EASTLAND. I want the rest of that answer.

Mr. SCHWARTZ. I say that—Mr. Sourwine says a Communist—

Senator EASTLAND. Yes.

Mr. SCHWARTZ. If a person were a Communist, a known Communist—we know he is a Communist—and, one, if he does not have a passport, he would have to be applying for a passport because it is a restricted area where a passport is needed. Now if he has a passport it would immediately raise the question, on the basis of what evidence is available, whether that passport should be withdrawn, so

that, if we are speaking of Elizabeth Flynn, whom we will say—whom we would know is a Communist, she would not get her passport, or if she had one—

Senator EASTLAND. Who would make that decision?

Mr. SCHWARTZ. That would be in the Passport Office which would pass that up to my office. A tentative denial in such an open case as that might be done directly there. There would be very little questioning but I assume I would be informed.

Mr. SOURWINE. Do you have authority to deny those cases—are they required to refer them to you?

Mr. SCHWARTZ. All section 6 tentative denials would come, I believe, now, to me. I would consult with the Legal Adviser who, in effect, gives advice on the final determination on the tentative—

Senator EASTLAND. You mean a Legal Adviser makes the final determination?

Mr. SCHWARTZ. He gives advice for the determination.

Senator EASTLAND. You make it, do you not?

Mr. SCHWARTZ. I would be the one to send down to the Passport Office the order of denial, after approval by Mr. Crockett. Now I can give you an example of that, that might clarify that. The tentative denial, in the case of a student who went abroad—the students who went abroad—the students who traveled to Cuba—there was a question whether, since we had a certain amount of evidence that they were going via Amsterdam, London, or Paris to Cuba, whether we could at those points in Europe withdraw their passports on the basis of a tentative denial. Now that was something that the Legal Adviser became involved in, because if we did that, the question arose that they could demand a hearing. Could we give a hearing in Prague, Amsterdam, Paris, and so forth? So it is not just my determination.

Senator EASTLAND. You get advice, but who makes the final decision?

Mr. SCHWARTZ. On a tentative denial I would like to check the actual wording of the regulations, but I make a decision or very often—in this case I speak of, Mr. Crockett was involved in that decision of whether we would—whether it would be at all possible to deny those passports and hold a hearing in, let us say, Prague.

Senator EASTLAND. Where does the power lie?

Mr. SCHWARTZ. What is that?

Senator EASTLAND. Where does the power to deny the passport lie?

Mr. SCHWARTZ. It lies within the power of the Secretary of State. He really is the only one who can do it. Now, Mr. Crockett can act for him; Mr. Ball could act for him; I could act for him under delegation. From me there could be delegation below.

Senator EASTLAND. There could be delegations below, but how is that delegation below?

Mr. SCHWARTZ. Senator, I will have to check to see the status of the regulations on whether there is power.

Senator EASTLAND. But you have been delegated the power.

Mr. SCHWARTZ. Under the general delegation from the Secretary down the line.

Senator EASTLAND. You have been delegated the power. Now answer that question "Yes" or "No".

Mr. SCHWARTZ. Yes, sir, I have been delegated the power.

Senator EASTLAND. That is all.

Mr. SCHWARTZ. Mr. Senator, I believe—and I would like to check this, because it does get into the field of delegation and I am not fully familiar with all of the details of delegation—I do believe my recollection is correct, that the Passport Office, also, has the power of tentative denial.

Mr. SOURWINE. Except that you have instructed the Passport Office not to deny anybody, but to refer the cases to you, and to the Legal Office.

Mr. SCHWARTZ. I will have to check the file on that.

Senator EASTLAND. You know what you have instructed the Passport Office to do, do you not? You know whether or not you have instructed them to refer it to you.

Mr. SCHWARTZ. Yes, sir, not on denials. I believe there is an instruction now that section 6 cases must come above. I think there is at this moment.

Mr. SOURWINE. As a matter of fact, is there not an instruction that they may not even recommend a denial?

Senator EASTLAND. Wait just a minute. Who above? Who are you talking about?

Mr. SCHWARTZ. To myself, to my Office.

Senator EASTLAND. All right, you are talking about regulations. Who drew the regulations?

Mr. SCHWARTZ. Regulations are not drawn by me. The regulations—

Senator EASTLAND. Who drew them?

Mr. SCHWARTZ. The existing regulations?

Senator EASTLAND. Yes.

Mr. SCHWARTZ. They are drawn through Mr. Crockett's Office. Mr. Crockett is the one who is in charge of the manual or the organization manual and so forth. He is the Deputy Under Secretary for Administration. Those organizational regulations are drawn by him and his staff with the advice of the Legal Adviser. If I might, I would like the name of that case that you mentioned, Mr. Sourwine, because I am interested to check it.

Mr. SOURWINE. North—N-o-r-t-h. Just North.

Senator SCOTT. Did you have any part in the drafting of the regulations, Mr. Schwartz?

Mr. SCHWARTZ. I personally have not participated in the actual drafting of regulations. I have been consulted from time to time. There was a regulation 6 or 8 months ago—whenever it was—concerning congressional mail. I had no part in drafting it. I was consulted, as other persons were. I do not draft any regulations.

Senator SCOTT. But you make recommendations as to provisions that you feel should be incorporated into the regulations?

Mr. SCHWARTZ. I have not in any formal manner. This is one of the areas of things that Ambassador Flake, as I understand it, is looking into. There has been some of the regulations, for instance, speaking of my office, as I understand it, dealing with security matters that we discussed earlier have not been changed since the removal of the

personnel security. I understand this is one area that Ambassador Flake will look into, to see how the regulations stand. I do not think that there has been an orderly look at these regulations for a very long time. There are, probably, outstanding directives. I know that there are outstanding directives such as this dealing with personnel security, which are contrary to some of the existing printed regulations. This was called to my attention by Ambassador Flake this summer.

Senator SCOTT. While Ambassador Flake is looking into these things after the event, is he not? He is doing that after all the regulations are drawn?

Mr. SCHWARTZ. Of course, these are changed all of the time—the regulations. This manual is a loose-leaf business, as I see it. Something crossed my desk the other day—I do not recall what it was—dealing with organizational regulations. I am speaking of those within the Department of what office does what—that type of regulation.

Senator SCOTT. Ambassador Flake was brought in, was he not, to review the regulations already existing?

Mr. SCHWARTZ. That is correct, as I understand it—what is on the books, yes. And I think to make any recommendations.

Senator SCOTT. Therefore, the questions that I am asking pertain to what Ambassador Flake found when he got there. And, again, are you saying that you made no recommendations as to changes in the regulations at any time, even though you were the head of the Department?

Mr. SCHWARTZ. At the time, we were discussing various items, such as removing the regulations which say that I am in charge of personnel security. At the time that I discussed that with Mr. Crockett and with others, we also discussed the regulation that congressional mail will all go to Mr. Dutton. At that time we had agreed that the entire regulation ought to be looked at so far as the Bureau of Security and Consular Affairs was concerned. That was one thing that I recall. The Secretary or Mr. Crockett said that Ambassador Flake should look into the total thing. This is quite a voluminous business. I have not, myself, made any effort in that area since that time and have not been consulted on the regulations affecting my office.

Senator SCOTT. You have referred to tentative approvals or tentative denials of passports pertaining to persons alleged to be Communists. Has there been any change in the regulations since you have been the head of the department pertaining to the right of the Passport Office to give affirmative approval or to deny passports to any persons or any designated type of persons, such as Communists or alleged Communists?

Mr. SCHWARTZ. This, I believe, if I am correct, touches on the procedure established in section 6 cases of the Internal Security Act. Those cases must go to Mr. Crockett, acting for the Secretary. Those cases go from the Passport Office, to my office, to the Legal Adviser's Office to Mr. Crockett. I think the only change made is that a case is now forwarded from my office to Mr. Crockett after it comes back from the Legal Adviser's Office. I have a covering memorandum pre-

pared to Mr. Crockett, whereas previously there was a Passport Office covering memorandum to transmit the file, through me to, I believe, Mr. Chayes: through Mr. Chayes to the Deputy Under Secretary for Administration. My office now looks at all of those cases. Previously it was a channeling to the legal office. My office now looks at them. I have the responsibility to review that, to put my views on the case, to have the advice of the Legal Adviser, and to forward that to Mr. Crockett. There is, in that sense, a change in procedure. I now express my opinion.

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TESTIMONY OF ABBA P. SCHWARTZ

FRIDAY, NOVEMBER 22, 1963

Senator Olin D. Johnston presiding.

Present: Senators Johnston, Everett McKinley Dirksen, and Hugh Scott.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. All right, sir.

Do you know, Mr. Schwartz, what happened with regard to the visa issued to William Gallacher, the 81-year-old former president of the British Communist Party?

Mr. SCHWARTZ. I have some knowledge of that.

Mr. SOURWINE. To refresh your recollection with regard to this, I show you a group of clippings, first from the Washington Post, of July 12, with a London, July 11, AP dateline.

Then from the Washington Post of July 13, with a London, July 12, UP dateline.

Then from the New York Times, with a London, July 12, dateline, special to the Times.

From the New York Times of July 14, with a London, July 12, special to the New York Times, dateline.

And from the Washington Post of July 15, with a London, July 14, AP dateline.

And a Washington Post editorial of July 17, clipped from page A-18 of that newspaper.

If you would just look at those to refresh your recollection about the incident.

I don't mean to imply that these stories are all necessarily true. But I think reading them will recall to your mind what the circumstances were.

Mr. SCHWARTZ. Yes; well, I won't take the committee's time to read all of this. I am generally familiar with the Gallacher case.

Mr. SOURWINE. May these clippings go in the record, Mr. Chairman?

Of course, you are not responsible for what these clippings say.

Mr. SCHWARTZ. It refreshes my memory of the case.

Senator JOHNSTON. They shall become a part of the record, hearing no objection.

(The clippings referred to follow :)

[From the Washington Post, July 12, 1963]

BRITISH RED GETS LIMITED U.S. VISA

LONDON, July 11 (AP).—William Gallacher, veteran president of the British Communist Party, has been granted a limited visa to go to the United States where his sister, Agnes, will shortly undergo major surgery in Chicago.

Gallacher, 81, was first refused a visa by local consular officials, the Communist Daily Worker reported.

[From the Washington Post, July 13, 1963]

BRITISH RED'S VISA REVOKED BY STATE DEPARTMENT

LONDON, July 12 (UPI).—The United States has revoked the visa of William Gallacher, 81-year-old leader of the British Communist Party who sought to visit his ailing sister in Chicago, a U.S. Embassy spokesman said today.

The Government earlier had agreed to permit Gallacher to come to the United States, but stipulated he would have to keep in close contact with American officials during his stay.

No reason was given for the revocation.

Gallacher had applied earlier for the visa, but was turned down because of his political activities. He then appealed on humanitarian grounds and was granted a 3-week stay. He was to have left for the United States today.

[From the New York Times, July 14, 1963]

UNITED STATES RETRACTS VISA GIVEN TO BRITISH RED

(Special to the New York Times)

LONDON, July 12.—The State Department revoked Friday the limited visa it had issued on compassionate grounds to William Gallacher, 81-year-old former president of the British Communist Party.

Mr. Gallacher was turned down when he first applied for an exception to the ban on Communists' entry into the United States. He sought to visit his 75-year-old sister, Mrs. Agnes Wilson, who is seriously ill at her home in Chicago.

He went to the U.S. consul in Glasgow to appeal the revocation and was told by the consul, Wallace Holbrook, that the decision would not be reversed. Mr. Gallacher said the consul had asked him to hand in his passport to have the visa canceled but he had refused, saying he "intended to take further steps to get a favorable reconsideration of my application."

(Special to the New York Times)

WASHINGTON, July 12.—The State Department said Friday that Mr. Gallacher had received his visa through "administrative error." It was issued by a junior officer apparently unfamiliar with the U.S. law barring Communists from entry to the United States.

[From the Washington Post, July 15, 1963]

U.S. VISA ACTION IS CRITICIZED

LONDON, July 14 (AP).—Two British newspapers suggested today the United States was being heavyhanded in refusing a visa to 81-year-old British Communist Leader William Gallacher.

Gallacher was granted a temporary visa to visit his sick sister, Agnes Wilson, in Chicago. Then U.S. consular officials in Glasgow revoked it, saying it was granted through an administrative error. Gallacher said yesterday he would try again to obtain a visa.

Lord Beaverbrook's Sunday Express commented that the American State Department action "lacks both wisdom and humanity. To let in an old man in such sad circumstances would redound to America's credit."

The Sunday Mirror said in an editorial: "The policymakers of a great Nation should be less petty. They should let our Willie pass."

[From the Washington Post, July 17, 1963]

THE WALL PSYCHOSIS

William Gallacher is an 81-year-old British Communist who recently applied for a visa to the United States in order to visit his sister in Chicago, who he said was sick. A visa was granted, but under the immigration laws a special waiver is needed to admit a Communist. Evidently, through a bureaucratic mishap, the proper procedures were not followed and the State Department then revoked the visa it had already granted. This prompted Lord Beaverbrook's Sunday Express to comment that the action "lacks both wisdom and humanity. To let an old man in in such sad circumstances would redound to America's credit."

The State Department says the matter is not closed and that a visa could yet be given. It would be wise to do so. Whatever initial blunder was committed in granting Mr. Gallacher a visa was compounded by the worse blunder of letting a small matter become a cause celebre. This venerable Communist will do America more harm if he remains in Britain than if he visits Chicago to see his sister. Keeping aging relatives apart is no credit to the heart or head of a country that deplores the wall psychosis.

Mr. SOURWINE. When Mr. Gallacher first applied for a visa to visit his sister in Chicago, the visa was refused; is that right?

Mr. SCHWARTZ. Without the benefit of looking at my own file, it is my recollection that the initial action—the application—was made in Glasgow, Scotland.

I am uncertain, without reference to the file, whether the consul in Glasgow initially declined to issue the visa, after which Mr. Gallacher would have asked for a waiver, or whether the original communication from the consul in Glasgow was an application for a waiver. There may have been a refusal which came to the Department—a notice of that, or more likely that the consul had declared him ineligible and sent in the request or document which would indicate that he desired a waiver.

Mr. SOURWINE. This was a waiver case, then?

Mr. SCHWARTZ. It was a waiver case.

Mr. SOURWINE. He was excludable under the Immigration Act and, therefore, not eligible for a visa without a waiver?

Mr. SCHWARTZ. He was excludable under 212(a)(28).

Mr. SOURWINE. Was your instruction—which you told us about the other day—to consular officers to forward to you all visa application cases which necessarily involved a waiver in force at this time?

Mr. SCHWARTZ. It is my recollection, Mr. Sourwine, it was not in force, and that the Gallacher case precipitated the instruction of immediate notice on any 212(a)(28) case.

Mr. SOURWINE. The instruction then was sent subsequent to April?

Mr. SCHWARTZ. It is my recollection.

Mr. SOURWINE. Subsequent to July of this year?

Mr. SCHWARTZ. It would have to be—it is my recollection it was subsequent to the very moment that I got notice of this case. Perhaps those clippings would indicate the date.

Mr. SOURWINE. Did you, when you received this information from Glasgow, order the granting of the visa to Mr. Gallacher?

Mr. SCHWARTZ. I believe that—as these clippings indicate—it was granted, then it was denied, and then it was granted. I think that is the substance of it.

Mr. SOURWINE. Well, first it was denied by the consular officer on the grounds of excludability?

Mr. SCHWARTZ. It would be denied, yes.

Mr. SOURWINE. At least he declined to grant it and forwarded the thing to Washington.

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. All right.

Now, did you then authorize or order the issuance of the visa?

Mr. SCHWARTZ. It was denied; it came to Washington; I did not see the case; and it is my recollection that it was brought to my attention late one afternoon that, without my knowledge, the waiver had been recommended and had been granted. I was unaware of it.

Mr. SOURWINE. Who recommended or authorized that?

Mr. SCHWARTZ. The recommendation came out of the Visa Office and went to the Department of Justice. It had not hit me.

Mr. SOURWINE. Was it an action by Mr. Moreland?

Mr. SCHWARTZ. I would have to check the file, whether Mr. Moreland was himself present at the time.

Mr. SOURWINE. Were you happy when you learned the action had been taken without your knowledge?

Mr. SCHWARTZ. I was not happy.

Mr. SOURWINE. Didn't you check up to find out who took the action?

Mr. SCHWARTZ. I can almost pinpoint the time. I learned this, as I recall—

Mr. SOURWINE. We don't care when, sir.

The question is didn't you check up to find out?

Mr. SCHWARTZ. I would like to refresh my memory on a case that is several months old.

Mr. SOURWINE. I tried to refresh your memory. You said you had it clearly in mind, you didn't need to read the clippings.

Mr. SCHWARTZ. I do not have it clearly enough in my mind, Mr. Sourwine, to know whether I first called Mr. Moreland, Mr. Ylitalo, or somebody else in the Visa Office.

Mr. SOURWINE. It is not important who you first called.

The question is: Did you check up to find out who was responsible?

Mr. SCHWARTZ. I immediately called the Visa Office and checked on the case and asked for the file on this case as soon as it came to my attention. It came to my attention through a press ticker which was put on my desk, announcing from, I believe, London or Scotland, that a visa had been granted to Mr. Gallacher.

That is how I learned it, through a press ticker.

Mr. SOURWINE. Well, when you checked up, who did you find out had been responsible for granting the visa?

Mr. SCHWARTZ. I checked up and found that the visa had been recommended and granted. I cannot say whether Mr. Moreland himself had signed that recommendation to Justice, or whether Mr. Ylitalo had signed it, or whether Mr. Owen—there were three people.

Mr. SOURWINE. You never sought to find out directly who was responsible?

Mr. SCHWARTZ. I certainly sought to find out, but I do not recall. I could tell you by one glance at that file who actually sent that letter over to Justice.

Mr. SOURWINE. You say you did find out, but you do not now remember?

Mr. SCHWARTZ. I do not recall whether Mr. Moreland was actually in the Office when that was sent out. He could have been off that day.

But the point is: It was the Visa Office. It was one or more officials in the Visa Office.

Mr. SOURWINE. And you were not happy about it?

Did you, therefore and thereafter, order that the visa which had been granted be revoked?

Mr. SCHWARTZ. I examined the file personally and found that there were what I would call gaps in the file. I felt that, before one recommends a waiver in such a case, on compassionate grounds, these grounds should be checked out. This gentleman had indicated he wished to visit his elderly, ill sister. We do grant waivers on occasion on such compassionate grounds.

I saw that the file did not indicate that there had been any check made if a sister even existed in Chicago, I believe it was. I found no one had checked to see, No. 1, if there was a sister; and No. 2, if she was ill. In other words, the basis for the granting of the waiver, that is, the compassionate reasons, had not been checked out.

Having found this out I immediately took this case to the Secretary.

By that time, it was perhaps 7 o'clock in the evening. I took it first to Mr. U. Alexis Johnson, who is the Deputy Under Secretary for Political and Military Affairs. Mr. Crockett, and several other persons were with me. I showed him the file. The gentleman was to have left the next day. We had no means of checking on the facts as alleged by this applicant at that late hour.

I recommended that we revoke this visa until we had an opportunity to at least check to see that there was a sister and perhaps even confer with a doctor to see if the sister was ill. Because, if the basis of granting a waiver or recommending a waiver is the illness of an elderly sister, a compassionate reason, I had to be assured that that was true.

Mr. Johnson reviewed it. He felt, also, that despite the inconvenience to the gentleman who was scheduled to leave the next morning from Glasgow, we should revoke it quickly.

Mr. Johnson called the Secretary at home at dinner. He explained the facts, and the Secretary agreed that we should revoke. We then telephoned, as I recall, the consul in London to contact Glasgow. The time difference was considerable. And he, I believe, himself, or a member of the consulate, got hold of the consul in Glasgow who contacted Mr. Gallacher at his home—I think it must have been nighttime by then, quite late—and informed him that his visa had been withdrawn or canceled.

Mr. SOURWINE. If it was after 8 o'clock at night here, it was after 1 o'clock in the morning at Glasgow.

Mr. SCHWARTZ. It was a terribly late hour, I remember this.

And Mr. Gallacher, as I recall, does not live in Glasgow itself. He was out in the country. But I do know they got word to him before he left his house that it had been canceled.

Mr. SOURWINE. So the fact is, then, that it was revoked at Mr. Johnson's order, pursuant to your recommendation and with the Secretary's approval?

Mr. SCHWARTZ. It was the Secretary's order, in effect—Mr. Johnson related the facts, the Secretary asked what I thought, what Mr. Johnson thought, and then said "Go ahead, revoke it; look into it further."

Mr. SOURWINE. Thereafter, was the visa again granted?

Mr. SCHWARTZ. Thereafter, we immediately called the security people in the Department, asked them to check in Chicago, to find out whether the sister existed, whether she was ill, and to contact the doctor. That was done.

We received a doctor's certificate from the doctor about her illness. She is not 81—as I recall she was 76 or 77. But she was ill. It was not considered that she was on her deathbed.

However, she had undergone a most serious operation.

We then had in hand the doctor's report, and the confirmation of her existence.

That information took a few days to come back, there was a time element. I know the file shows a doctor's certificate.

Thereafter, the case was looked at on the basis of the facts that we had. It was then decided we had proof of the compassionate reason, and the visa was then reinstated.

Senator JOHNSTON. Just to correct the record—he was the one that was 81. She was 75, according to these articles.

Mr. SCHWARTZ. I know they were rather elderly.

Yes; I would like that corrected.

Mr. SOURWINE. Did he thereafter come to the United States?

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Is he still here?

Mr. SCHWARTZ. Oh, no, sir; as I recall, he came and has left. I would like the record to show that the Immigration and Naturalization Service was completely alerted to his arrival. Other agencies were also alerted to his arrival. He arrived, I believe, in New York. He went to Chicago. We had imposed through the Immigration Service the restriction on him when he entered that he was to report into the local Immigration Service office, I think, in Chicago.

Then he was to visit, I think it was a nephew in the Midwest; and he was to report his whereabouts by phone to the closest Immigration Service office. The idea was that we would know at all times where Mr. Gallacher was. Those were the measures and precautions taken.

We subsequently received a report, I believe—I don't know exactly—that he may have stayed a week or 10 days. He then left the country via perhaps Toronto—I know it was Canada. I believe he flew back to England from Canada.

That is the history as I recollect the case.

Mr. SOURWINE. It is clear from your testimony on this point that you were not consulted about or advised with regard to this case before the initial action denying the visa. That is correct, is it not?

Mr. SCHWARTZ. Before the initial action granting the visa?

Mr. SOURWINE. No, denying it, refusing to grant.

Mr. SCHWARTZ. That would be the consul there. He determines that he is ineligible, and he says—

Mr. SOURWINE. I understand. But just to make it perfectly clear, as your testimony seems to make it—the question is whether you were consulted or advised about that before the consul acted.

Mr. SCHWARTZ. No; it was not brought to my attention.

Mr. SOURWINE. All right.

Then when it came in, and was initially granted, did you obtain specific information about who had authorized that? I think you said you did get it but do not now recall.

Mr. SCHWARTZ. I can.

Mr. SOURWINE. Can you furnish the committee with the information about who authorized it?

Mr. SCHWARTZ. Yes indeed, yes; it is just a matter of looking at the file.

(Assistant Secretary of State Dutton, in a letter to Chairman Eastland, dated March 25, 1964, wrote:)

“Forrest K. Geerken, consul general at Glasgow, authorized the original issuance of a visa to William Gallacher after notification from the Department of State that a waiver under section 212(d)(3)(A) of the Immigration and Nationality Act had been granted to Mr. Gallacher.

“This visa was revoked at the direction of the Department of State and subsequently reinstated. Mr. Geerken authorized, after direction from Washington, the reinstatement or issuance of the second visa.”

Mr. SOURWINE. Thereafter, as you told us, you recommended that it be canceled or revoked?

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. And the Secretary took this action when Mr. Johnson joined in your recommendation?

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. And subsequently, after the investigation, you authorized or ordered the granting of the visa?

Mr. SCHWARTZ. That is correct—with the Secretary's full approval. We had the doctor's report and so forth.

Mr. SOURWINE. Right.

Now, to turn to another matter.

Senator SCOTT. Before you do that, Mr. Sourwine, may I ask a question for some information?

In deportation proceedings, Mr. Schwartz, I take it the Attorney General institutes the deportation proceeding; is that right?

Mr. SCHWARTZ. That is correct.

Senator SCOTT. Then the State Department takes certain steps. This is what I am getting at. What steps does the State Department take?

You must have to prepare some kind of passport or some record showing someone is being sent involuntarily out of the United States.

Mr. SCHWARTZ. You mean when the final order comes through?

Senator SCOTT. An order of deportation.

Can that be issued by the Attorney General?

Mr. SCHWARTZ. He goes to court on the deportation order, as I understand it. I am not too familiar with those procedures. But I believe that he goes through the deportation proceedings, and then perhaps the hearing officers can recommend deportation. I think there is an appeal procedure. The cases I hear about most or read about are normally those that get into a court case.

Mr. SOURWINE. Don't you know, Mr. Schwartz, that a deportation procedure is wholly within the Bureau of Immigration and Naturalization unless the deportee himself takes the matter to court?

Mr. SCHWARTZ. Yes, sir.

Senator JOHNSTON. You issue an order to send them back—the same as an order?

Mr. SCHWARTZ. Not the State Department; no.

Senator JOHNSTON. You order them to go back?

Mr. SCHWARTZ. The order of deportation would come out of the Immigration Service. We may come in, I can imagine, when a fellow is ordered deported to Italy, for instance, and Italy refuses to take him back. The State Department then gets into negotiation with the Italian Government. There is such a case right now of a bad egg whose name I forget. For some long time the State Department has been trying to persuade the Italian Government to accept this fellow. So that we get into it on a question such as that—in response to Senator Scott—when the country, say Italy, says, "We are not going to take him back." The State Department has the problem of trying to persuade that country, through its diplomatic channels, to accept the deportee.

Mr. SOURWINE. In your response to Senator Scott, you appeared to imply some doubt about whether the Immigration and Naturalization Service had the power to deport without a court order. I think you said that you believed they went to court. Don't you know in fact that the Immigration and Naturalization Service has the power to deport, they may issue the order, and unless it is stayed by a court action initiated by the deportee, they may execute that order?

Mr. SCHWARTZ. You have correctly stated that, Mr. Sourwine.

Senator SCOTT. Now, if a person, then, is being deported for security reasons, is the matter still handled by Immigration and Naturalization?

Mr. SCHWARTZ. To the best of my knowledge, the Immigration and Naturalization Service is the agency.

Senator SCOTT. And just for the record, under what agency is Immigration and Naturalization?

Mr. SCHWARTZ. Department of Justice.

Senator SCOTT. So that if the Department of Justice, through its Immigration and Naturalization Service issues an order of deportation, does the State Department prepare any documents to accompany that person? That is what I am getting at.

Mr. SCHWARTZ. I know of no documents that accompany that person. Certainly we would have a file and the order of the Immigration and Naturalization Service, and they would notify us. I do not know of any document. I have never, myself, been involved, except in the cases where I have negotiated or attempted to persuade countries to accept a deportee, such as Italy, in this case which is rather well known. The name I forget but it has been the subject of much discussion in the Congress. The Italian Government has not yet, to my knowledge, accepted his return.

It is a well-known case, which I think the Congress has discussed.

Senator SCOTT. That is all. I just wanted to find out the procedure.

Mr. SCHWARTZ. Yes, sir; I am unaware of any documents that we would issue that he would carry.

* * * * *

TESTIMONY OF ABBA P. SCHWARTZ

TUESDAY, AUGUST 13, 1964

Senator Roman L. Hruska presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Schwartz, when you were asked about the Allen-Scott column for August 16, 1963, which reported that when Miss Knight refused a visa to Mr. Willie Gallacher, 81-year-old British Communist and former Member of Parliament, to fly to Chicago to visit an ailing sister, she was overruled by Secretary Rusk on the recommendation of Schwartz, you have said you would check into the facts with regard to that. Did you have an opportunity to do so?

Senator HRUSKA. Off the record.

(Discussion off the record.)

Mr. SCHWARTZ. I recall that being raised before. I also recall replying that it was totally inaccurate, that Miss Knight would have nothing whatsoever to do with the issuance of visas. I think that is already in the record of the previous hearing.

Mr. SOURWINE. You were also asked what you had to do with the Gallacher visa yourself, who approved it and who countermanded it. You said you would check. Did you do that?

Mr. SCHWARTZ. I believe, Mr. Sourwine, the record will show we went into that in great detail. I can review it again.

Mr. SOURWINE. No, no.

Mr. SCHWARTZ. If you will recall it is all in the previous record.

Mr. SOURWINE. I'm sorry. It simply shows that on this area, at least, my memory is not good.

Mr. SCHWARTZ. But I do recall that because of the discussion of telephoning the Secretary at home.

Mr. SOURWINE. This was when, if you know?

Mr. SCHWARTZ. I can check that, but I know we went into great detail and there was even a letter sent to this committee about the name of the consul in Glasgow.¹

Mr. SOURWINE. May I ask that when you correct this record, you put a notation in the margin as to where that earlier testimony appears?

Mr. SCHWARTZ. Yes, and if I'm wrong—I don't think I am—I'll be glad to supply that.

(Mr. Schwartz, in correcting his testimony, cited earlier testimony on November 22 and December 6 and 9, 1963, as touching on this matter.)

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¹ This subject was discussed in the hearing of Nov. 22, 1963, at p. 1205, and an excerpt from a letter of Assistant Secretary Dutton, appears at p. 1211.

TESTIMONY OF ABBA P. SCHWARTZ

MONDAY, DECEMBER 9, 1963

Senator Thomas J. Dodd presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Turning to another subject, Mr. Schwartz, have you had any trouble with Mr. Allen Moreland? Mr. Moreland is—

Mr. SCHWARTZ. Is the Director of the Visa Office of the Department of State.

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. I don't know what the word "trouble" means, Mr. Sourwine. I would like to be responsive.

Mr. SOURWINE. Have you found Mr. Moreland incompetent in any way?

Mr. SCHWARTZ. I have found Mr. Moreland a very good officer. I think—perhaps I shouldn't anticipate.

Mr. SOURWINE. Have you found Mr. Moreland's knowledge of the law inadequate?

Mr. SCHWARTZ. No, sir. I will say that I have just finished a report on Mr. Moreland, or am just about to finish a report on Mr. Moreland, which I think is pretty good.

Mr. SOURWINE. Have you ever charged Mr. Moreland with incompetence?

Mr. SCHWARTZ. I have never charged anyone with incompetence.

Mr. SOURWINE. Have you ever charged Mr. Moreland with inadequate knowledge of the law?

Mr. SCHWARTZ. I have not charged him with the inadequate knowledge of the law.

Mr. SOURWINE. Have you requested, ordered, or demanded that Mr. Moreland be removed from his job?

Mr. SCHWARTZ. I have not.

Mr. SOURWINE. Do you have a candidate to take Mr. Moreland's place?

Mr. SCHWARTZ. I do not.

Mr. SOURWINE. Have you recommended that Mr. Moreland go overseas on an assignment?

Mr. SCHWARTZ. I have not. Mr. Chairman, I don't like to anticipate or to unduly hold you, but I would like to—I see how some things come about, and I much prefer to have it clarified, if I think—

Senator DODD. Go right ahead.

Mr. SOURWINE. Please.

Mr. SCHWARTZ. During the Gallacher case, which I testified to earlier, when the recommendation for a waiver was made to the Attorney General without the knowledge of anyone in my office—

Senator DODD. I will have to refresh my memory, the Gallacher case?

Mr. SOURWINE. This was Willy Gallacher, the 81-year-old British Communist.

Mr. SCHWARTZ. Yes. I was quite disturbed to find that a matter of that importance had not been brought to my attention. Mr. Moreland is the head of the Visa Office. I did have discussions with him.

I did institute new procedures as to such matters he had to see and had to bring to my attention. I think that perhaps as a result of those discussions, stories began in the Department. I don't know, but this is my guess, that as a result of those discussions, setting up new procedures, it had nothing to do with the lack of knowledge of the law, this was a matter of procedure. He also was relatively new. He had not been in that post for an extremely long time. He preceded me.

Mr. SOURWINE. He was a Foreign Service officer routed in, wasn't he?

Mr. SCHWARTZ. Yes, he came before I did, but it was just a few months before. We had what I would have assumed would have been a perfectly private discussion in my office with the visa officers concerning how to set up procedures to prevent this sort of thing from happening again.

I am afraid—and the reason I am saying this is that I have heard this from other places, just in the corridors, and it seems a pity that these stories should begin which reflect on a person. I don't mean your questioning, Mr. Sourwine, I mean the stories that do get around.

Mr. SOURWINE. I think the questioning and your answers, instead of reflecting on Mr. Moreland, will be a good force in stopping any corridor talk that there may be to the contrary.

Mr. SCHWARTZ. I appreciate this. That is why I wanted to make this statement. I am afraid it began that way. I can assure you he is a competent officer. He has done tremendous things in improving various aspects of the Visa Office, and I have great respect for him, and I feel badly that these stories get around which do not have foundation in fact.

* * * * *

Mr. SOURWINE. Do you favor abolition of the requirement for visas either generally or in any particular cases?

Mr. SCHWARTZ. Senator, this question has come up, and I have had to familiarize myself with it. Apparently there was a bill in before my time, a year or so ago, I don't know, for the abolition of visas between the United States and certain areas. The result was, as I understand it, that the bill didn't leave the committees, but it did precipitate the working out of the so-called mail-order procedure for issuance of visas.

My examination to date would lead me to conclude that the abolition of visas is not practical. It would, I am afraid, create situations where persons would get to our ports of entry and would be barred by the Immigration Service, which has that power—the doublecheck.

I do not think that you could adequately carry this out, at least I don't know how one can. I have talked about this and I think it may require more exploration. I don't know how you could adequately fulfill the requirements of security, if you did not have an opportunity, through the visa process, to make the checks that I think are essential.

I would like to say that perhaps someone will come up with a plan, but I have not heard of any to date that I think will accomplish this.

Mr. SOURWINE. Do you favor, therefore, or do you disfavor any relaxation of the present visa procedures?

Mr. SCHWARTZ. No, I do not favor any relaxation of the visa procedures. I am very much in favor of the things that Mr. Moreland has done and is continuing to think about, of how to expedite, how to, in the interest of increasing tourism, how best to expedite the issuance of visas abroad.

I think there is an area in the mechanical process, I think the mail-order business has been fantastically successful. I think I was told just the other day that 56 percent—I am subject to correction on this figure—of visas of tourists in northern Europe now come through the mail-order process, and this has speeded up very much the issuance of these visas, so that we have, I think, contributed to the increase in tourism and benefited the balance of payments.

It is in that area that I am working with Mr. Moreland to see what the next step may be. But, as to abolition, I think the problems, at least from what I know of them, are insurmountable at this point.

Mr. SOURWINE. Mr. Schwartz, in what instances does the Passport Office ask the Office of Security to conduct investigations?

Mr. SCHWARTZ. The Passport Office would be requesting—I am sorry, the Security Division, is that what you said?

Mr. SOURWINE. The Office of Security. In what instances would the Passport Office ask the Office of Security to conduct investigations?

Senator DODD. On a visa application?

Mr. SOURWINE. On anything, if Mr. Schwartz knows.

Mr. SCHWARTZ. In a visa case, the Office of Security. In the other, intelligence agencies are checked out. The Office of Security within the Department itself is, of course, checked out. The Office of Security now does a good bit of work in visa cases in addition to the normal security checks.

In connection with applications for waivers of persons who are ineligible, we check through the Office of Security, on the bona fides of the representations made by the applicant that he wants to visit his relative or that he is coming for an eye operation, and so forth.

We now have the Office of Security making the checks in the United States on those facts. This is something that had not been, so far as I know, done before, so that the Office of Security is certainly involved in every such visa case. The name is checked out with it.

Mr. SOURWINE. Would the Passport Office have anything to do with visa cases?

Mr. SCHWARTZ. Visa cases? No, sir.

Mr. SOURWINE. My question is: What were the instances in which the Passport Office asked the Office of Security to conduct investigations?

Mr. SCHWARTZ. I am sorry. The Passport Office would certainly deal with the Office of Security in the Department in such cases where any check were required on an individual, as they deal with the agencies outside of the Department.

They would also check with the Office of Security. I do believe that at one time, some years back, the Passport Office dealt I think first

with the Security Office and it would do the checking with other agencies. The Passport Office would also be dealing with the Office of Security on any physical security problems, and of course in personnel problems I am sure they deal with them, also.

Mr. SOURWINE. Do you know of any conflicts between the Passport Office and the Office of Security?

Mr. SCHWARTZ. No, sir; I do not.

Mr. SOURWINE. Can you tell us, Mr. Schwartz, what the current figure is on the number of cases referred to the Department of Justice for prosecution under section 6, for having applied for a passport or used the passport while a member of the Communist Party?

Mr. SCHWARTZ. Having applied or used? No; I could not offhand. I would have to refer to the files on that. I would not know that offhand.

Mr. SOURWINE. The last figure the committee has, and it is somewhat old now, was 10 such cases, with prosecution denied in 7, and 3 pending. If you could bring that figure up to date, it would be helpful.

Mr. SCHWARTZ. Yes, sir. That was applied or used?

Mr. SOURWINE. Yes.

Senator DODD. What do you mean by that, Mr. Sourwine? Wouldn't they be two different things? How could you use it if the application was denied?

Mr. SOURWINE. You couldn't, Senator, but the act makes provision for criminal offense in the case of a Communist who applies for a passport or a Communist who uses a passport.

Senator DODD. You mean a criminal offense, if he applied and is denied?

Mr. SOURWINE. No; the application for a passport by a Communist is an offense.

Senator DODD. If he conceals the fact that he is a Communist.

Mr. SOURWINE. Yes; and the use of a passport by a Communist, if he has it, is an offense.

Senator DODD. If he conceals it?

Mr. SOURWINE. No; if an individual, knowing himself to be a member of the Communist Party, uses a U.S. passport, it is an offense.

Mr. SCHWARTZ. Yes.

Senator DODD. I understand.

Mr. SCHWARTZ. Yes; there are several laws involved because he must execute an affidavit that he is not a member.

Mr. SOURWINE. And I understand these cases are referred to the Department of Justice, when they arise.

Mr. SCHWARTZ. Cases are. When the case is built up, it is referred to the Department of Justice.

Mr. SOURWINE. Then they decide whether or not to prosecute.

Mr. SCHWARTZ. That is their decision; whether there is sufficient evidence to prosecute, yes.

(The statement furnished by Assistant Secretary Dutton, attached to a letter to the subcommittee dated April 13, 1964, reads as follows:)

This question concerns cases falling within section 6(a) (1) and 6(a) (2) of the Internal Security Act of 1950. As stated in Assistant Secretary of State Dutton's letter dated August 21, 1963, addressed to Chairman Eastland, we believe

that the information concerning these cases should be sought from the Department of Justice.¹

Mr. SOURWINE. At the present time what statement if any is required from passport applicants with respect to Communist Party affiliation?

Mr. SCHWARTZ. There is a statement which they must file that they have not been a member of the Communist Party, U.S.A.—I don't remember the words—whether it is for the last 12 months or within the last 12 months.

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TESTIMONY OF ALLEN B. MORELAND, DIRECTOR, VISA OFFICE,
DEPARTMENT OF STATE

WEDNESDAY, JULY 22, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Moreland was previously sworn.)

* * * * *

Mr. SOURWINE. Do you, sir, have any knowledge about the Philby case?

Mr. MORELAND. No, I do not.

Mr. SOURWINE. Are you familiar with that case at all?

Mr. MORELAND. I am aware of the name and that it is a current case, but I do not know the details of it.

Mr. SOURWINE. So that this record may clearly show what we are talking about, Mr. Chairman, I ask that there may be inserted at this time in the record two newspaper stories; one from the New York Times of July 7, 1963, and the other from the Washington Star of July 1, 1963. You will recall that Harold Philby was the so-called third man in the Burgess-Maclean case.

Senator HRUSKA. That may be done.

(The newspaper items referred to follow:)

[From the New York Times, July 7, 1963]

LABORITES SAY TORIES HOLD BACK TRUTH IN SECURITY CASES

(Special to the New York Times)

LONDON, July 6.—The opposition Labor Party accused the Government today of being "singularly reluctant" to disclose the truth in security matters where "laxities" may be involved.

Harold Wilson, Labor's leader, told a party rally at Oakengates, Shropshire, that the opposition would continue to press for "searching and independent" security inquiries.

He said, however, that the party would not engage in "muckracking or any denigration of personal character" and would not seek to benefit from events of the last few weeks.

Reginald Maudling, Chancellor of the Exchequer, speaking at Sawston, Cambridgeshire, called for a "new, vigorous, and sustained political offensive" by the Conservatives.

¹ See Yeagley letter in testimony of Robert B. Johnson before the Internal Security Subcommittee Apr. 4, 1963, p. 610, part 3, of this series on passport-visa matters.

A COMMENT ON PROFUMO

At the same time, he said, the political effects of the scandal that broke after the lie told to Parliament by John Profumo, Conservative former Secretary of State for War, "can be greatly exaggerated." Mr. Profumo resigned after having admitted that he had lied in denying an affair with Christine Keeler, a party girl, who was having a simultaneous affair with an assistant naval attaché of the Soviet Embassy.

Mr. Maudling said the Conservatives were falling behind even before the Profumo affair because of the failure to obtain the allegiance of the younger generation of voters and the sheer desire for change "which told inevitably against any government as its years of office increased."

Both men spoke as reports were published of a new twist in Britain's latest spy case, involving H. A. R. Philby, the recently acknowledged "third man" in the 1951 Burgess-Maclean defection to the Soviet Union.

According to these reports, Mr. Philby was actually a "double agent" working at the same time for Soviet and British intelligence between 1956 and January 23 of this year, when he vanished. He is now believed to be behind the Iron Curtain. Highly valuable intelligence data can be passed on by a double agent.

NEW QUESTIONS COMING UP

New questions will be raised in the House of Commons next week on the Philby matter.

Marcus Lipton, a Labor member of Parliament, said today in a telephone conversation: "the whole story has not yet been told and further disclosures will have to be made."

It was Mr. Lipton who in 1955 told the House of Commons that Mr. Philby had been the mysterious informant who tipped off Guy Burgess and Donald Maclean, British diplomats, that British counterintelligence agents were about to arrest them. Mr. Lipton later publicly apologized and withdrew his statement.

Last Monday Edward Heath, the Lord Privy Seal, told the House that Mr. Philby by his own admission had worked for the Soviet authorities before 1946 and that he was indeed the "third man" in the 1951 incident.

Although not so stated, it is presumed that Mr. Philby worked for Soviet intelligence during the World War II years when he was also working for British intelligence.

According to current reports, the same pattern was followed between 1956 and January of this year when he was working as a special correspondent in the Middle East for the Observer of London and the Economist.

Both publications said earlier this week that the Foreign Office had suggested that they employ Mr. Philby.

ABILITY AS CORRESPONDENT

In an article this week entitled "A Lost Correspondent," the Economist termed Mr. Philby "an excellent Middle East correspondent in 1956, 1957, and 1958" but said that "as the pressure of explosive crises there began to ease off in 1959 and 1960, we began to notice that he failed to find noncrisis topics to write about."

Mr. Philby knew Burgess as a Cambridge undergraduate, was a foreign correspondent during the Spanish civil war, and joined the British Foreign Service in 1947 after his World War II years as an intelligence agent.

He resigned from the Foreign Service in 1951 and during the next 5 years found employment for a time in the London financial district.

In last Monday's House of Commons session Mr. Heath said that since 1951 Mr. Philby "had not had access to any kind of official information."

"For the last 7 years he has been living outside British legal jurisdiction," he added.

Among the questions submitted is one by William Hamilton, a Labor Member of Parliament, who will ask on what date in the last 7 years Mr. Philby renewed his passport, the implication being that he has returned to Britain.

The Government has been reticent in making disclosures in the case.

[From the Washington Star, July 1, 1963, p. A-1]

PHILBY BARED AS RED SPY

WARNED BURGESS AND MACLEAN

LONDON, July 1 (AP).—A Government Minister disclosed today former British diplomat, Harold Philby, was the third man in the notorious Maclean-Burgess case, had spied for the Russians while in the Foreign Office, and now is believed to be behind the Iron Curtain.

Edward Heath, Deputy Foreign Minister, told the House of Commons Philby warned Donald Maclean and Guy Burgess, two other Foreign Office men, that British security services were about to arrest them. As a result the two fled to Russia in June 1951.

Philby quit the Foreign Service in 1951, turned newspaperman and vanished from his post in Beirut, Lebanon, as correspondent for the London Observer last March.

WORKED FOR REDS

Mr. Heath said Philby had admitted to British security officials he had worked for the Russians before 1946—while he was in the Foreign Office.

Philby also had admitted warning Maclean, through Burgess, that the security authorities were about to act. Mr. Heath said that Philby was the third man in the Maclean and Burgess mystery that shook the nation when it was revealed.

Both Prime Minister Harold Macmillan, when he was Foreign Minister, and former Prime Minister Sir Anthony Eden, now the Earl of Avon, had told the House in 1955 there was no reason to suspect Philby had been the tipoff man in the Burgess and Maclean case.

Mr. Heath recalled Lord Avon had reported no evidence had been found to show Philby warned Maclean and Burgess.

WIFE RECEIVES MESSAGE

Mr. Heath said messages purporting to come from Philby had been received by his wife from behind the Iron Curtain. He did not name the country.

In a special report to Parliament, Mr. Heath said the British Government began trying to trace Philby after his disappearance.

"I can now tell the House that more recently Mrs. Philby has received messages purporting to come from Mr. Philby from behind the Iron Curtain," he said. "On the other hand the Soviet newspaper Izvestia reported on June 3 that Mr. Philby was with the Imam of the Yemen.

IMAM FIGHTING FOR THRONE

Mr. Heath related it was discovered—evidently during the probe following the defection of Maclean and Burgess—that Philby had Communist associations.

In 1951, Mr. Heath continued, there was no evidence to show that Philby either had warned Burgess and Maclean they were under suspicion or that he had betrayed British interests.

"There is no confirmation of this story. Although there is, as yet, no certainty concerning Mr. Philby's whereabouts there has been a development which may throw light on the question."

The Imam or King of Yemen was overthrown last fall and now is fighting to try to regain his throne.

ADMISSION ON WARNING

Since then inquiries have been going on uninterruptedly, Heath said. He added:

"They (the security services) are now aware, apparently as a result of an admission by Mr. Philby himself, that he worked for the Soviet authorities before 1946 and that in 1951 he, in fact, warned Maclean through Burgess, that the security services were about to take action against him.

"This information, coupled with the latest message received by Mrs. Philby, suggests that he left Beirut and may have gone to one of the countries of the Soviet bloc."

Mr. Heath recalled that Lord Avon told Parliament in 1955 that Philby had Communist associations.

Lord Avon then said Philby had been asked to quit the Foreign Service and did.

Mr. SOURWINE. Mr. Moreland, do you know where Mr. Philby is now?

Mr. MORELAND. I do not.

Mr. SOURWINE. Do you know whether Mr. Philby at any time since his defection has applied for a visa?

Mr. MORELAND. I am not aware that he has.

Mr. SOURWINE. Do you know whether he was in possession of one at the time he, as I say, disappeared or defected?

Mr. MORELAND. No, I don't know the facts in the case.

Mr. SOURWINE. You do not know when he was in the United States or for how long?

Mr. MORELAND. No, I do not.

Mr. SOURWINE. Do you have any knowledge of the situation with respect to Mrs. Philby?

Mr. MORELAND. No, I do not.

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TESTIMONY OF ABBA P. SCHWARTZ

WEDNESDAY, JULY 22, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Schwartz, do you have any information about the Philby case?

Mr. SCHWARTZ. Yes, sir; I think I do have some information.

Mr. SOURWINE. And what can you tell us about the Philby case?

Mr. SCHWARTZ. Well, if you would be specific, it might be easier for me to deal with the matter.

Mr. SOURWINE. Well, you know what the Philby case was. What comes to your mind? When I asked you the question, you said, yes, you knew.

Mr. SCHWARTZ. What comes to my mind is that I am involved in the Philby case because of Mrs. Philby and the question of her passport.

Mr. SOURWINE. Mr. Philby never had a passport?

Mr. SCHWARTZ. He could not have a passport.

Mr. SOURWINE. He would have to have a visa, wouldn't he?

Mr. SCHWARTZ. Since he worked at the British Embassy, undoubtedly he had a visa.

Mr. SOURWINE. He would have a visa, as far as you know?

Mr. SCHWARTZ. I don't know—

Mr. SOURWINE. Did you ever have anything to do with issuing a visa to him?

Mr. SCHWARTZ. No.

Mr. SOURWINE. You don't know who handled it, if he did have one?

Mr. SCHWARTZ. It must have been many years ago, I am only aware he did work in the British Embassy in the fifties.

Mr. SOURWINE. Can you supply the committee with information respecting the occasion on which Mr. Philby has received, if he did, a visa to come to the United States?

Mr. SCHWARTZ. I would respectfully suggest that be included in the communication for further documents—

Mr. SOURWINE. We are not asking for a document but just a statement but, of course, the request will be made—you see no objection?

Mr. SCHWARTZ. I see no objection, no. There must be a visa file and if you want we may have to dig it up.

Mr. SOURWINE. You brought up the question of the passport for Mrs. Philby. What was the issue?

Mr. SCHWARTZ. That is how I was aware—other than general knowledge from newspapers—Mrs. Philby, who is an American citizen was living in Lebanon, with her husband. Subsequently, Mrs. Philby went to London, and she subsequently joined her husband in the U.S.S.R. She held an American passport. We were unaware of her exact location in the U.S.S.R.

And in June—I am sorry, either the end of June or perhaps early July, I can give you the exact date, we got word from a source that Mrs. Philby may be arriving in the United States, we got word—I should now correct it, we got word in June she would be arriving in June in the United States and the question then arose whether any action should be taken to withdraw her passport.

Conferences, discussions were held and it was decided her passport would be tentatively withdrawn when she arrived in the United States. She arrived, I believe, June 30, or maybe July 1. The Immigration and Naturalization Service officers handed to her a letter from the Department of State informing her that her passport had been tentatively withdrawn and they picked up her passport which is now in the Department of State.

Mr. SOURWINE. Has she appealed?

Mr. SCHWARTZ. We have no notice of appeal as yet.

Mr. SOURWINE. Mr. Chairman, may I have in the record a newspaper story from the Washington Post of July 7, 1963, about the background on Mr. Philby?

Senator DODD. Surely.

(Item referred to follows:)

[From the Washington Post, July 7, 1963]

CALLED 3d MAN IN DEFECTION: PHILBY BACKGROUND SOURCES DOUBT COMMUNIST LEANINGS

The London Observer today published a 4,500-word background article on the disappearance of its Middle East correspondent, H. A. R. Philby, who, the Government said last week, was the "third man" in the 1951 Burgess-Maclean spy defection case.

The disappearance remains a mystery, the Observer said, but the article quoted several sources, including a former American diplomat and the newspaper's foreign editor, who considered Philby a competent reporter with no Communist sympathies.

It also pointed out that Philby was hired in 1956 by the Observer and the Economist after a member of the British Foreign Office staff, on an "official" visit, said it was unfair that the former diplomat was "not in a job worth his talent or earning capacity."

BELIEVED PREMEDITATED

The 51-year-old correspondent disappeared in Beirut, Lebanon, last January, and the Observer said the disappearance had apparently been premeditated.

Deputy Foreign Minister Edward Heath told the House of Commons last Monday that Philby was believed to be behind the Iron Curtain.

Heath said the Government is "now aware" that Philby warned diplomats Guy Burgess and Donald Maclean to flee England in 1951 because British security agents were preparing to apprehend them.

The Observer said Philby's close friends are still bewildered. The newspaper raised several possible theories to explain his disappearance.

"Money looked important somewhere in the story," the article said. "Friends who respected him thought it quite likely that, given his need and his temperament, he would embark on a quite risky enterprise if the reward were high enough."

He also was observed drinking heavily during the past year, the article said.

The Observer also noted that although Philby had "no known enemies * * * the Saudi Arabians had occasionally been disturbed by his rather republican political line."

NO RED TRACE

The Observer's foreign editor was quoted as saying that Philby's writing "showed not only no trace of Communist bias but also no evidence of a Marxist method of thinking. His reporting was realistic and objective and his political interpretation was cautious in form and traditional in style."

The article quoted former American diplomat Miles Copeland as saying that, "If Philby was a Communist he was the best actor in the world, and this was quite unbelievable."

When Philby first disappeared, the Observer said, "No one then claimed they had heard him utter any Communist sentiment under any conditions of stress or liquor."

Mr. SOURWINE. Did you know Mr. Philby personally?

Mr. SCHWARTZ. No, sir.

Mr. SOURWINE. You have never had any contact with him?

Mr. SCHWARTZ. Certainly not; no, sir.

Mr. SOURWINE. Do you know how long he was in the United States?

Mr. SCHWARTZ. As I said before, I don't, I only know from press reports and other reports that he had worked in the British Embassy and I would be glad to check those dates.

Mr. SOURWINE. Can you say whether Mr. Philby's visa case came to you personally?

Mr. SCHWARTZ. I said just a few minutes ago I have never had the visa case dealing with Mr. Philby and as far as I know, he was here in the fifties.

Mr. SOURWINE. You never did personally handle the Philby visa?

Mr. SCHWARTZ. I just said, a few minutes ago, never. I only was concerned with the question of the passport of Mrs. Philby.

* * * * *

TESTIMONY OF ABBA P. SCHWARTZ

FRIDAY, DECEMBER 6, 1963

Senator Thomas J. Dodd presiding.

Present: Senators Dodd and Everett McKinley Dirksen.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. You will recall, Mr. Schwartz, at the last session there was some discussion of the Oswald file. I will correct myself. That discussion was between you and me on the telephone subsequent to the last session. At that time the field had gone over, I understood, from you to Mr. Miller at the Department of Justice. In discussions this morning preceding the hearing, you said it had come back from the Justice Department, and you had been asked to analyze it. This is correct?

Mr. SCHWARTZ. Yes, sir; many of us are involved in the analysis.

Mr. SOURWINE. You have just completed that job now?

Mr. SCHWARTZ. As of last night I think the analysis is completed.

Mr. SOURWINE. We had one or two questions about it. Have you ascertained whether Mr. Oswald's passport, on which he traveled to Russia had expired or was still valid at the time he decided he wanted to come back to this country?

Mr. SCHWARTZ. If I might, Mr. Chairman: Just before you came there was a little discussion of whether you might get into this. I am a little at a loss here on whether it is appropriate to discuss in view of the establishment of the Presidential Commission.

Senator DODD. I can assure you that I think it is. I want to hear what Senator Dirksen thinks, but I don't think it has anything to do with the investigation of the case.

Mr. SCHWARTZ. I am sorry.

Senator DODD. I was just addressing Senator Dirksen. I said I did not think it would have anything to do with the Commission on which Senator Dirksen serves. We are not trying to pry into that.

Senator DIRKSEN. I am not on that Commission. You mean the Oswald Commission?

Senator DODD. Yes.

Senator DIRKSEN. We put Senators Cooper and Russell on it.

Mr. SCHWARTZ. If you think it is appropriate, I will be glad to discuss any aspect.

Mr. SOURWINE. We will not attempt to discuss here any question of who shot whom or why, but solely confine it to the passport and visa matter. It is in our jurisdiction there and, as you know, we have asked questions about that before.

Mr. SCHWARTZ. I am sorry, the question was whether Mr. Oswald's passport had expired prior to his—

Mr. SOURWINE. Return to this country from Russia.

Mr. SCHWARTZ. My recollection is that the passport was renewed in Moscow. I am not positive, Mr. Chairman, when it was renewed. I don't think it was renewed because it had already expired but because it was due to expire within a matter of some days. That is a point I would have to check. It is my recollection—there are so many dates and factors here—that it had not actually expired at the time it was renewed in Moscow, but would have, I think, expired say within the period that he would have left Moscow.¹

Mr. SOURWINE. When it was renewed, sir, is it true that it was renewed to be good only for return to the United States?

¹ Mr. Schwartz, by letter to the chairman on Mar. 25, 1964, asked that the following statement be printed at this point in the record:

"Subsequent examination of the files revealed that Oswald's passport was issued Sept. 10, 1959, valid for 2 years, and expired Sept. 10, 1961. It had, therefore, expired when it was renewed in Moscow on May 24, 1962."

Mr. SCHWARTZ. Yes, sir; it was valid only for return to the United States, which is the procedure under the regulations where one is granted a repatriation loan.

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. The regulations specifically state that the passport shall be validated solely for return to the United States. I would like to make one reservation there; that we have not physically seen the passport. When he came to the Embassy in Moscow it was marked "Valid for return to the United States only." We are quite sure of that; but they are normally not picked up at the port of entry once they are stamped "Valid only for return to the United States." The INS does not normally pick them up unless there is a specific request.

I checked that point. As far as we can tell, it was not picked up, and as a matter of fact, when he got his later passport in 1963, I believe that the application shows that the other passport was returned and actually canceled. But they didn't, as far as we know, retain it in the New Orleans office.

Mr. SOURWINE. It was canceled and returned to him?

Mr. SCHWARTZ. As best I can tell from the application, and inquiry in New Orleans, which I think has been made, it was canceled and returned, which is a normal thing. I think they clip off the ends.

Mr. SOURWINE. That is the normal procedure.

Mr. SCHWARTZ. Normal procedure I think, if a person wants it, it is given to him, and as far as we know at this point, on what we have, the passport was returned to him after cancellation.

Mr. SOURWINE. Now, the renewal of this passport, good only for return to the United States, was based, as I understand it, upon the fact that he had never actually given up his U.S. citizenship.

Mr. SCHWARTZ. A determination was made that he had not lost his U.S. citizenship.

Mr. SOURWINE. Do you know whether he did in fact sign any paper bearing on the subject of renunciation of U.S. citizenship?

Mr. SCHWARTZ. He did definitely sign letters, either one or two, I think there are two letters in his own hand, attempting to renounce. But he had not complied with the law and regulations which require certain formalities to be gone through, in order to effectively lose his citizenship.

In a letter which he wrote, I think—I don't remember the exact words—he did say he wishes to or is renouncing or has allegiance to the U.S.S.R., something along that line.

Mr. SOURWINE. That was in the second letter?

Mr. SCHWARTZ. There was a letter to that effect. Then he was informed that in order to accomplish expatriation he would have to sign a statement before a consular officer.

Mr. SOURWINE. You have a form for that, don't you?

Mr. SCHWARTZ. Yes; there is a form, in conformity with the regulation which requires renunciation before—I believe it says—a consular officer.

Mr. SOURWINE. Was that form furnished to him?

Mr. SCHWARTZ. He was so informed by the Embassy or at the consulate in Moscow, and told that it was closed at that hour. He was given the hours at which the consular section would be open, at

which that could be accomplished. He left, and—I am not certain whether it was the next day or a few days later—he wrote a letter to the Embassy protesting that he wanted to do this and had been unable to do it. So that I don't believe he received the form the day that he came into the Embassy. The record shows that the consular section was closed. He was told it was closed, and I don't think he was actually handed that form, as far as the records show.

Mr. SOURWINE. The committee was informed that he was given a copy of the form.

Mr. SCHWARTZ. No; I can only say, from my recollection of having lived with this for the last 10 days, that there was no form handed to him. He was told that the consular section was closed and he could come back during the working hours.

It is the practice of the consular officers, since this is such an important step that a person might take of giving up his basic right, his citizenship, to attempt to have them think it over. So he was told to come back the next day or anytime when the consular section was open. To my knowledge, and from my recollection of the file, I have seen no evidence that he was given the form.

Senator DODD. All right, we have gone over that.

Mr. SOURWINE. Are you aware that the State Department informed Senator Tower, at about the time this was happening, that Mr. Oswald had renounced his citizenship?

Mr. SCHWARTZ. The only communication I have seen is a copy of the State Department's reply to Senator Tower. There may have been more than one. We had difficulty in finding some of these.

Senator DODD. Just tell us what you know. We want to get on here. We will never get through.

Mr. SCHWARTZ. I am sorry. The answer to that question is—

Senator DODD. You can answer the question. If you have seen a letter or copy, tell us. If you have seen two, say so.

Mr. SCHWARTZ. I am sorry.

Mr. SOURWINE. I explicitly did not say letter because I am not sure it was a letter. I asked if you were aware that the State Department had informed Senator Tower's office, at the time that Oswald was trying to come back, that Oswald had renounced his citizenship?

Mr. SCHWARTZ. No, sir; I am not aware of that.

Mr. SOURWINE. I will tell you that Senator Tower's files reflect that this is true. He had received information which, on its face, simply showed a Texan stranded abroad and trying to come back. He had referred the matter to the State Department for information.

His files reflect that the State Department informed him that the man had renounced his citizenship and signed a paper, and on that basis he dropped the case and told the Department he was no longer interested.

Mr. SCHWARTZ. I have not seen it.

Mr. SOURWINE. Now, is it possible to furnish the committee with the copies of the two letters that Oswald sent in this connection?

Mr. SCHWARTZ. I would certainly have to ask my superiors in relation to the Commission. I don't know, so far as I am concerned—

Senator DODD. All right, just ask and let us know.

Mr. SOURWINE. May this be the request?

Senator DODD. Yes, unless there is objection.

(Photocopies of the letters written by Oswald in his effort to secure revocation of his U.S. citizenship were later supplied by the State Department.)

(In an accompanying letter, Assistant Secretary Frederick G. Dutton noted that one letter was not dated. He said it was handed to a consular officer at the U.S. Embassy in Moscow on October 31, 1959.)

(Handwritten on hotel stationery, it reads as follows:)

I, Lee Harvey Oswald, do hereby request that my present citizenship in the United States of America, be revoked.

I have entered the Soviet Union for the express purpose of applying for citizenship in the Soviet Union, through the means of naturalization.

My request for citizenship is now pending before the Surprem [sic] Soviet of the U.S.S.R.

I take these steps for political reasons. My request for the revoking of my American citizenship is made only after the longest and most serious consideration.

I affirm that my allegiance is to the Union of Soviet Socialist Republics.

LEE H. OSWALD.

(The second letter, dated November 3, 1959, was written on plain correspondence paper, and reads as follows:)

I, Lee Harvey Oswald, do hereby request that my present United States citizenship be revoked.

I appeared in person, at the consulate office of the United States Embassy, Moscow, on October [sic] 31, for the purpose of signing the formal papers to this effect. This legal right I was refused at that time.

I wish to protest against this action, and against the conduct of the official of the United States consular service who acted on behalf of the United States Government.

My application, requesting that I be considered for citizenship in the Soviet Union is now pending before the Surprem [sic] Soviet of the U.S.S.R. In the event of acceptance, I will ask my government to lodge a formal protest against this incident.

LEE HARVEY OSWALD.

Mr. SOURWINE. Sir, after Mr. Oswald returned to this country with his wife, and sought a new passport, do you know whether that passport was handled in a routine fashion? In your judgment was it handled in normal routine or was there a discrepancy from normal, proper handling of the case?

Mr. SCHWARTZ. As far as I know it was handled in normal routine fashion.

Mr. SOURWINE. As the committee has heard the story: What happened was that he applied to a field office; is that right, sir?

Mr. SCHWARTZ. New Orleans.

Mr. SOURWINE. The New Orleans field office of the Passport Office?

Mr. SCHWARTZ. Correct.

Mr. SOURWINE. And they had a flag on the file because of the loan, and they checked to see if the loan had been repaid and found it had been repaid in the early spring or the late winter, anyway after the first of this year, and so they removed that impediment, considered it removed and went ahead and issued the passport; is that substantially as you understand it?

Mr. SCHWARTZ. This is a very important point in the sequence. Did I understand you to say that there was a flag when the loan was outstanding, according to our records?

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. It is a little bit—there is a little uncertainty on that point: whether there actually was a flag. There is some indication that there was, and some that there wasn't.

Senator DODD. Would there normally be a flag?

Mr. SCHWARTZ. Normally, to implement the regulations, there would be a flag.

Senator DODD. Would there normally be a flag on the card, or whatever it is, of a person who tried to renounce his citizenship and was now seeking a new passport?

Mr. SCHWARTZ. No, sir. It is my understanding that the Passport Office lookout system does not include a person who tried to renounce, once his citizenship is determined. There certainly would have been a flag when it was in doubt, but once it was determined he is a citizen, the flag is removed. And on the loan, once the loan is repaid, the flag is removed. The question of whether, in fact, there was a flag or not on the loan becomes a little academic. We are uncertain on that point, but the loan was repaid before the issuance of the new passport to Oswald in June 1963.²

Mr. SOURWINE. He did repay the loan, probably in February.

Mr. SCHWARTZ. The loan was repaid prior to the issuance of that passport.

Mr. SOURWINE. Do you know what month that was?

Mr. SCHWARTZ. February. Our file record in the Finance Office shows the last payment was recorded February 7, if my memory is correct, 1963. The passport was issued in June, I think the 24th or 25th.

Mr. SOURWINE. Passing from passport to visa—

Senator DODD. Let me interrupt. Don't you think there should be some sort of a flag on the card or file of an individual who has once renounced his citizenship?

Mr. SCHWARTZ. Senator, I agree with you. This is one of the lessons learned from this sad event, and we intend to put a flag on anyone who has made such an attempt. There are not so many. It will not be burdensome.

Senator DIRKSEN. Do you recall the amount of the loan?

Mr. SCHWARTZ. Yes, sir; \$400—I think \$435.71, in that neighborhood, \$435.71.

Mr. SOURWINE. We got the figure of \$435.

Mr. SCHWARTZ. A few pennies difference.

Mr. SOURWINE. Passing to the visa end of it, he, of course, did not have a visa.

Mr. SCHWARTZ. No, sir.

Mr. SOURWINE. But his wife did.

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Isn't it normal procedure to conduct an investigation before a visa is granted in the case of someone who has been granted an exit permit from the Soviet Union?

² Mr. Schwartz, by letter to the chairman on Mar. 25, 1964, asked that the following statement be printed at this point in the record:

"Subsequent examination of the files revealed that there is no indication in Oswald's passport file that a 'lookout card' was ever prepared or in the file when the repatriation loan was outstanding."

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Was that done in this case?

Mr. SCHWARTZ. Yes, sir. The file showed that the intelligence agencies conducted their check, the FBI and so forth.

Mr. SOURWINE. Did she have to have a waiver of any kind?

Mr. SCHWARTZ. She did require a waiver of 243 (g), I believe.

Mr. SOURWINE. Do you know who authorized that?

Mr. SCHWARTZ. The waiver was authorized—well, the recommendation for a waiver went to INS from the State Department by letter of the then Acting Administrator of the Bureau of Security and Consular Affairs, Mr. Cieplinski.

Mr. SOURWINE. Michel Cieplinski.

Mr. SCHWARTZ. To Commissioner Farrell. The letter is addressed to Commissioner Farrell.

Mr. SOURWINE. And Farrell then waived?

Mr. SCHWARTZ. The return letter waiving—I should clarify this. The Immigration Naturalization Service (INS) first had refused to waive. I do not recall who sent that letter—I am familiar with this letter, which resulted in the INS agreeing to the waiver.

After the first refusal of INS, Mr. Cieplinski went back to INS, to Mr. Farrell. The reply came from Mr. Robinson, who is Deputy Assistant Commissioner for Travel Control, and INS finally agreed to the waiver.

Mr. SOURWINE. All right, sir.

Are you satisfied that there was no dereliction on the part of the State Department employees in either the passport or the visa handling in this case?

Mr. SCHWARTZ. Now that we have finished the complete analysis, this is a matter that we go into now. I would not want to prejudge the conclusions to be reached.

Mr. SOURWINE. In other words, that is an open question in your mind? You think there may have been some dereliction?

Mr. SCHWARTZ. I don't know about dereliction. I think there are some questions here that should be looked into, such as the one that Senator Dodd hit on.

Mr. SOURWINE. That wouldn't have a relation. I am talking about failure to follow normal procedure, including normal security procedure.

Mr. SCHWARTZ. This we have not concentrated on. I would have to review to see; normal security procedures. As far as I know, normal security procedures were carried out.

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TESTIMONY OF ABBA P. SCHWARTZ

WEDNESDAY, JULY 22, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Schwartz, do you have the Lee Harvey Oswald case file in your office?

Mr. SCHWARTZ. As far as I recall, the Lee Harvey Oswald file is still in the Legal Adviser's office, unless it has unbeknownst to me been returned to my office.

Mr. SOURWINE. You did bring it to your office at the time or shortly after the case broke?

Mr. SCHWARTZ. The very day it broke.

Mr. SOURWINE. As soon as you could, and had it there sometime?

Mr. SCHWARTZ. No. It was actually worked on the very day and all night and I believe from the next day on it was in the hands of Legal Adviser.

Mr. SOURWINE. You went through it first and then turned it over?

Mr. SCHWARTZ. I asked for the file.

Mr. SOURWINE. And they have had it—

Mr. SCHWARTZ. Unless it has been returned recently.

Mr. SOURWINE. Have you had any request from the Warren Commission for this file?

Mr. SCHWARTZ. All the requests go to the Legal Adviser from the Warren Commission, the Legal Adviser has furnished a lot of information, it is my recollection the Commission may have asked for some original documents, but I don't know whether it asked for the entire file as a file.

Mr. SOURWINE. Have you been asked to testify by the Warren Commission?

Mr. SCHWARTZ. I did not testify. I was scheduled to testify and the Warren Commission decided they would not hear me. I have not testified.

Mr. SOURWINE. It was not a case of your asking to be excused?

Mr. SCHWARTZ. Certainly not.

Mr. SOURWINE. It was their decision?

Mr. SCHWARTZ. Their decision.

Mr. SOURWINE. I commend you, sir, this morning. You are answering the questions very briefly and very much to the point and we do appreciate it and we are going to try to finish up with you today and tomorrow if we can.

After you had the Oswald file and had a chance to look at it, and a night session—I asked if you had a chance to familiarize yourself with it and isn't it true that you then briefed certain officials of the Department on or about November 22, 1963, a Friday afternoon or evening—officials including Mr. Ball, Mr. Harriman, Mr. Crockett, and Mr. Chayes—on the questions involved in the issuance of a passport?

Mr. SCHWARTZ. My recollection is, Mr. Chairman, that when we did get the file, I immediately took it to Mr. Ball, I had not had a chance to examine it very carefully before I went up to see Mr. Ball. We actually thumbed through the file in Mr. Ball's office; it was not a question of briefing them, since I was practically uninformed myself.

Mr. SOURWINE. That night session were you and he alone?

Mr. SCHWARTZ. No; as soon as I got the file I went to Mr. Ball's office where some of these other people were present, but the night session consisted of people from FBI and other agencies and the Military and the State Department. Every one of them met in Mr. Chayes' office. I would say there were 10 or 12 people, all looking at various aspects of the case.

Mr. SOURWINE. Did you, Mr. Schwartz, either at that interview, talking about the file, or in conference about it, in Mr. Ball's office, or during this subsequent period when so many people were working on it, express the opinion to your superiors that the Passport Office was to blame for issuing a passport to Oswald, June 26, 1956?

Mr. SCHWARTZ. Certainly not. That file was carried up to Mr. Ball's office. There was a passport file, a visa file, and others. I expressed no opinion. I didn't even know what was in that file, it was carefully analyzed all that night. I didn't express any opinion, I didn't have all the facts.

Mr. SOURWINE. Now that the analysis has been completed, can you say whether the Oswald case was a passport case or not?

Mr. SCHWARTZ. It was certainly in the Passport Office, in the Visa Office, and in the Office of Special Consular Services for repatriation, it was a case involving all three offices.

Mr. SOURWINE. Was there any question of possible irregularity or mistake with respect to the issuance of the passport?

Mr. SCHWARTZ. I would have to say this, Mr. Chairman: I had no views on that point. The question of—there were two passports involved. There was the original passport and renewal, and the passport, when he came into the United States—

Mr. SOURWINE. The first passport?

Mr. SCHWARTZ. Oh, yes; he had his original passport.

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. And he got it renewed in Moscow and then—

Mr. SOURWINE. And the original passport was—

Mr. SCHWARTZ. The original passport was renewed in Moscow, in my recollection, then after he came back to the United States he subsequently, in July 1963, got a new passport which he had at the time of this—

Mr. SOURWINE. That was good only for return to the United States?

Mr. SCHWARTZ. No, sir; that was a new passport he had.

Mr. SOURWINE. A new and valid passport?

Mr. SCHWARTZ. A new and valid passport issued in 1963, if my dates are correct.

Mr. SOURWINE. Was that issued abroad?

Mr. SCHWARTZ. In the New Orleans office, after it cleared with the Passport Office.

Mr. SOURWINE. You mean after he came back to the United States?

Mr. SCHWARTZ. That is right, a new passport after he came back to the United States.

Mr. SOURWINE. I beg your pardon. All right. I don't want to go into that to any extent which would seem to indicate we are trying to duplicate the Warren Commission.

Mr. SCHWARTZ. I would say this, Mr. Chairman: As far as my office is concerned, the SY¹ people in the Department had been requested to look through the entire case to see if there was any gap or anything we should do in the way of instituting any further procedures in the Passport Office, and that survey is proceeding now.

Mr. SOURWINE. Now, fixing in your mind the occasion of conferring with Mr. Ball, Mr. Harriman, Mr. Crockett, and Mr. Chayes, now, on

¹ Office of Security.

that occasion, did you also brief those officials with respect to your testimony before the Senate Internal Security Subcommittee?

Mr. SCHWARTZ. May I say, Mr. Chairman, that I would not say that I briefed any of those gentlemen in that meeting. I walked in with files. To start with, they had certain information from the Pentagon. We thumbed through the files, I would like to get that clear—

Mr. SOURWINE. You had very recently testified—just before that—had you not?

Mr. SCHWARTZ. I testified before this committee on November 22 when the President was assassinated. It seems to me I testified that morning in this very room.

Mr. SOURWINE. Did you, that afternoon or evening, describe to these higher officials of the Department your appearance before this committee or any of the circumstances or occurrences?

Mr. SCHWARTZ. To the best of my recollection I left here, I went right back, I had lunch at the State Department and the tragedy was announced there and as best I recall I did not mention having been here that morning.

Mr. SOURWINE. All right. You have yourself, of course, carefully reviewed the State Department file on Lee Harvey Oswald?

Mr. SCHWARTZ. Yes; we went through that very carefully.

Mr. SOURWINE. Does that reflect when Oswald moved to North Dakota?

Mr. SCHWARTZ. North Dakota? I am sorry, that doesn't ring a bell.

Mr. SOURWINE. Does it show when?

Mr. SCHWARTZ. I don't—I mean, the place doesn't ring a bell.

Mr. SOURWINE. Does it show where he lived in North Dakota?

Mr. SCHWARTZ. I have no recollection of North Dakota—

Mr. SOURWINE. No recollection, no mention of possible Communist activities in North Dakota?

Mr. SCHWARTZ. No, sir; no recollection.

* * * * *

TESTIMONY OF ABBA P. SCHWARTZ

THURSDAY, AUGUST 13, 1964

Senator Roman L. Hruska presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Do you have the Lee Harvey Oswald case file in your office? If not, where is it, when was it sent there?

Mr. SCHWARTZ. No. The Legal Adviser's Office has been responsible for coordinating matters relating to the President's Commission on the Assassination of President Kennedy, and I assume that office has all files on Oswald.

Mr. SOURWINE. When did you have the Oswald file sent to your office?

Mr. SCHWARTZ. November 22, 1963.

Mr. SOURWINE. Isn't it true that on or about November 22, 1963, a Friday afternoon or evening, you briefed certain officials of the De-

partment, including Mr. Ball, Mr. Harriman, Mr. Crockett, and Mr. Chayes, on the question involved in the issuance of a passport to Oswald? You had the file at that time?

Mr. SCHWARTZ. This same question was asked me and answered by me in the hearing of July 22, 1964.

Mr. SOURWINE. Did you, at the briefing, blame the Passport Office for issuing a passport to Oswald on June 25, 1963? Isn't it a fact that this was not a passport case at all?

Mr. SCHWARTZ. This matter was discussed during the hearing of July 22, 1964.

Mr. SOURWINE. On the occasion of the briefing with respect to the Oswald case, did you also brief the Department officials present respecting your testimony before the Senate Internal Security Subcommittee?

Mr. SCHWARTZ. This question was also previously discussed during the hearing of July 22, 1964.

Mr. SOURWINE. Did you describe the committee or its proceedings in derogatory terms? Did you make a point of telling these officials that committee counsel was highly nervous while questioning you, and did you support this judgment by stating counsel took some pills and drank a great deal of water? What were you trying to convey to your superiors in that connection?

Mr. SCHWARTZ. As I indicated in the testimony of July 22, 1964, we did not discuss my testimony before this committee on the occasion of the briefing with respect to the Oswald case.

Mr. SOURWINE. Mr. Schwartz, do you have the Lee Harvey Oswald case file in your office?

Mr. SCHWARTZ. I think you asked that last time.

Mr. SOURWINE. Yes; I am wondering if it is back there.

Mr. SCHWARTZ. The last time I checked it wasn't back. I would have to check again. I would assume it could have come back, or maybe not, I just don't know. I would be glad to check.

Mr. SOURWINE. As far as you know, it is not back in your office, it is still with the Warren Commission?

Mr. SCHWARTZ. It should be in the Legal Adviser's Office. Either they have it or the Commission. I wouldn't know.

Mr. SOURWINE. It wasn't submitted directly by you?

Mr. SCHWARTZ. No.

Mr. SOURWINE. But through the Legal Adviser?

Mr. SCHWARTZ. I think I explained that all relationships with the Warren Commission were through the Legal Adviser. No one in the Department, no office as far as I know, had direct liaison except the Legal Adviser's Office.

Mr. SOURWINE. All right, sir. Have you, yourself, had an opportunity to review the State Department file on Lee Harvey Oswald?

Mr. SCHWARTZ. Not since the very early days when I think we testified about it.

Mr. SOURWINE. I think that testimony indicated that you had, on the evening of November 22—

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. Friday afternoon and evening?

Mr. SCHWARTZ. That is right.

Mr. SOURWINE. Gone through this and briefed certain officials of the Department with regard to it, and showing portions to them?

Mr. SCHWARTZ. The Warren Commission put questions to the Department through the Legal Adviser, to be answered for them in the course of their investigation; from time to time, the Legal Adviser would consult with me in preparing the replies to those questions.

Often I had to go to other areas in my office to get the answers, and parts of files at least would be around my office. But as for the total file, that has not been in my shop or my office for a long time.

Mr. SOURWINE. I do not mean to have it appear in the record, Mr. Chairman, that we are attempting to take testimony about the processes of the Warren Commission or what they do or do not do.

Senator HRUSKA. There is no indication of that to this point, I am sure.

Mr. SOURWINE. I only intended to lay the foundation for asking this question. Can you tell us whether this State Department file reflects when Oswald moved to North Dakota?

Mr. SCHWARTZ. You asked me that last time. I remember saying that North Dakota never has come to my attention.

Mr. SOURWINE. And it still hasn't?

Mr. SCHWARTZ. It has not. I think when I came back to the Department. I asked if anyone recalled North Dakota. I didn't look at the file. North Dakota never came to my attention.

Mr. SOURWINE. Mr. Schwartz, it has been reported to the Committee that one Raul Luebano, a Mexican immigration official, with the rank of inspector stationed at Nuevo Laredo, Mexico, made a report respecting the alleged entry into Mexico from the United States of Lee H. Oswald, wearing was was described as a "sailor-type" uniform. The alleged crossing was said to have been made on September 26, 1963.

The Mexican immigration inspector's report is said to have been given to the American consul at Nuevo Laredo who, in turn, forwarded it to the U.S. Embassy in Mexico City. Are you aware of any such report?

Mr. SCHWARTZ. I have no recollection of ever having seen that report. It could well be in the file, if it exists. To my recollection I have never seen the report.

Mr. SOURWINE. Can you determine if such a report was, in fact, made?

Mr. SCHWARTZ. Yes, I certainly could, both by finding out from the files and by asking the INS and Mexico so I will be glad to do this.

Mr. SOURWINE. You can determine this definitely?

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Can you inform the committee when you correct your transcript, if there is such a report?

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. And if there is, Mr. Chairman, may the request be that the State Department be asked to provide it to the committee on whatever classified basis they consider is required?

Senator HRUSKA. Such request will be made by counsel or considered made of the Department in the alternative, as indicated.

(Mr. Schwartz later advised the subcommittee as follows:)

All of the information concerning Oswald which has provided by the Government of Mexico to the Department of State or the American Embassy in Mexico City was forwarded to the President's Commission on the Assassination of President Kennedy. The Report of the President's Commission published by the U.S. Government Printing Office refers on page 323 to Oswald's admission to Mexico at Nuevo Laredo. On page 840 there is an explanation of note 729 to page 323 indicating that this information is based on Commission exhibits.

* * * * *

TESTIMONY OF OTTO F. OTEPKA

AUGUST 17, 1964

Senator Roman L. Hruska presiding.

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

(Mr. Otepká was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Otepká, were you ever interviewed with respect to knowledge that you had of the Oswald case?

Mr. OTEPKA. Yes; I was.

Mr. SOURWINE. Do you have a clear memory of what happened in that regard?

Mr. OTEPKA. I think so.

Mr. SOURWINE. Did you make any memorandum for your own files with respect to that matter or any notes about the interview from which you could refresh your recollection?

Mr. OTEPKA. Yes; I did.

Mr. SOURWINE. Could such memorandum or notes be furnished for the committee record at this point in order to save time questioning you about this?

Mr. OTEPKA. I shall be happy to furnish that information for the record.

Mr. SOURWINE. Do you have a copy of that memorandum or those notes with you?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. May we have that for the record now?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. May it go in, Mr. Chairman?

Senator HRUSKA. It is ordered to be included.

(The memorandum referred to is as follows:)

MEMORANDUM FOR THE RECORD

I was notified on January 10, 1964, by Mr. Raymond Laugel, Acting Deputy Assistant Secretary for Security, that Mr. Thomas Ehrlich of the Legal Adviser's Office wished to see me together with Mr. Laugel. Mr. Laugel did not indicate to me the topic of the discussion.

On January 13, 1964, Mr. Laugel advised me that he would call on me at my office at 2:00 p.m. that day. He did not state that he would be accompanied by anyone. Mr. Laugel appeared in the company of Mr. Ehrlich. The latter informed me that his office was coordinating the Department's work with the President's Commission on the Assassination of President Kennedy.

According to Mr. Ehrlich, Mr. Lee Rankin had advised him that I had information in my files pertaining to Lee Harvey Oswald. Mr. Ehrlich stated he wished

to know the nature of the information and whether it was identical or different from that appearing in the central files of the Office of Security which already had been furnished to the President's Commission.

I told Mr. Ehrlich that pursuant to the terms of reference specified to me by the Deputy Under Secretary for Administration in May 1961 I was authorized to make studies of the pattern of internal subversion and to relate any pertinent cases to the Department's Personnel Security Program. In this connection I obtained from various sources within the Department, including SY files, various information on Americans who defected to the Soviet Union. The file on such defectors was kept in my suite but was available as needed to any evaluator. Included in the defector file was data which I had obtained long prior to November 1963 concerning Lee Harvey Oswald.

Mr. Laugel informed me on January 14, 1964, that he had found the defector file and had furnished it to Mr. Ehrlich. Mr. Laugel did not specify to me what material was located in that file on Oswald and whether it was of any significance to the President's Commission.

I am deeply concerned about the possibility that the file which I established would not be returned to the Division of Evaluations, but its contents may be dissipated, as has been the result previously where I had made other studies for appropriate use in the administration of the Department's Personnel Security Program.

(S) ОТЕПКА.

The following excerpts from hearings before the Committee on Appropriations of the House of Representatives, on Friday, February 19, 1965, respecting appropriations for fiscal year 1966 operations of the Department of State, subsequently were ordered inserted in the record:

REPATRIATION OF LEE HARVEY OSWALD

Mr. SLACK. Are you prepared to answer some questions growing out of the repatriation of Lee Harvey Oswald?

Mr. SCHWARTZ. I am generally familiar with it.

Mr. SLACK. I am in the right department?

Mr. SCHWARTZ. I think so, yes.

Mr. SLACK. The Warren Commission states that from November 1959 to February 1961 the American Embassy heard nothing of Oswald. He had turned in his passport and indicated he planned to remain in the Soviet Union. Then in February 1961 he wrote the Embassy and asked that arrangements be made to permit him to return to the United States. He came to the Embassy in July 1961 and was interviewed. On the basis of this interview apparently the Embassy concluded that Oswald had not legally expatriated himself. He was given back his passport, which at that time was valid only until September 1961. In May 1962, after 15 months of dealing with the Embassy, his passport was renewed and he and his wife were given permission to enter the United States.

Now, to me, Mr. Schwartz, it is obvious that any American who disappeared from sight in a foreign country for over a year and then suddenly reappeared and requested reentry into the United States could have developed almost anything in the way of a physical disease, some form of addiction, or emotional breakdown.

Is it a fact that the pertinent Federal law permits reentry under these conditions and, if so, who must be satisfied as to the acceptability of a citizen?

Mr. SCHWARTZ. Sir, once it was determined that Oswald had not lost his citizenship—

Mr. SLACK. Does Federal law permit reentry under these conditions as was just stated, according to the Warren report?

Mr. SCHWARTZ. Yes, sir.

Mr. SLACK. The second part of that question is, if so, who must be satisfied as regards the acceptability of a citizen?

Mr. SCHWARTZ. The Department of State must be satisfied that the person is a citizen. The Immigration Service, if it did not agree with that determination, would exclude the person at the port of entry.

Mr. SLACK. In a case of this kind who makes the final decision?

Mr. SCHWARTZ. The final decision on citizenship in the Oswald case was made by the Department of State in Washington, based on reports from the Embassy that Oswald was still a citizen.

Mr. Hickey, if my memory fails me on this, will you correct me? It is my recollection the determination was made in the Department.

Mr. HICKEY. That is correct.

Mr. SLACK. Are any written or oral tests given of any kind, or is it simply an interview after which the individual is turned loose on the body of American citizens?

Mr. SCHWARTZ. When the Embassy is in doubt a questionnaire is often given to the applicant. A questionnaire was given to Oswald in this case. He had to fill out a questionnaire, which is one of the items taken into account in determining whether or not he had performed any act which could have resulted in his expatriating himself.

Mr. CROCKETT. But on the point of emotional stability and all that, we have no jurisdiction over any of that.

Mr. SLACK. How many U.S. Embassy officers participated in the interview or interviews with Oswald in Moscow?

Mr. SCHWARTZ. I would have to check the file on that. I do know certainly one officer, the one who testified before the Commission. My recollection is that there was at least one other officer who had spoken to or interviewed Oswald. I am sure of one, Mr. Snyder, who testified before the Commission.

(The information follows:)

"The Department's files and the 'Report of the President's Commission on the Assassination of President Kennedy' (app. XV and testimony of Mr. Snyder in hearings vol. V) indicate that Oswald was interviewed by Mr. Richard E. Snyder on October 31, 1959, concerning his expatriation and again by Mr. Snyder on July 8 and July 10, 1961, concerning the return of his passport. Oswald was also interviewed by Mr. John A. McVickar on July 11, 1961, concerning Marina Oswald's admittance to the United States."

* * * * *

Mr. SLACK. Mr. Schwartz, on October 2, 1964, the Washington Star had a press report with regard to testimony before the Warren Commission of the Director of the FBI, Mr. Hoover. Mr. Hoover states that his department received from the Department of State a document which evaluated Lee Harvey Oswald as a "thoroughly safe risk."

The following day, on October 3, for the State Department, a spokesman, Robert J. McCloskey, denied there was any such document in the files of the Department. The conflict here apparently refers to a two-and-a-half-page summary of an interview between Oswald and Richard E. Snyder of the American Embassy on July 9, 1961.

What is the present occupation and responsibility of this Mr. Richard Snyder?

Mr. SCHWARTZ. I will have to check that, sir. I do not know where Mr. Snyder is now.

(The information follows:)

"Richard E. Snyder is now assigned to the American Embassy, Tokyo, as special assistant to the Ambassador."

Mr. CROCKETT. If I may, Mr. Slack, I would like it specifically understood that the State Department does not have any authority to investigate any American citizen for entry into the United States on security, emotional health, or anything else.

Mr. SLACK. Do you think it might be well if there were legislation introduced in this field?

Mr. CROCKETT. I do not know. It might well be.

I would just like to have it understood no State Department person was derelict in his duty in this case because he had no authority, no jurisdiction or responsibility in any of these areas of emotion, health, or security, in the return of an American citizen to this country.

Mr. SLACK. Mr. Schwartz, in this press release of October 3, it was reported that Mr. Boris H. Klosson, counselor for political affairs at the Moscow Embassy, reported that 20 months of the realities of life in the Soviet Union had clearly had a maturing effect on Oswald.

It quotes Klosson as saying: "He [Oswald] stated frankly he had learned a hard lesson the hard way and that he had been completely relieved about his illusions about the Soviet Union, at the same time that he acquired a new understanding and appreciation of the United States and the meaning of freedom."

To quote again: “* * * much of the arrogance and bravado which characterized him on his first visit to the Embassy appears to have left him.”

I would like to know the assignment and responsibility Mr. Boris H. Klosson now has with the Department.

Mr. SCHWARTZ. I would have to check that unless somebody present happens to know.

(The information follows:)

“Boris H. Klosson is now assigned to the American Embassy, Kingston, as deputy chief of mission.”

Mr. SLACK. On that same day, October 3, reference is made in the press to another document written by the Office of Soviet Union Affairs of the Department to the visa office recommending the issuance of a visa to a Mrs. Oswald. In this document it is recommended that Mrs. Oswald be given a visa to get Lee Harvey Oswald and his family out of the Soviet Union.

It is understood that the document contains this language:

“An unstable character whose actions are entirely unpredictable, Oswald may well refuse to leave the U.S.S.R. or subsequently attempt to return, and if we should make it impossible for him to be accompanied from Moscow by his wife and child, such action would permit the Soviet Government to argue although it had issued a visa to Mrs. Oswald, to prevent the separation of a family the U.S. Government had imposed a forced separation, by refusing to issue her a visa. Obviously this would weaken our Embassy's position—and so forth.”

POLICY RELATING TO DEFECTORS

Is it the policy of the State Department to encourage return to this country of defectors the Department itself labels “unstable and entirely unpredictable” so that diplomatic negotiations may continue toward the end that additional Soviet citizens may be brought to the United States at the request of American relatives?

Mr. SCHWARTZ. Mr. Slack, I am afraid I would not be competent as a witness to testify on the policy relating to defectors. I could only tell you that from my experience there are certain instances where efforts are made to have a defector returned.

I think in the instance that you are citing here, the overall policy of the Department was to encourage the uniting of families. We have had problems with the Soviet Union over many years in their refusal to permit Russian wives, for instance, to leave and join husbands who are in the States. We have generally adopted the policy of doing everything reasonable to effect family reunions.

I recall in some measure that memorandum you referred to. It is my impression that within the context of what you have quoted that the Soviet Affairs Section of the Department was talking of the general policy of uniting families and, if possible, preventing separation of families.

Mr. SLACK. I am glad to hear from Mr. Crockett about the law on this subject, but let me ask you, Mr. Schwartz, have you any suggestions to offer as to what might be done either overseas or on this continent in terms of new laws or new regulations within the Department or new special apparatus to prohibit the recurrence of a series of events such as this?

Mr. SCHWARTZ. Mr. Slack, I can only say at this moment that we do have within the Department a study group, with which I am participating, reviewing the entire Oswald case, to see whether or not there are areas where legislation may be advisable or recommended to the Congress.

We have not come up with firm recommendations yet, but that study is taking place at this time within the Department. I have no firm recommendations at this point.

* * * * *

Mr. SMITH. Mr. Crockett, as I understand it, the State Department did not evaluate Oswald to be “a thoroughly safe risk”?

Mr. CROCKETT. We had no jurisdiction, no responsibility, and the answer is “No.” We do not know. There were two statements made by the Embassy that were somewhat contradictory, as Mr. Slack read; one statement where it said the man seemed to have matured and seemed to have learned some hard lessons by having lived there; another statement was also available, the statement that this guy—“you do not know what he is going to do, therefore we better get him out of Russia.”

Mr. SMITH. There was no evaluation made? It was a submission of statements?

Mr. CROCKETT. Yes, sir.

Mr. SMITH. Does anyone make the evaluation?

Mr. CROCKETT. No one; the only evaluation that would be made, Mr. Smith, would be in the State Department in case we were going to hire him. That is the only time we make an evaluation of anybody, if we hire him as an employee, as a consultant, and we make this at one time. We made an evaluation of Communist affiliation when we granted passports but the Supreme Court declared this unconstitutional. They are no longer making that evaluation in terms of passports.

We make an evaluation on foreigners when we issue some visas in accordance with immigration law, but that is only in the case of foreigners.

Mr. SMITH. In the case of repatriated Americans, who is notified they will be coming back? Someone makes a determination as to whether or not there should be further surveillance of him, is that right?

Mr. SCHWARTZ. If I may answer that, whenever there is repatriation, Immigration, as I understand it, is aware of the return of someone to whom we lend funds.

Of course, once a person arrives at the port of entry, he is under the jurisdiction of the Immigration Service.

Mr. CROCKETT. Certainly in this case, too, because he was, in effect, a defector—although not a defector in the technical sense—the FBI had him under surveillance and questioned him several times, as you know.

Mr. SMITH. You made reports to them but it was up to them to evaluate the reports?

Mr. CROCKETT. That is right, or to carry on any other activity, since he was an American citizen because we have no jurisdiction, no authority whatsoever.

Mr. SMITH. That is all I have.

* * * * *

TESTIMONY OF ALLEN B. MORELAND

WEDNESDAY, JULY 22, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Moreland was previously sworn.)

* * * * *

I would like to offer for the record, Mr. Chairman, an article which appeared in the National Guardian of November 21, 1963, entitled "A Red Carpet for Peace." If that may go in, I would like to show it to the witness—

Senator DODD. Yes.

(The document referred to follows:)

[From National Guardian, Nov. 21, 1963]

REPORT TO READERS ON YASUI TOUR: A RED CARPET FOR PEACE

The arrival of Prof. Kaoru Yasui was marked with pleasure at the two extreme ends of the United States—New York and Honolulu. In New York the Times commended the Government (see below) for showing uncommon good sense in granting a visa. In Honolulu Yasui began his 10-city tour auspiciously with a red-carpet welcome at the airport, a series of crowded meetings and a reception by what our man in Honolulu described as "an improbable mixture of industrialists, labor leaders, city and State officials, leading members of the bar and advocates of nuclear disarmament."

At the airport the Japanese peace leader, in the United States at the invitation of the National Guardian, was met by delegations from the office of Hawaii's Gov. John A. Burns and Honolulu Mayor Neal Blaisdell, top officials of the trade unions and representatives of University of Hawaii students and peace groups.

Yasui brought a message of greeting from the millions of Japanese peace workers and asked for increased cooperation between the peace groups of both countries "in the defense of humanity."

At a reception given by the International Longshoremen's and Warehousemen's Union, the 100 guests included William Norwood, representing the Governor; Acting Mayor Robert Ellis, Chief Justice Wilfred Tsukiyama of the State Supreme Court and Hawaii Bar Association President Walter Chuck. Also present were representatives of the big sugar, pineapple, and stevedoring firms which bargain with the ILWU. Even the State Department's Hawaii Representative John Goemans came.

Yasui was introduced by the ILWU's education director, Dave Thompson, as "the father of the nuclear disarmament movement in Japan" to "some of the people we work with every day because we are so busy arguing about our nickel-and-dime differences that we never get around to discussing a big interest we have in common—the prevention of war."

Yasui got an attentive hearing as he reviewed the background of the Japanese peace movement and projected its aims. Despite the partial test ban treaty, he said, "the danger of nuclear war remains undiminished and the peace movement has many important tasks." The work for peace, he said, must rise above political differences: "In this age of nuclear weapons, the law must end war, not merely limit it."

In a moving ceremony Yasui laid a wreath at the Arizona Memorial in Pearl Harbor in honor of the American war dead and said their sacrifice should inspire mankind to banish war. Both the victims of Hiroshima and Pearl Harbor, he said, "died in the clash of forces then beyond their control."

A talk by Yasui at the university drew double the number of students who had come out in the previous weeks to hear the Governor and the university's president. The Honolulu Star-Bulletin reported November 16: "Students at the university may be more interested in peace than in university philosophy or State government if attendance at a lecture series is a guide to their sentiments."

A letter to the Star-Bulletin the same day from Jay Field, executive vice president of Hawaii Foundation for American Freedoms (Imua), denounced Yasui, the Guardian, Dr. Linus Pauling, the labor unions greeting Yasui and all others who bid him welcome. "Lest I be misunderstood," said Field, "Imua has nothing against peace or professors. Imua is against communism."

A full-column editorial alongside the letter took Field apart in a forthright defense of free exchange and free speech. "Who does Mr. Field think the United States has got to make peace with before there is peace in the world?" the editorial said. "The Communists. If not with the Communists, who? * * * To suggest that Professor Yasui, because he accepts the hospitality of leftwing organizations, is a tool of the Communists, is about as logical as to make the same accusation against the President, the Secretary of State, Senator Dodd, and the 79 other Senators who voted in favor of an agreement with the Communists to limit nuclear testing."

The Star-Bulletin's editor, William H. Ewing, was a guest at the ILWU reception for Yasui.

In San Francisco November 7¹ Yasui was met by a group of children carrying paper cranes and flowers, was interviewed by the Chronicle and then spoke at a public meeting that night at the Scottish Rite Auditorium. Next day he spoke at the University of California in Berkeley.

Our Los Angeles representative reported at press time that all seven TV stations and the major dailies were planning to meet Yasui at the airport and that it looked like an SRO meeting for him November 19. A luncheon with the Lawyers Guild and a talk at UCLA were to follow. After Los Angeles, Yasui was heading for events in Chicago, Cleveland, and Detroit (a report next week) and then on to Philadelphia and Washington.

In the Capital, Yasui will be presented by Women Strike for Peace Sunday, November 24 at 7:45 p.m. at the Mount Vernon Place Methodist Church, Fellowship Hall, 900 Massachusetts Avenue NW.

¹ Editor's Note.—Yasui actually arrived on November 17. The date which appears in the National Guardian may have been a typographical error.

On Tuesday, November 26, the high spot of the tour will be the Guardian's 15th anniversary dinner at the Hotel Astor in New York, where Yasui will share honors with Rev. Fred M. Shuttlesworth of Birmingham. They will be joined on the dais by a group of distinguished persons from several nations in what promises to be the largest and liveliest annual Guardian dinner ever.

There are still some reservations open, but you must get yours in immediately if you want to be present. Call the Guardian Events Division, Endicott 2-5727.

This report cannot close without acknowledging the outpouring of support for the Guardian in its successful fight to persuade the State Department to grant a visa to Yasui. From every corner of the country we have received copies of wires and letters sent to the Secretary of State with one dominant theme, ably put by W. H. Ferry of the Center for Democratic Studies in Santa Barbara, Calif.: "We cannot hope for confidence and understanding among nations if you keep well-informed and peace-loving visitors from entering this country."

This demonstration from persons who may disagree with the Guardian's point of view was one of the most heartening responses we have had in our many battles over the years to restore the Bill of Rights to the mainstream of American life. It means two things: (1) There is a deep current of faith in free exchange in our country which refuses to be diverted; (2) you get nothing if you don't fight for it with every ounce of strength and support you can muster.

A VISA FOR PROFESSOR YASUI

(The following editorial appeared in the New York Times Nov. 16:)

The State and Justice Department deserve credit for waiving the restrictions of the McCarran-Walter Act and issuing a visitor's visa to Prof. Kaoru Yasui.

The Hosei University law dean has won Communist favor for his leftwing and ban-the-bomb activities as head of the Japan Council Against Atomic and Hydrogen Bombs. But that is no reason why Americans who wish to hear his views—such as the American Friends Service Committee and a group of Yale Law School students—should be denied that opportunity.

Willingness to grant a hearing of ideas of all varieties is the essence of the democratic system. Exclusion of controversial visitors does injury to the fabric of our society. It undermines confidence abroad in our talk of liberty when such visas are delayed, even when they subsequently are granted.

The Yasui case is a good augury for expeditious action—despite pressure to the contrary—as the norm in all such visa matters.

Mr. SOURWINE. I should state for the record that related testimony in this area appears in our record already in two places—on pages 1239 and 1250 of this volume.

Do you recall having seen that article, Mr. Moreland?

Mr. MORELAND. I have never seen this particular article; no.

Mr. SOURWINE. Now, that article indicates that Professor Yasui arrived in San Francisco on November 7. Do you know if he did in fact arrive on that date?

Mr. MORELAND. He did arrive in the United States. I am not sure of the date.

Mr. SOURWINE. Do you know when he left Japan?

Mr. MORELAND. Not the exact date.

Mr. SOURWINE. Do you know how long it takes to fly from Tokyo?

Mr. MORELAND. Not in a jet. I did it one time some years ago in about 22 or 23 hours, but it doesn't take that long now, I am sure.

Mr. SOURWINE. Is there a direct flight now, nonstop?

Mr. MORELAND. I don't know.

Mr. SOURWINE. Do you know when Professor Yasui left Japan?

Mr. MORELAND. Not the exact date. It was in November, I think.

Mr. SOURWINE. If he got to San Francisco on the 7th, it would have to be at least as early as November 6, because there is a day's difference—

Mr. MORELAND. Yes.

Mr. SOURWINE. It is tomorrow over there.

Mr. MORELAND. Yes.

Mr. SOURWINE. Now, are you in any sense familiar with the Yasui case?

Mr. MORELAND. Yes; I am generally familiar with it.

Mr. SOURWINE. Did you handle it yourself?

Mr. MORELAND. To a certain point.

Mr. SOURWINE. Up to what point?

Mr. MORELAND. Until it was referred to SCA—through Mr. Schwartz's office.

Mr. SOURWINE. Prior to the time it was referred to SCA what had happened to it? Had it come in from—normally, through the consular office?

Mr. MORELAND. That is right.

Mr. SOURWINE. With a recommendation for granting a waiver?

Mr. MORELAND. I am not sure that I am at liberty to give the details of this particular case, Mr. Chairman—

Mr. SOURWINE (after pause). Why not?

Mr. MORELAND. I understand—I understand this case is under investigation by your committee. Mr. Schwartz—

Mr. SOURWINE. That is a reason why you should talk about it, not a reason why you shouldn't talk about it.

Mr. MORELAND. If Mr. Schwartz could answer this I would appreciate the opportunity of having Mr. Schwartz answer this.

Mr. SOURWINE. I am not asking you about what Mr. Schwartz would answer, I am asking you what you knew about the case up until the time—

Senator DODD. May I see that?

(Document was handed to Senator Dodd.)

Mr. SOURWINE. You know what you do, you know what came to you, why shouldn't you tell us whether the case came in with a recommendation for a waiver?

(Mr. Moreland no response.)

Mr. SOURWINE. Why shouldn't you?

(Mr. Moreland no response.)

Mr. SOURWINE. To help you make up your mind, I will state, as far as I know, the grounds for refusing to answer the question; on possible self-incrimination, which is absurd in this case, or a claim of privilege, or a finding or belief that the case comes within the Executive order issued by President Truman with respect to giving security information regarding Government personnel. And this does not fit that, either. Is there some other reason why you shouldn't give us the information?

Mr. MORELAND. Well, to be sure, I can say that there was a statement of the case by the Embassy.

Mr. SOURWINE. Necessarily so.

Mr. MORELAND. Necessarily so.

Mr. SOURWINE. Yes.

Mr. MORELAND. There was a statement from the geographic area in regard to the case and there was as the result of the security check and the file was taken up—was submitted to SCA and there were subsequent dealings that resulted in the waiver being—

Mr. SOURWINE. Yes—did it come to you as a waiver case or as a visa case?

Mr. MORELAND. As a waiver case.

Mr. SOURWINE. It came in as a waiver case?

Mr. MORELAND. Yes.

Mr. SOURWINE. Why can't you tell us whether there was a recommendation from the consular officer with respect to granting of the waiver?

Mr. MORELAND. I am not sure I am at liberty to state who made what recommendation.

Mr. SOURWINE. Oh, I am not saying who, because it is perfectly understandable, whatever the consular officer did—the recommendation would arrive here under his signature.

Mr. MORELAND. That is right.

Mr. SOURWINE. So when I say what the consular officer did, I am not talking about a particular person, I am merely talking about whether in the referring of the case to you from the field there was a recommendation for granting waiver.

Mr. MORELAND. That is the—that is the very area that I do not know whether I am at liberty to discuss.

Mr. SOURWINE. Well, why not? I don't know why you can't tell us why you think you are or may not be at liberty to tell us. Have you had specific instructions?

Mr. MORELAND. No specific instructions. I wish I had.

Mr. SOURWINE. It is your own mind that raises it; is that it?

Mr. MORELAND. If you are asking specifically who recommended for and who recommended against—

Mr. SOURWINE. No; I am not. I am only asking if, in the submission of the case, there was an accompanying recommendation for the granting of a waiver.

Mr. MORELAND. There was a submission from the Embassy. There was a submission from the geographic area.

Mr. SOURWINE. You have said that. I am only asking: Was there a recommendation from the field for granting of a waiver?

(Mr. Moreland no response.)

Mr. SOURWINE. The security findings did not involve any recommendation for or against that—they never do, do they?

Mr. MORELAND. No.

Mr. SOURWINE. The geographic recommendation was part of the—

Mr. MORELAND. That is right.

Mr. SOURWINE. I am asking about the case when it came from the field, was there an accompanying recommendation for granting the waiver?

Mr. MORELAND. There was a—a submission outlining the pros and cons and I didn't interpret it as a specific recommendation.

Mr. SOURWINE. It had to be one of three things. It was not silent. It had to recommend for, or recommend against, it had to be a direct statement they were not recommending. Which one of these three?

Mr. MORELAND. There is also an alternative one, stating the pros for a recommendation and the cons against a recommendation.

Mr. SOURWINE. Are you telling us there was not, accompanying the submission of this case to the Department from the field, either a recommendation for or recommendation against or specific statement they were not recommending for or against?

Mr. MORELAND. I can say this, I did not interpret the submission from the field as a specific recommendation for a waiver.

Mr. SOURWINE. I don't understand why you cannot answer there was in this submission a specific statement that no recommendation was being made—isn't that true?

(Mr. Moreland no response.)

Mr. SOURWINE. It was stated in language which would have made it possible for you to interpret it as indicating that the recommendation was unfavorable, but you couldn't have interpreted it as a favorable recommendation; isn't that true?

Mr. MORELAND. You couldn't interpret this as a favorable recommendation?

Mr. SOURWINE. That is right, whether it could be interpreted as unfavorable or as neutral.

Mr. MORELAND. Subjectively. I am speaking subjectively here—yes.

Mr. SOURWINE. I understand, I did not want to ask for the words. All right. Did you have a specific recommendation from the area desk, the geographic desk?

Mr. MORELAND. There was a general concurrence in the position of the recommendation—of the statement from the field.

Mr. SOURWINE. In other words, the geographic desk also was either against it or neutral?

Mr. MORELAND. I would not interpret the submission from the geographic desk as a specific recommendation for the waiver.

Mr. SOURWINE. All right, they were neutral, then, right? They weren't for it or against it?

Mr. MORELAND. They did not specifically recommend.

Mr. SOURWINE. How did this happen to go to Mr. Schwartz?

Mr. MORELAND. This was normal routine at the time.

Mr. SOURWINE. So there was nothing for you to do except send it up there?

Mr. MORELAND. As standard procedure.

Mr. SOURWINE. What is the normal time required for handling visa cases?

Mr. MORELAND. Well, it depends on the length of time it takes for the agency check. That can vary from 1 day to several weeks.

Mr. SOURWINE. What is the shortest lapse of time you know of between, in any case where waiver was granted—

Mr. MORELAND. One day.

Mr. SOURWINE. Between the time received and the time handled?

Mr. MORELAND. One day.

Mr. SOURWINE. The Yasui case was handled in 1 day, wasn't it?

Mr. MORELAND. No, it wasn't—several days.

Mr. SOURWINE. How could it have taken several days?

Mr. MORELAND. It took several days—this wasn't handled in 1 day.

Mr. SOURWINE. By "several days" you mean 3 or 4 or more?

Mr. MORELAND. About a week, I think.

Mr. SOURWINE. About a week. Well, when did the Yasui case first come—

Mr. MORELAND. I think it was in November, sometime. I don't have the exact date.

Mr. SOURWINE. Well, if he left Japan, which he could not have done without having a waiver, on the 6th—it was necessary for him to arrive on the 7th—and if the handling of the case took a week, it would have had to be in the Department before the 5th of November, wouldn't it?

Mr. MORELAND. It might have been—the exact date I don't recall. It was during the month of November.

Mr. SOURWINE. If I told you it had not reached the Department before the 4th of November, would you know he had left Japan on the 6th—do you find my statement credible?

Mr. MORELAND. It would be hard for me to believe.

Mr. SOURWINE. Hard for me to believe, too, sir, but I would tell you Mr. Schwartz has testified that was the fact, that the first that he or the Department knew that Professor Yasui left Japan to come to the United States was on the 4th of November—

Mr. MORELAND. Well, the file would have been here several days and a lot of things would have been done to it by the time it reached Mr. Schwartz's office—

Mr. SOURWINE. In other words, the Department would know something that he wouldn't know and that the file wouldn't show if he went to look at it?

Mr. MORELAND. The file should show all the details.

Mr. SOURWINE. The file should—and you are satisfied that was several days prior to November 4?

Mr. MORELAND. That is my recollection.

Mr. SOURWINE. All right, sir. Now, this National Guardian article has gone into the record and refers to the outpouring of support for the Guardian in its successful fight to grant—it further states that from every corner of the country "we have received copies of letters sent the Secretary of State with one dominant theme"—is it true that there was a flood of wires and letters to the Secretary of State in support of the admission of Professor Yasui?

Mr. MORELAND. There were several.

Mr. SOURWINE. A substantial number?

Mr. MORELAND. I would—I can only make an estimate because I don't have definite knowledge—I would think it ranged from 25 to 50—perhaps it was in the range of 50 to 100, I would say.

Mr. SOURWINE. And those communications came in after Professor Yasui had applied and before the action was taken?

Mr. MORELAND. They dribbled in—

Mr. SOURWINE. Well, was a substantial number of them in there before the action was taken?

Mr. MORELAND. Not having the time fixed precisely in my mind, it would be difficult for me to answer that.

Mr. SOURWINE. I see. So you don't know whether these letters or telegrams had anything to do with that decision?

Mr. MORELAND. I don't know.

Mr. SOURWINE. That decision was made by Mr. Schwartz or in his office?

Mr. MORELAND. Well, I don't know where the decision was made. Certainly Mr. Schwartz is the responsible—

Mr. SOURWINE. Well, he had to recommend, didn't he, in order for the Justice Department to grant?

Mr. MORELAND. I have no knowledge—

Mr. SOURWINE. No, I am just talking about procedure; in any case of waiver the State Department had to recommend before the Justice Department or the Attorney General can actually grant?

Mr. MORELAND. That is right.

Mr. SOURWINE. So necessarily there was a waiver by the Department?

Mr. MORELAND. Yes.

Mr. SOURWINE. Which may or may not have been by Mr. Schwartz but was conveyed to the Department, the Attorney General. The committee has some information which would appear to indicate that the Department had made at least a tentative determination to deny this waiver before Mr. Schwartz got into the picture. Can you say whether this is true or untrue?

Mr. MORELAND. The Department had made a determination, you say, to deny the waiver before it got to the Department?

Mr. SOURWINE. No. I say, a determination, at least tentative determination to deny had been made within the Department and the Department determination obviously was to waive or recommend waiver?

Mr. MORELAND. Well, I at the time thought that the decision had been made to deny it—

Mr. SOURWINE. Yes, sir.

Mr. MORELAND. So I informed Mr. Appell of the House Un-American Activities.

Mr. SOURWINE. A-p-p-e-l-l?

Mr. MORELAND. Yes, I did inform him.

Mr. SOURWINE. And you were at that time the responsible head of the Visa Office?

Mr. MORELAND. And I felt that the decision had been made.

Mr. SOURWINE. And the decision was not yours, it was made at a higher level?

Mr. MORELAND. Yes.

Mr. SOURWINE. And it was at Mr. Schwartz' office?

Mr. MORELAND. That is right.

Mr. SOURWINE. So you must have had some report of what action—

Mr. MORELAND. I had understood from Mr. Schwartz' office the final decision was to deny it.

Mr. SOURWINE. Do you remember who gave you that information?

Mr. MORELAND. Mr. Mace informed me that—I might have misunderstood—

Mr. SOURWINE. I understand. You can only testify to the best of your understanding.

Mr. MORELAND. I did inform Mr. Appell that the waiver had been denied.

Mr. SOURWINE. You do not know whether it had been done or was going to be done?

Mr. MORELAND. The decision had been made—

Mr. SOURWINE. But he said the decision that had been made was to deny?

Mr. MORELAND. I understood it that way.

Mr. SOURWINE. And that was how long before the waiver was granted?

Mr. MORELAND. I think I informed Mr. Appell on a Friday—to the best of my recollection—and I think it was on Monday or Tuesday that the decision was made. What the dates were, I don't remember.

Mr. SOURWINE. Well, maybe we can figure it out.

Mr. MORELAND. What was the Monday before the 6th of November?

Mr. SOURWINE. The 6th would have been a Tuesday—a Wednesday. The 5th would have been Tuesday.

Mr. MORELAND. Then it is probable that the telegram went out on that date and I informed Mr. Appell on the Friday before, to the best of my recollection.

Mr. SOURWINE. The telegram went out on the 4th?

Mr. MORELAND. To the best of my recollection. I informed Mr. Appell on a Friday, thinking that the telegram would go out over the weekend.

Mr. SOURWINE. The following Monday it went out.

Mr. MORELAND. Did you have some—

Mr. SOURWINE. And if Professor Yasui reached the United States on the 7th of November, the chronology would be that it was on the preceding Monday that the waiver went out and the preceding Friday that you made your expression to Mr. Appell regarding what you then understood.

Mr. Moreland, are you generally familiar with the law firms which handle substantial numbers of visa cases?

Mr. MORELAND. Well, I am generally familiar with the Immigration and Nationality lawyers. I rarely get into any individual case with them.

Mr. SOURWINE. What would you say with regard to Mr. Schwartz' law firm or former law firm; that had handled a good many of these or only a few or none?

Mr. MORELAND. I am not aware that his law firm handled any; I don't know of any individual case it had handled.

Mr. SOURWINE. You have never had occasion in which you discussed such a case with any member of that firm?

Mr. MORELAND. No.

Mr. SOURWINE. Or anyone on behalf of that firm?

Mr. MORELAND. No.

Mr. SOURWINE. Mr. Chairman, I have no more questions of this witness. I would like to say, if the Chair will permit me, that Mr. Moreland has had questions posed to him which were difficult from the standpoint of a struggle between conscience and expediency and I think conscience has ruled and I have every belief that he has answered the questions truthfully and to the best of his knowledge and ability.

Mr. MORELAND. Well, thank you very much.

Senator DODD. Thank you for coming.

(Discussion off the record.)

TESTIMONY OF ABBA P. SCHWARTZ

WEDNESDAY, JULY 22, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Referring, Mr. Schwartz, to the waiver which was given to Professor Yasui, I just want to get two or three dates straight. If he arrived in San Francisco November 7, would it be true, therefore, that he necessarily had to leave Japan at least as early as November 6, our time?

Mr. SCHWARTZ. The dateline business confuses me.

Mr. SOURWINE. Have you ever traveled across it?

Mr. SCHWARTZ. I have.

Mr. SOURWINE. How far—

Mr. SCHWARTZ. You say if he arrived when?

Mr. SOURWINE. November 7, San Francisco.

Mr. SCHWARTZ. We save a day coming back, so he would have left the previous day—

Mr. SOURWINE. No, without any regard to the change, to the basis of our time, he had to leave Tokyo 20 hours or so before he arrived?

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. I believe you stated that the earliest the Department had any indication that Professor Yasui wanted to come to the United States was November 4?

Mr. SCHWARTZ. I don't recall that date at all, Mr. Sourwine. The House committee has been furnished with the date. I testified—I would be glad to recheck, but could not say from memory.

Mr. SOURWINE. You were asked by the House Committee on Un-American Activities to check that?

Mr. SCHWARTZ. Yes, I have.

Mr. SOURWINE. And you did testify after refreshing your recollection, to see what the earliest date was?

Mr. SCHWARTZ. Correct, and I would be glad to give the dates but I could not from memory venture a guess whether it was November 1 or when.

Mr. SOURWINE. If it was November 4, this would necessarily mean that from the time of receipt to the entire process of consideration and whatever security checks were made, to the granting of the visa was under 48 hours—or rather, the waiver?

Mr. SCHWARTZ. I couldn't comment without having the file. I have not looked at the file since testifying before this committee some month or so ago—and too many dates are involved.

Mr. SOURWINE. May I ask there be admitted into the record appropriate excerpts of what Mr. Schwartz testified before the House committee, if we can get them?

Senator DODD. Yes.

(EDITOR'S NOTE.—The testimony of Mr. Schwartz before the House Committee on Un-American Activities, referred to herein, was in executive session and has not been released.)

Mr. SOURWINE. Sir, the National Guardian carried an article November 19, 1963, referring to what it called an outpouring of support

for the Guardian in its successful fight to persuade the State Department to grant a visa to Professor Yasui, and from every corner having received copies with one dominant theme, and so forth—do you recall any substantial number of such letters or telegrams?

Mr. SCHWARTZ. I have a compilation and will be glad to furnish the compilation to you. That was prepared in connection with my appearance before the House committee. There were quite a few.

Mr. SOURWINE. Can you supply that showing the dates they were sent and the dates received?

Mr. SCHWARTZ. Yes, we have the compilation.*

Mr. SOURWINE. Is it your memory they came in between the time of the application and the time of the action in that case?

Mr. SCHWARTZ. I would have to check the dates to see when the application was. I just don't recall but would be glad to give you the compilation.

Mr. SOURWINE. Did you ever authorize anyone in your office to state that the determination had been made to deny the waiver?

Mr. SCHWARTZ. Did I ever authorize—

Mr. SOURWINE. To state that the decision, or authorize anyone in your office to state the decision had been to deny?

Mr. SCHWARTZ. No, sir.

Senator DODD. I will have to leave now.

(Discussion off the record, following which at 11:50 a.m., the committee adjourned, to reconvene tomorrow, Thursday, July 23, 1964.)

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TESTIMONY OF ABBA P. SCHWARTZ

THURSDAY, JULY 23, 1964

Senator Thomas J. Dodd presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. Schwartz, I show you a clipping from the publication, Tocsin. Have you seen that?

Mr. SCHWARTZ. No, sir.

Mr. SOURWINE. Would you take the time to read it now, please?

Mr. SCHWARTZ. Could I ask what Tocsin is?

Mr. SOURWINE. Tocsin is a publication of the, I suppose you could call it, the pamphlet variety. As you see, it is printed on a pretty good grade of paper. It is that size lengthwise which is about 12 inches, perhaps 8 by 11 is the format, about the size folded of a sheet of letter size paper. It is published periodically, and it devotes itself almost exclusively to matters of news or opinion in the anti-Communist field.

I am not offering this as evidence of any fact, only with respect to certain statements which have been made. I want you to read it, and then I will ask you about the facts which are set forth there, or which are reported there as facts.

May I ask, Mr. Chairman, when Mr. Schwartz has finished reading this, that it be ordered into the record?

*See communication list concerning the Yasui case on p. 1270.

Senator DODD. Yes; I have not seen it.

Mr. SOURWINE. Thank you. As the article he has read.

Senator DODD. Yes.

(The article referred to follows:)

[From the Tocsin, Dec. 4, 1963, p. 4]

RED PRESSURE TO WIN VISA

The story of how a Communist-backed group put pressure on the State Department to win a visa for a Japanese pro-Communist visitor is dramatically told in the November 14 issue of the Communist National Guardian.

The New York weekly, which circulates from coast to coast, boasts of how its mass pressure campaign ended in permission from the United States for the current visit of Kaoru Yasui, director of the so-called Japan Council Against A and H Bombs.

The State Department in early November had ruled that Yasui was not eligible for entry under terms of the Walter-McCarran Act since he was affiliated with such proscribed organizations as the Japanese-Soviet Friendship Society.

In celebration of its 15th anniversary, the National Guardian sought to bring Yasui to the United States on a national "peace" tour sponsored by a string of veteran Communists.

WORLDWIDE PRESSURE

To impress the State Department with the force of "public opinion" supporting Yasui's visit, the Guardian contacted its adherents both here and abroad. The result was a flood of made-to-order messages expressing support for the pro-Communist visitor.

"It is known," the Communist paper also acknowledges, "that there was intervention at the State Department and the White House by Members of Congress and State officials." The Congressmen and officials are not named.

One individual who is identified, however, as having agitated for the visa is Algernon Black, the oldtime Communist-front member who heads the Ethical Cultural Society. Black attacked the visa delay over New York Times station WQXR November 10.

The Communist paper also contacted Linus Pauling, veteran purveyor of fall-out phobia, and Mrs. Cyrus Eaton, wife of Khrushchev's millionaire industrialist friend. Both sent personal messages of protest over the visa delay to Secretary of State Dean Rusk.

COMMUNIST CALLS

Identified Communist Russell M. Nixon, general manager of the Guardian, and Mrs. Dagmar Wilson, a founder of the Women (Strike) for Peace Organization, called on the Visa Division in Washington to present a memorandum that the visit of Yasui was "in the national interest." The memorandum also made a point of resorting to the old Communist cliché that the U.S. image would suffer if Yasui were denied entry.

The successful campaign proved once again the zip-code rapidity with which pro-Communist forces are able to marshal support for their positions and bore an ominous presage for the future.

Mr. SOURWINE. I might say for the record we had another witness called for this morning, Karl Ackerman. He was to have been here at 9 o'clock but Mr. Ackerman is out of the city until August 1, according to the Department of State. We will have to reschedule him.

I also should state for the record—I do not believe I remembered to do it yesterday—that three witnesses called for yesterday, Mr. Jerome Schneider, Mr. Richard O'Brien, and Mr. John Ordway, were unable to respond because the Department said each of these men was on foreign station: Mr. Schneider in London, Mr. O'Brien in Capetown, and Mr. Ordway in Palermo, Italy.

Have you read it, Mr. Schwartz?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. I have a few questions about it. First, in reading it, and I note that you only had an opportunity to read it through once, did anything strike you in it that you would wish to contradict or expand or limit? In other words, do you take issue with anything that you saw in it, at the moment?

Mr. SCHWARTZ. I would have to have that in front of me again, Mr. Sourwine. It is full of statements and facts, or statements in there. If you would like me to go through it point by point—

Mr. SOURWINE. No. I do not ask you to traverse it. I am only seeking now—I am not committing you to anything. I am just asking you if your single reading of it produced in your mind the distinct impression of any particular thing in there that is wrong.

Mr. SCHWARTZ. There are statements in here that I am unaware of, names that I have never heard of, and so forth.

Mr. SOURWINE. In other words, there are things in there that you simply do not know whether they are true or not?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. Yes. Is there anything in there that struck you, not committing you by the question, that struck you on the first reading as being wrong?

Mr. SCHWARTZ. Well, there are several things. They speak of people, identify them as Communists. I have no knowledge of—

Senator DODD. That is not what he asked you, Mr. Schwartz. He is asking you if you see anything in there that you know right away looking at it is wrong. He is not asking you to comment on matters that you do not know about.

Mr. SOURWINE. The Chair is right. I am not asking you to affirm anything that is in it.

Mr. SCHWARTZ. Yes. There are things not true that I spot immediately.

Mr. SOURWINE. Would you point them out?

Mr. SCHWARTZ. The article says that the State Department in early November had said that Yasui was not eligible—I am sorry. I misread that—that he was not eligible for entry under the law since he was affiliated with a proscribed organization.

It is sort of a half-truth. He was ineligible but eligible for admission if there was a waiver.

Mr. SOURWINE. Well, he was ineligible under the statute, and that determination was made by the proper responsible authority of the Department; isn't that true?

Mr. SCHWARTZ. That determination—

Senator DODD. I take it a waiver does not make a man eligible. He is still ineligible. It waives his ineligibility.

Mr. SCHWARTZ. Correct.

As to the statement about pressure, there were certainly letters from this Guardian, National Guardian, but I have no recollection of other letters. It mentioned here:

There was intervention at the State Department and White House by members of Congress and State officials.

I do not have a recollection of that.

Mr. SOURWINE. How could you possibly say there was not such contact? No one man could know that.

Mr. SCHWARTZ. I say there it is not my recollection that there was intervention by Members of Congress.

Senator DODD. I remind you again we are not asking you about that. He really asked you a very simple question. On reading it, do you see anything in the article that you can say is not true? This is a very simple question really.

Mr. SCHWARTZ. The only problem is, Senator, as I try to be as responsive as I can, I cannot tell whether it is true because—

Senator DODD. Well, if you cannot tell, then you do not know. We are asking about those facts you immediately recognize as being untrue.

Mr. SCHWARTZ. Yes. Now—

Senator DODD. Of course, this does not mean that everything in there is true. It simply means what the counsel said it meant.

Mr. SOURWINE. While the witness is reading that, may I have a small chat with Mr. Hoover off the record?

Senator DODD. Yes.

(Discussion off the record.)

Mr. SOURWINE. Back on the record.

Senator DODD. Yes.

Mr. SCHWARTZ. Senator, I cannot spot anything which I can say is not true since most of these facts here I would be unable to verify.

Mr. SOURWINE. All right, let me ask you a few questions about it. Upon whom in the Department was this Communist-inspired pressure in this article directed?

Mr. SCHWARTZ. Upon whom in the Department? There were letters from various organizations, whether or not Communist sponsored I do not know, or Communist inspired, directed to, addressed to the Secretary. Some may have been addressed to me. Some may have been addressed to the Visa Office. But I think I mentioned yesterday we do have a compilation of all the inquiries.

Mr. SOURWINE. Yes. You were going to furnish us with that.

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Who did Russell Nixon and Mrs. Wilson see?

Mr. SCHWARTZ. I do not know whom they saw. They never saw me.

Mr. SOURWINE. Did you see their memorandum?

Mr. SCHWARTZ. I do not recall seeing their memorandum.

Mr. SOURWINE. Did you see the telegrams from Linus Pauling and Mrs. Cyrus Eaton?

Mr. SCHWARTZ. I saw a good bit. There is quite a mass of communication. I do remember something from Mrs. Eaton but Pauling I do not recall. I may well have seen it in the file.

Mr. SOURWINE. Did you have any communication about this matter with or from Algernon Black?

Mr. SCHWARTZ. That name I do not know; no, sir.

Mr. SOURWINE. Do you recall the names of any persons with whom or from whom you had communication about this matter?

Mr. SCHWARTZ. Cyrus Eaton's name I recall. There is a communication, as I recall, from—it might be the dean or the president of Yale, someone at Yale. I do recall the name Nixon. There could be communications from Nixon. Russell.

Senator DODD. Which Nixon?

Mr. SCHWARTZ. Russell M. Nixon. Those are the names that come to mind immediately.

Mr. SOURWINE. I do not recall—

Mr. SCHWARTZ. There may be some telegrams signed—I think the Eaton telegram—I could be wrong—had quite a few signatures on it. I am not sure of that.

Mr. SOURWINE. Those are all the names you know?

Mr. SCHWARTZ. That is what I recall.

Mr. SOURWINE. Mr. Schwartz, since leaving the hearing room yesterday—

Mr. SCHWARTZ. Excuse me. One other thing. There was a lady, women's group lady, who sent a communication, and that may be the name that is in here. I do not recall the name, but this—

Mr. SOURWINE. You mean it might be Mrs. Dagmar Wilson?

Mr. SCHWARTZ. This states Women's Group for Peace. I think that was the organization. But that was a communication from someone, I believe, in that organization, a woman.

Mr. SOURWINE. Since leaving the hearing room yesterday have you been informed respecting any portions of Mr. Moreland's testimony?

Mr. SCHWARTZ. Mr. Crockett and I were informed generally of Mr. Moreland's testimony.

Mr. SOURWINE. How were you so informed?

Mr. SCHWARTZ. After the hearing Mr. Hoover briefed Mr. Crockett, and I was present at the briefing.

Mr. SOURWINE. Did you add any comments of your own?

Mr. SCHWARTZ. Did I—I am sorry.

Mr. SOURWINE. Did you offer any comments of your own at that briefing?

Mr. SCHWARTZ. On Mr. Moreland's testimony?

Mr. SOURWINE. Yes.

Mr. SCHWARTZ. No. I was not—had nothing to comment on Mr. Moreland's testimony.

Mr. SOURWINE. In other words, you did not on that occasion offer any comments with respect to accuracy or truth of what Mr. Hoover told the Secretary Mr. Moreland had said.

Mr. SCHWARTZ. I did not; no.

Mr. SOURWINE. Mr. Hoover was briefing the Secretary from notes he had made here and memory?

Mr. SCHWARTZ. Mr. Crockett, not the Secretary.

Mr. SOURWINE. Mr. Crockett. From notes he had made here and memory?

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. Do you know that Mr. Moreland gave testimony with regard to the timing of the Yasui application and action which was at variance with the testimony given in this same area?

Mr. SCHWARTZ. No. I did not pay that particular attention. Mr. Hoover mentioned that dates came up on the Yasui testimony. I recall my testimony. I said I could not without looking at those files again yesterday determine what those dates were.

Mr. SOURWINE. Have you looked at them since then?

Mr. SCHWARTZ. We looked briefly at the file, very quickly, yesterday afternoon.

Mr. SOURWINE. What did you find about the date on which—

Mr. SCHWARTZ. I made no note of it. We have an incoming from Tokyo which is dated November 4, and the outgoing went, the approval went, it is either November 14 or some day around that date.

It was well—at least a week later. As I recall, it was——

Mr. SOURWINE. It was at least a week later?

Mr. SCHWARTZ. My memory——

Mr. SOURWINE. At least a week after November 4 of 1963?

Mr. SCHWARTZ. Yes. I think when they gave me those dates that my impression was it was at least a week.

Mr. SOURWINE. If Mr. Yasui, then, came to the United States and arrived in San Francisco on November 7——

Mr. SCHWARTZ. Which he did not, Mr. Sourwine.

Mr. SOURWINE. What date did he arrive?

Mr. SCHWARTZ. It was after November 12. Do you mind if I ask Mr. Hoover? He may remember whether it was 14th, 15th, or 17th. It was well after November 12.

Mr. SOURWINE. No; I don't mind.

Mr. SCHWARTZ. Do you recall?

Mr. HOOVER. I do not remember seeing specifically the date, but I remember the date of the 14th which was the outgoing.

Mr. SCHWARTZ. The 14th was the outgoing. So he would have to have arrived after the 14th.

Mr. SOURWINE. If he did arrive——

Mr. SCHWARTZ. The incoming had the plans of, the arrival plans.

Mr. SOURWINE. One would certainly think he could not come here until after he had been given a waiver.

Mr. SCHWARTZ. I am quite sure he did not.

Mr. SOURWINE. So if any report had been made, printed or otherwise, that he arrived here on the 7th, that would necessarily be erroneous in your opinion?

Mr. SCHWARTZ. Yes.

Mr. SOURWINE. So that the total time involved, then, was from the 4th to the 14th or 10 days?

Mr. SCHWARTZ. If I am correct on the 14th. But it was—it was left in my mind it was well after a week.

Mr. SOURWINE. If Mr. Hoover is correct on the 14th. You did not offer that as your own conclusion.

Mr. SCHWARTZ. Correct.

Mr. SOURWINE. For the time being we are willing to accept what he says, too. All right, the 14th of November.

Senator DODD. It would seem to me in the interests of a careful record we ought to find out exactly. Your records certainly ought to show.

Mr. SCHWARTZ. Exactly.

Senator DODD. I think that ought to be supplied to us right away.

Mr. SCHWARTZ. Yes, sir.

Mr. SOURWINE. The 14th of November 1963 was a Thursday, so if it was issued on the 14th, it was issued on a Thursday.

Mr. SCHWARTZ. I am speaking, Mr. Sourwine, of the outgoing message from the Department which would be dated the 14th.

Mr. SOURWINE. Yes. But until that had been sent, you told us Mr. Yasui could not have entered the country.

Mr. SCHWARTZ. Correct.

Mr. SOURWINE. The decision might have been made at an earlier date, but it was not accomplished in an outgoing message which would let him come in until the 14th, which was a Thursday.

Mr. SCHWARTZ. Correct.

Senator DODD. Mr. Sourwine, so I can get this clearly in my mind, do I understand correctly that this man applied for permission to enter the country on the 4th of November?

Mr. SOURWINE. There is some doubt about this, Mr. Chairman. What is known for sure, I think, and I will try to confine the statement to that, and if you know otherwise, please correct me, Mr. Schwartz, is that Professor Yasui did at some time apply for a visa in Japan, that the appropriate consular officer, appropriate officer at that level, made a determination that he was ineligible under the statute, that the case was sent in to Washington over the signature of the chief of station with an indication that he had been found ineligible under the statute and with a statement respecting waiver which could not have been construed as a recommendation for waiver, which was construed by one person at least, Mr. Moreland, as a recommendation against waiver, and which conceivably might have been construed as no recommendation at all, or a disavowal of a desire to make a recommendation; that this transmittal reached the Department on the 4th, according to Mr. Schwartz' testimony, and that according to Mr. Schwartz' testimony this morning, accepting Mr. Hoover's memory, the matter was terminated by a message which went out, how, by cable?

Mr. SCHWARTZ. All cable.

Mr. SOURWINE. On the 14th, granting a waiver, or saying that a waiver had been granted.

Senator DODD. Now, is it customary and normal for the chief of mission or station or whatever you call it to send a message of this kind to the Department when he has turned down an applicant for a visa?

Mr. SOURWINE. Mr. Schwartz could answer that. I will state my understanding. Please correct me if I am wrong, Mr. Schwartz. It would not be incumbent upon him to do so unless he considered that the case involved an application for a waiver, in which case he would have to send it in to Washington for an advisory.

Mr. SCHWARTZ. That is substantially correct. The person could say, "I realize I am ineligible, I would like a waiver." Or the consular officer on some occasions might not even tell him that he is not eligible and might just refer to Washington and say he applies. The normal case is where he is aware and said, "Could I get a waiver?"

Mr. SOURWINE. To finish out our record on this I believe we should have the following information. I would like to ask that the Chair make the request. The points to be covered would be, first, whether Professor Yasui was advised regarding the finding of ineligibility. Second, whether Professor Yasui requested a waiver and in what form he made that request earlier in writing and to whom. Third, whether there was notice to the Department that a request for waiver had been made. Then, in addition to those points, I have a few others I would like to ask Mr. Schwartz about briefly.

Senator DODD. Let me finish this. Wouldn't it be helpful if we knew the answers to these questions? When did the Department first become aware of Yasui's application for a visa? And was it on November 4 for the first time or had you heard of it prior to that time,

and from whom had you heard it? And next, was there a file on Yasui in the State Department files here in Washington, and if not, on what basis did you decide to grant the waiver? Did you get more information from Tokyo or get full information from the file there before the waiver was granted?

Mr. SOURWINE. Yes. Very good, and the Senator's suggestions remind me of one further question which we perhaps should have answered and that is the basis on which the waiver was granted which I would presume would be a finding that it was in the national interest to bring him here, but I do not want to bind you as to whatever the basis of the grant of the waiver was.

Now, I want to clear up these points. According to my best memory—the record of course will speak for itself—we do not have yesterday's record yet—but according to my memory, Mr. Moreland's testimony was that there was at least a week between the time—he thought more than a week between the time when this first came to the attention of the Department in Washington and the time when the waiver was granted. This does not conflict with your testimony in any way, Mr. Schwartz.

Second, that the waiver was—the waiver letter or cable, rather, went out on a Monday. This is at least in minor conflict since if you place it on the 14th, it would have been on a Thursday.

Further, Mr. Moreland told us that he had been told by Mr. Mace on the preceding Friday, that is, the Friday preceding the Monday on which he says the cable was sent out granting the waiver, that a decision had been made to deny a waiver, and that he had conveyed this information to a congressional investigator.

That leads me to ask you this question, Mr. Schwartz. Did you ever tell Mr. Mace or authorize him in any way to say to others that there had been a determination to deny the waiver?

Mr. SCHWARTZ. No. I am not aware of that at all.

Mr. SOURWINE. Were you aware that he had conveyed any information on this point to a congressional investigator?

Mr. SCHWARTZ. I learned that later in connection with another hearing, and the file shows that on a certain date, whatever that date is, Mr. Moreland informed Mr. Appell of the House Un-American Activities Committee—I do not know the date—I will have to look at it again. I think he indicated that—the memorandum indicates, memorandum of the conversation I think indicates that he thought a waiver would be denied, but I would have to look at the file. There is a memorandum, perhaps in his own hand.

Mr. SOURWINE. In the file? A memorandum for the record that he wrote?

Mr. SCHWARTZ. I saw this as a result of another hearing. You would have to look at the words, whether he said, "It is denied," or whether he said, "I think it will be denied." I have the impression it is the latter.

Mr. SOURWINE. Was this conference or communication to Mr. Appell with your assent or at least not in violation of any instructions?

Mr. SCHWARTZ. I had no knowledge of the conversation. It came to my attention a long time later, in connection with looking at the file.

Mr. SOURWINE. You did not know at the time?

Mr. SCHWARTZ. No. I did not. No.

Mr. SOURWINE. That a congressional committee was even inquiring about it?

Mr. SCHWARTZ. No. I had no knowledge of that.

Senator DODD. It seems to me that this was inordinately quick action. Would you agree to that, Mr. Schwartz?

Mr. SCHWARTZ. That the 10 or 12 days? No, sir. I would say that in the section 212 cases, those that come in by cable in advance of the written communication which comes by pouch and takes a long time, that 10 to 12 days is not an unusual period, neither short nor long. In many of these cases, with personalities of this kind, there are files available. I do not want—

Senator DODD. In the Department?

Mr. SCHWARTZ. Oh, yes. And in the Bureau, in Mr. Hughes Office—the Intelligence Office—and so forth. So that when they come by cable this way, and there is a time element of speaking engagements and things of that sort, 10 or 12 days is not short.

Mr. SOURWINE. Mr. Chairman, I might comment that at yesterday's session we were questioning Mr. Schwartz about this in the committee at that time on the basis of information that Mr. Yasui had entered the country on the 7th. I was putting questions to Mr. Schwartz about whether it was exceeding the rapid action to act between the 4th and the 7th, and I got the impression that Mr. Schwartz did not think even that was particularly unusual. Am I correct about that?

Mr. SCHWARTZ. I do not recall giving that impression.

Mr. SOURWINE. I do not recall your exact words. I can only state my impression.

Mr. SCHWARTZ. We have had cases where there is a matter of urgency, and that would be I believe—

Mr. SOURWINE. I believe—

Mr. SCHWARTZ (continuing). I am pretty sure over a week.

Mr. SOURWINE. You stated there were other cases in which action had been had within 48 hours.

Mr. SCHWARTZ. There probably are, but in any case, 10 or 12 days is not—

Senator DODD. I just want to be sure I get all this.

Mr. SCHWARTZ. Yes, sir.

Senator DODD. Here was a situation, as I understand it, of a man concerning whom you suggest there was a file in the State Department, in the Intelligence. Well, this would suggest to me there was some question about him.

Mr. SCHWARTZ. Oh, yes.

Senator DODD. The next fact that I get from the record is that our pious responsible officer in Japan turned him down for a visa, right?

Mr. SCHWARTZ. Yes, sir.

Senator DODD. The next impression I had is that the State Department was notified by cable that he had been turned down and certainly there was no recommendation that a waiver be granted in the same cable. And the next impression I get is that in what I describe as an inordinately short period of time the waiver was granted. I think that is what concerns us here.

Mr. SOURWINE. I might add this fact. I believe this is a fair statement from yesterday's record—if you know anything to the contrary,

please tell us, Mr. Schwartz—that Mr. Moreland told the committee during his testimony that the area desk had concurred in the communication which had come from Japan.

Senator DODD. Yes.

Mr. SOURWINE. Which he said he understood to mean that they went along generally with the same position Japan took; that is, they at least did not recommend it, might have been intending to concur in a recommendation for denial and might have been intending to make no recommendation.

Senator DODD. The next thing I would like to be clear about is who considered the subject when the cable arrived and who made the decision to grant the waiver? And if there is more than one, I would like to know that.

Mr. David Martin has passed me a note which reminds me of what I had already been thinking of as I asked these questions. You know who Michel Struelens is, certainly.

Mr. SCHWARTZ. Yes.

Senator DODD. As late as last fall he applied for a visa. It took several months for action, and it was granted only after I personally intervened with Secretary Rusk. And then only for a 3-month period.

Now, I think you will agree there never was any question about Struelens being subversive or being associated with any subversive organization, and at the time he made his application last fall, he was a member of the faculty at the University of Sherbrooke in Canada. This was at the request of former Prime Minister St. Laurent and the Foreign Minister, Paul Martin, who are certainly well known to our Government, yet it took months and months to get even an answer on Struelens but this creature in Japan got action in something like 10 days.

How do you account for this?

Mr. SCHWARTZ. Senator Dodd, in relation to this visa last fall, I can only say that the visa which I recall was a multiple entry visa—

Senator DODD. What does that mean?

Mr. SCHWARTZ. That means trips back and forth, not just for one entry but multiple entries.

Senator DODD. I am not sure.

Mr. SCHWARTZ. I will be glad to check this, Senator.

Senator DODD. Anyway, it is not really pertinent because he applied over and over again, and every time he applied he got the same treatment.

Mr. SCHWARTZ. May I just—

Senator DODD. Go right ahead.

Mr. SCHWARTZ. The only Struelens matter that ever reached me until recently was this one last fall that you refer to. Until that reached me, after the political decision was made, it was not in my hands at all.

Senator DODD. Who made that decision?

Mr. SCHWARTZ. That decision was made above me. My direct communication came from the Bureau of African Affairs.

Senator DODD. Well, can you give us a name?

Mr. SCHWARTZ. That is the first—

Senator DODD. I do not like these nameless authorities.

Mr. SCHWARTZ. I am sorry. I will look at the file. I will be glad to.

Senator DODD. Don't you really know this morning?

Mr. SCHWARTZ. I do not. I assume it came from Governor Williams, but it could have come from his staff.

Senator DODD. Find out, and let us know.

(The following information was supplied in a letter to the subcommittee, from Robert E. Lee, Acting Assistant Secretary for Congressional Relations, dated February 13, 1964:)

Upon checking the files, Mr. Schwartz found that the visa referred to as having been issued in the fall to Mr. Struelens and as having come to Mr. Schwartz' attention was a 3-month visitor's visa valid for multiple entries into the United States which permitted Mr. Struelens to enter and depart from the United States as often as he desired in the 3-month period; that the Secretary of State approved the issuance of that visa on December 21, 1963; that the Visa Office of the Department of State informed the American consul in Montreal on January 3, 1964, by telephone of the Secretary's approval; and that the consul in Montreal issued the 3-month multiple-entry visitor's visa to Mr. Struelens on January 9, 1964.

Mr. SCHWARTZ. I will. That decision was not—that was a decision that was out of my particular hands. It was certainly in Governor Williams' hands and perhaps above him, but I would like to explain.

Senator DODD. Who would be above him?

Mr. SCHWARTZ. I assume the Secretary. I do well recall a communication that came in to me with the recommendation to grant a certain type of visa, and the approval went out, and I do recall, Senator, a letter which was attached to the file from you. I will be glad to look and see the dates.

Senator DODD. Of course, you also know that this is just one example. There have been many involving Struelens. Every time he applied for a visa he had run the gauntlet over there, and it would take months and months to even get an answer, and as a rule somebody in the legislative branch of the Government or somebody outside the executive department had to say, "What is going on? What are you doing to this man?" You say 10 or 14 days is not inordinately long. Would you say in Struelens' case it would be inordinately long?

Mr. SCHWARTZ. Yes, I would, and I would like to say this if I may. The only Struelens matter in the period that I have been in the Department that came to me was the one I mentioned. It has never been to me prior to that. I had never been aware of these applications and how they came in, and so forth; I do not know.

Senator DODD. Didn't you ever hear of the Struelens' applications until that last one?

Mr. SCHWARTZ. I did not hear of them. I have heard the name of Struelens. I had read things in the paper. It had not come to me. I assume it was in the political area. It may have been in the Secretary's Office. I respectfully say it was not in my office. I had no formal applications. When it is formal, it normally comes to me.

Senator DODD. Apparently then the Struelens—

Mr. SCHWARTZ. I do not wish to disclaim any responsibility.

Senator DODD. No. I understand. Let me say that apparently the Struelens matter was handled on a very high level. I must assume this from what you say.

Mr. SCHWARTZ. Yes, sir. It is my impression.

Senator DODD. And you suggest this was the Secretary's level.

Mr. SCHWARTZ. That is my impression. The file would show.

Senator DODD. It certainly would have been at the level of the Under Secretary or Assistant Secretary Williams.

Mr. SCHWARTZ. Assistant Secretary Williams.

Senator DODD. Where else could it have been?

Mr. SCHWARTZ. It could have been the Secretary, Under Secretary, Mr. Ball, or Mr. Williams, or all three.

Senator DODD. Anybody else? You see, what the——

Mr. SCHWARTZ. In the chain of command, perhaps Mr. Crockett, but I think I would have heard of it more directly if it had been in Mr. Crockett's office.

Senator DODD. Anybody else? Can you think of anyone in your Department, the way the Department operates, who might have had a hand in these strange delays?

Mr. SCHWARTZ. I would certainly say, Senator, from this viewpoint, I do not think it was in the Visa Office, and it was not in my office. I think it may have been in the African Bureau—Governor Williams' office—or in the office of Mr. Ball, Mr. Crockett, or the Secretary. That would be my guess.

Senator DODD. You see what I am getting at; I think we are all interested in this. I want to know now just how this thing operates over there. If you do not like a person or his views disagree with those of the people in charge of the State Department, is this the way they treat applicants, just delay them as long as they can, plague them and harass them, and no question about subversion or Communist influence? The Struelens case is important to me because I think it is indicative of what goes on over there, and yet when we get a Communist sympathizer, boy, do we get action. Deluxe.

Go ahead, Mr. Sourwine.

Mr. SCHWARTZ. Senator, if I may just say one thing. I really am not competent to comment further on this case without reviewing the file.

Senator DODD. You say what you want, but I say frankly on the record, Struelens is known as a strong anti-Communist. You harassed him, badgered him, delayed him, plagued him months and months and years, but when this questionable character from Japan applies, everything lights up, lights flash. He is, in 10 days, given a waiver. You can explain it any way you want.

I do not have much more time. You go ahead, Mr. Sourwine. And I think if we searched our files we would find plenty of additional cases like this. I am satisfied this is so. We will probably remind you of some others before these hearings are over.

Mr. SOURWINE. Just two more questions, sir, with regard to the Yasui matter. Was I correct a moment ago when I said that the probable basis for grant of waiver would have been a finding that it was in the national interest to let him come in?

Mr. SCHWARTZ. There are two ways of putting that, Mr. Sourwine, under the statute, that it is—you could say perhaps it was in the national interest. That is one interpretation. The statute is also interpreted on the basis that it is not against the national interest.

And those are two different things. The statute as you are aware—

Mr. SOURWINE. All right. I am just asking you to explain it for the record, not to argue about it. The finding has to be made by somebody, doesn't it?

Mr. SCHWARTZ. That is correct.

Mr. SOURWINE. We have established here that there was no such finding by the field. As a matter of fact, there was a disavowal of such a finding, wasn't there?

Mr. SCHWARTZ. By the field, yes.

Mr. SOURWINE. The finding was not made by the area desk, and I think along with the material you are submitting, it would be proper to ask that you also include a statement as to who it was that made this finding.

Senator DODD. Yes, I think that is of the greatest importance.

Mr. SCHWARTZ. Yes, sir. May I make one suggestion, Senator, that may help you in this case. We furnished—the Secretary furnished to the House Un-American Activities Committee a memorandum, a summary of the Yasui case which, I throw out the suggestion, I think the Secretary would be pleased to give you.

Senator DODD. We will be glad to have it.

Mr. SOURWINE. It will include at least the points that you have been asked about here?

Mr. SCHWARTZ. If not all, we will certainly do that subsequently, but it certainly will give you some information.*

Senator DODD. I have only got 4 minutes.

Mr. SOURWINE. Do you want to try now to name any dates for next week or leave it until tomorrow?

Senator DODD. No. I will go right ahead.

Mr. SOURWINE. Beginning Monday.

Senator DODD. Monday.

Mr. SCHWARTZ. Monday I am due before the House Un-American Activities Committee.

Mr. SOURWINE. I should say that Mr. Schwartz did give me notice a couple of days ago that he would not be available Monday, but we have other witnesses we can take Monday.

(Whereupon, at 10:57 a.m., the committee recessed to reconvene subject to the call of the Chair.)

TESTIMONY OF CHARLES H. MACE, DEPUTY ADMINISTRATOR,
BUREAU OF SECURITY AND CONSULAR AFFAIRS, DEPARTMENT
OF STATE

WEDNESDAY, AUGUST 5, 1964

The subcommittee met, pursuant to recess and subsequent postponement, at 9:15 a.m., in room 2300, New Senate Office Building, Senator Roman L. Hruska presiding.

Also present: J. G. Sourwine, chief counsel; Alan McArthur, associate counsel.

For the Department: Richard A. Frank, observer.

Senator HRUSKA. The committee will be in order.

Has the witness been sworn, Mr. Sourwine?

*A summary of the Yasui case was furnished to the subcommittee under a classification which enjoins its inclusion in this printed record.

Mr. SOURWINE. I do not think so, sir.

Senator HRUSKA. Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MACE. I do.

Mr. SOURWINE. Would you give the reporter your full name and official position, if any, please?

Mr. MACE. My name is Charles H. Mace and I am Deputy Administrator of the Bureau of Security and Consular Affairs.

Mr. SOURWINE. You are one of two deputies to Mr. Schwartz?

Mr. MACE. That is right.

Mr. SOURWINE. Mr. Mace, do your duties involve supervision in any respect of the Passport Office?

Mr. MACE. Only in a minor degree, in the absence of the other deputy, or in a particular case where I am asked to do a special assignment.

Mr. SOURWINE. Do you supervise the Visa Office?

Mr. MACE. Yes, sir; I do.

Mr. SOURWINE. Do you handle correspondence for the Administrator's Office?

Mr. MACE. Yes; in many instances.

Mr. SOURWINE. Do you sign some of this?

Mr. MACE. I sign some of this; yes, sir.

Mr. SOURWINE. Do you approve correspondence for the signature of the Administrator?

Mr. MACE. Yes.

Mr. SOURWINE. You are responsible solely to Mr. Schwartz?

Mr. MACE. That is correct.

Mr. SOURWINE. And have you functioned as Acting Administrator in his absence?

Mr. MACE. In Mr. Schwartz's absence I have.

Mr. SOURWINE. You are, then, the senior deputy?

Mr. MACE. That is correct.

Mr. SOURWINE. Who is the junior deputy?

Mr. MACE. We have no one at the moment. It had been up until—I think he was officially transferred last week—Mr. Edward Lyerly.

Mr. SOURWINE. Has he left?

Mr. MACE. Yes; he has.

Mr. SOURWINE. Where did he go?

Mr. MACE. He went to the Office of the Legal Adviser.

Mr. SOURWINE. That is where he came from?

Mr. MACE. Yes.

Mr. SOURWINE. Are you familiar with the Yasui case?

Mr. MACE. Yes; I know of the Yasui case.

Mr. SOURWINE. Was that settled at a time when you were Acting Administrator?

Mr. MACE. No, sir; it was not.

Mr. SOURWINE. Mr. Mace, were you authorized by Mr. Schwartz at any time to state to Mr. Moreland, the Director of the Visa Division, that a decision had been made to deny the visa waiver application of Prof. Kaoru Yasui?

Mr. MACE. I'm sorry.

Mr. SOURWINE. I asked you whether you had been authorized by Mr. Schwartz at any time to state to Mr. Moreland, the Director of the Visa Division, that a decision had been made to deny the visa waiver application of Professor Yasui?

Mr. MACE. No; I was not.

Mr. SOURWINE. Did you tell Mr. Moreland that a decision had been made?

Mr. MACE. No; I don't recall having told Mr. Moreland.

Mr. SOURWINE. Did you discuss the question of the pending Yasui decision with Mr. Moreland at all?

Mr. MACE. Yes; I did.

Mr. SOURWINE. Do you recall what you did tell him about it?

Mr. MACE. I recall our having discussed the matter in a preliminary way. I also recall sharing with him his, and other, recommendations concerning the Yasui matter, which, in my opinion, should have been decided upon by Mr. Schwartz, and this was the course of action that was taken.

Mr. SOURWINE. You say you shared Mr. Moreland's opinion. You mean you shared his opinion that it should be decided by Mr. Schwartz?

Mr. MACE. Yes.

Mr. SOURWINE. Did you and Mr. Moreland have a joint opinion or concurring opinions with respect to how it should be decided?

Mr. MACE. No; I would say that—I can't say that we had a joint opinion on it.

Mr. SOURWINE. Do you know what his opinion was?

Mr. MACE. I think I do, at that time; yes, sir.

Mr. SOURWINE. What was it?

Mr. MACE. It was that, on the basis of the information then available, the matter should be decided in the negative.

Mr. SOURWINE. Adverse to the granting of the waiver?

Mr. MACE. That is right.

Mr. SOURWINE. Did you have a similar opinion?

Mr. MACE. On the basis of facts available, at that stage of time; yes.

Mr. SOURWINE. Well, at that time, then, you and Mr. Moreland concurred?

Mr. MACE. Yes, substantially; although I think we both understood that there are other factors that should be taken into account.

Mr. SOURWINE. Now are you aware that Mr. Moreland has stated that you told him, on the Friday before the letter of decision or cable of decision went out in the Yasui case, that it had been determined to decide adversely, that is, to deny the waiver?

Mr. MACE. Am I aware? I'm sorry.

Mr. SOURWINE. That he had stated that, on the Friday before the cable went out with regard to the decision in the Yasui case, you told him a decision had been made to deny waiver?

Mr. MACE. Yes; I understand that.

Mr. SOURWINE. Have you talked with him about this? Did you attempt to reconcile your memory and his?

Mr. MACE. No, I have not.

Mr. SOURWINE. He has not come to you about it at all?

Mr. MACE. No.

Mr. SOURWINE. Hasn't communicated with you about it?

Mr. MACE. No.

Mr. SOURWINE. How do you account for his statement in view of your own—I beg your pardon, Mr. Frank?

Mr. FRANK. Mr. Mace has asked me a question, sir.

Mr. SOURWINE. Mr. Mace, I'm sure the Senator will tell him, has a perfect right to counsel. You are here as his counsel?

Mr. FRANK. I am here as State Department observer.

Mr. SOURWINE. Then I would respectfully ask that, if Mr. Frank is not Mr. Mace's counsel, if Mr. Mace wants to ask a question, that he do it audibly on the record. If Mr. Frank is counsel, you, of course, have a perfect right to consult with him privately, and in that event, I would hope that it would be you, Mr. Mace, who would say, "I want to consult with counsel." You can have all the time you need for it.

Mr. MACE. I understand.

Mr. SOURWINE. When counsel leans over and whispers to the witness, the implication is that he is stopping him or telling him what to say or raising an objection, or something of that sort, which I don't believe an observer should do.

Mr. MACE. I made the move. I'm sorry.

Mr. SOURWINE. I apologize if I misunderstood.

Senator HRUSKA. Well, are you counsel or are you an observer?

Mr. FRANK. I am an observer.

Senator HRUSKA. Counsel has stated the procedure in this committee correctly.

Mr. SOURWINE. I'll start again, Mr. Mace.

How do you account for the fact that Mr. Moreland says you told him this and you do not remember having done so?

Mr. MACE. I told Mr. Moreland this?

Mr. SOURWINE. Yes.

Mr. MACE. I think there may well have been a misunderstanding between us, that while our decision might have been—or our thinking might have taken one direction, that decision was not final because he was not aware, I don't think, that Mr. Schwartz had asked, I think subsequent to that conversation, or perhaps just before that conversation, that decision had been withheld on this matter. He may have been uninformed of that.

Mr. SOURWINE. Did you know that at the time you had your conversation with Mr. Moreland?

Mr. MACE. I'm not sure. We talked about it several times. I'm not sure exactly when the conversation occurred and this misunderstanding may have resulted.

Mr. SOURWINE. Well, I thought you had indicated that Mr. Schwartz had made this request to withhold the decision after you had talked with Mr. Moreland?

Mr. MACE. I just am not sure on that point.

Mr. SOURWINE. It may have been before and it may have been after?

Mr. MACE. It could have been either before or after.

Mr. SOURWINE. If it had been after, then of course, you would not have known it when you talked with Mr. Moreland?

Mr. MACE. That's right.

Mr. SOURWINE. When you talked with Mr. Moreland about the Yasui case and the forthcoming decision, was it your impression that

the case would be decided adversely; that is, against granting the waiver?

Mr. MACE. As I said, I think on the basis of the then known facts concerning the case, I think it is fair to say that at that juncture, it looked largely negative.

Mr. SOURWINE. I see. So what you conveyed to Mr. Moreland was only your own view as to what probably would happen. You did not tell him it had been determined?

Mr. MACE. That is right.

Mr. SOURWINE. And I presume that you probably assumed that he knew, as you did, that Mr. Schwartz had the authority and could do what he thought best?

Mr. MACE. That's right. I think we both understood that such decisions, as had been the case in a number of cases in the past, would be for decision by Mr. Schwartz or even conceivably higher in the Department.

Mr. SOURWINE. Of course. That was unspoken understanding on both your parts?

Mr. MACE. That's right.

Mr. SOURWINE. But both you and he, at the time, expected it would be decided adversely?

Mr. MACE. That's right.

Mr. SOURWINE. Do you know anybody in the State Department who, up to that time had recommended a favorable decision; that is, in favor of granting the waiver?

Mr. MACE. Up to that time?

Mr. SOURWINE. Yes.

Mr. MACE. No; I do not.

Mr. SOURWINE. Has Mr. Schwartz talked to you about this conversation that you had with Mr. Moreland and which Mr. Moreland has reported?

Mr. MACE. You mean at all?

Mr. SOURWINE. Yes.

Mr. MACE. Oh, yes. Yes.

Mr. SOURWINE. That is, since Mr. Moreland has reported this, you have talked with Mr. Schwartz about it?

Mr. MACE. Yes.

Mr. SOURWINE. Can you tell us the general nature of the discussion? Did he feel you had talked out of turn or said anything wrong, or was he satisfied with your explanation of the incident?

Mr. MACE. I feel that he was satisfied with my report of the incident.

Mr. SOURWINE. Now, not on the basis of what you said, but on the basis of the fact, was there any decision, tentative or otherwise, to deny the waiver prior to the time that Mr. Schwartz made the decision to recommend it?

Mr. MACE. You mean—in other words, you are asking was the decision reversed? There couldn't be two decisions, I don't think.

Mr. SOURWINE. No; there could not be two decisions, but there could have been a tentative decision which was changed in the light of certain conditions and factors that could have caused Mr. Schwartz to act contrary to prior recommendations.

Mr. MACE. I think the answer to your question is negative.

Mr. SOURWINE. There was not even a tentative decision?

Mr. MACE. No.

Mr. SOURWINE. This was a Friday when you talked with Mr. Moreland. Is that your memory, as it was his?

Mr. MACE. I would have to reconstruct the calendar. Friday, as I recall it was the 6th of November.

I'm sorry, I don't have last year's calendar.

Mr. SOURWINE. Well, you can take this year's calendar and move all the dates 2 days back in the week and you come out right. That is, if you have a date which is a Friday in 1964, it was a Wednesday in 1963.

Mr. MACE. On that basis, it would be Friday, that is correct.

Mr. SOURWINE. November 8 was a Friday in 1963?

Mr. MACE. That's right.

Mr. SOURWINE. So it was on November 8 that you had your conversation with Mr. Moreland, Mr. Mace?

Mr. MACE. Well, you mean with respect to this particular matter?

Mr. SOURWINE. That's right.

Mr. MACE. Yes.

Mr. SOURWINE. Then the letter, or cable, granting the waiver or giving notification of the grant of the waiver, went out the following Monday, the 11th?

Mr. MACE. No; I don't think—I'm sorry, I don't recall these dates clearly—but I would imagine it would have been the 12th, because as I recall, Monday, the 11th, was a holiday.

Mr. SOURWINE. It would have gone out on the 12th, a Tuesday. The waiver had definitely not been granted on Friday at the time you talked with Mr. Moreland?

Mr. MACE. No.

Mr. SOURWINE. The waiver then was granted on Saturday the 9th or Sunday the 10th, or possibly Monday, the 11th?

Mr. MACE. Or possibly Tuesday, the 12th.

Mr. SOURWINE. Yes; since we don't know at what hour the cable went out.

Mr. MACE. Yes.

Mr. SOURWINE. Now that waiver required a decision by the Department of State to recommend it, the communication of that decision to the Department of Justice, and action by the Attorney General in the matter, didn't it?

Mr. MACE. That's right.

Mr. SOURWINE. So those things took place during the 3 days that we have in mind? That is, the 9th, 10th, or 11th?

Mr. MACE. Yes.

Mr. SOURWINE. Do you know just when the Department's recommendation was communicated to the Attorney General?

Mr. MACE. No; I'm sorry, I do not.

Mr. SOURWINE. Did Mr. Schwartz, to your knowledge, go over to the Department of Justice and talk with the Attorney General about this?

Mr. MACE. I feel certain he did, but I couldn't definitely state that.

Mr. SOURWINE. Has he told you that he did?

Mr. MACE. Yes.

Mr. SOURWINE. Did he tell you what day he did this?

Mr. MACE. No. If he did, I do not recall.

Mr. SOURWINE. It was either Saturday or Sunday or Armistice Day, Monday?

Mr. MACE. Yes; or, I must say, possibly Tuesday.

Mr. SOURWINE. It would have been pretty fast action on Tuesday, to make the decision and communicate it and get it, but it could have been done?

Mr. MACE. It could have been; yes.

Mr. SOURWINE. Now did Mr. Schwartz have authority to make a decision in this regard which would bind the Department and to communicate that to the Attorney General, or did he have to get a clearance from higher authority first? In other words, did there have to be approval at a higher level than Mr. Schwartz' to recommend the grant of the waiver?

Mr. MACE. Well, as I understand his authority, he has, in his own authority, the ability to make the decision, or, if he deems it desirable and necessary, to take it to higher authority. I think it is——

Mr. SOURWINE. You didn't think the law requires a recommendation by the Secretary in order to justify waiver action by the Attorney General?

Mr. MACE. I think the law requires it, but I also think there is a delegated authority from the Secretary to——

Mr. SOURWINE. To Mr. Schwartz?

Mr. MACE. Right.

* * * * *

TESTIMONY OF ABBA P. SCHWARTZ

THURSDAY, AUGUST 13, 1964

Senator Roman L. Hruska presiding.

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

(Mr. Schwartz was previously sworn.)

* * * * *

Mr. SOURWINE. Now, sir, I offer for the record an article from the National Guardian, if I can locate it. I find I am in this position. I started to offer for the record a document I did not bring with me. May I describe it and ask permission that it go into the record at this point?

Senator HRUSKA. Yes; counsel will proceed as described, and leave is given that it go into the record at the appropriate point.

Mr. SOURWINE. This is an article from the National Guardian referring to the arrival in this country of Prof. Kaoru Yasui.

You will recall, Mr. Schwartz, we had discussion about this matter?

This article states that Professor Yasui arrived in San Francisco on November 7. I believe it has been established that, in fact, he did not arrive on that date, but that he arrived on November 17; and since there was a line of questioning based on this article and involving the assumption or hypothesis that he had arrived on the 7th, I felt it was only fair to put this in here and make a statement with regard to it.

(The article referred to, which appeared in the issue of November 21, 1963, will be found at pp. 1239 and 1250.)

TESTIMONY OF WILLIAM J. CROCKETT

TUESDAY, MAY 4, 1965

Senator Thomas J. Dodd presiding.

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

(Mr. Crockett was previously sworn.)

* * * * *

Mr. SOURWINE. Mr. Crockett, on August 18, 1964, the chairman addressed a letter to the Secretary calling attention to certain additional material called for in our hearings of July 22 and 23, 1964. Much of this was material which had been asked for by Senator Dodd with reference to the Yasui case. More than two and a half months later a letter from Mr. Robert E. Lee, Acting Assistant Secretary for Congressional Relations, supplied in the body of the letter a part of the information requested, and enclosed two attachments purporting to supply the rest of the information. One of these was a list headed "Miscellaneous Public Inquiries Concerning Kaoru Yasui," and the other was a memorandum entitled "The Kaoru Yasui Visa Case."

I have this letter here with the attachments. The letter identified the memorandum, which was classified as "Confidential," as being a copy of a memo that had been sent to the House Committee on Un-American Activities. That memo was dated April 9, 1964. The list of miscellaneous public inquiries did not bear on its face any classification. But the letter of transmittal was classified "Confidential" with the notation "Group 5, declassified followed the removal of enclosures." Since there was only one classified enclosure, the implication was that the list of "Miscellaneous Public Inquiries" was also classified "Confidential."

I should like to ask, sir, if there is anything you can do to make those two enclosures available for the committee's record without classification?

Mr. CROCKETT. Certainly there is not any intent to classify material that is unclassified in itself. Therefore, it is perfectly appropriate for the committee to have the letter and all the unclassified enclosures but it is not possible for us to declassify the one confidential document since it was in the matter of the discussion of a particular individual's case.

Mr. SOURWINE. No complaint. It is just an effort to clarify the situation so that we will know whether the Department does or does not wish to permit these to go into the record. May the memorandum be ordered held confidential, and incorporated in this record only by reference?

Senator DODD. Yes.

Mr. SOURWINE. Mr. Chairman, so that it may be clear what I have handed to the witness, may these two letters, Senator Eastland's letter of August 18, and Mr. Lee's reply of November 6 be inserted in the record at this time with the unclassified enclosures?

Senator DODD. Yes.

(The letters referred to, without the "Confidential" statement, are as follows:)

AUGUST 18, 1964.

HON. DEAN RUSK,
Secretary of State, Department of State,
Washington, D.C.

DEAR MR. SECRETARY: In accordance with our previous procedure, the subcommittee respectfully calls your attention to certain additional material called for in the hearings of July 22 and 23, 1964.

The information is described in the following excerpts from the testimony on those days:

July 22, testimony of Allen B. Moreland, page 2977:

"Mr. SOURWINE. And you can supply us with the total number of nonquota visas for each of those 4 years (1961, 1962, 1963, and 1964)?"

"Mr. MORELAND. We will be glad to."

July 22, testimony of Mr. Moreland, page 2979:

"Mr. SOURWINE. Mr. Chairman, may I have the same order with respect to this case, that the committee staff be instructed to insert the figures with respect to the (visa) estimates for those 4 years and Mr. Moreland will furnish for the record the actual figures?"

"Senator DODD. Yes, sir.

* * * * *

"Mr. SOURWINE. Perhaps [the estimates and totals] would be in the same form and therefore comparable?"

"Senator DODD. Very well."

July 22, testimony of Abba Schwartz, page 3052:

"Mr. SOURWINE. * * * do you recall any substantial number of such letters or telegrams [asking the State Department to grant a visa to Professor Yasui]?"

"Mr. SCHWARTZ. I have a compilation and will be glad to furnish [it] to you."

July 23, testimony of Abba Schwartz, pages 3106-3107:

"Mr. SOURWINE. To finish out our record on this I believe we should have the following information. I would like to ask that the Chair make the request. The points to be covered would be, first, whether Professor Yasui was advised regarding the finding of ineligibility. Second, whether Professor Yasui requested a waiver and in what form he made that request earlier in writing and to whom. Third, whether there was notice to the Department that a request for waiver had been made. Then, in addition to those points, I have a few others I would like to ask Mr. Schwartz about briefly.

"Senator DODD. Let me finish this. Wouldn't it be helpful if we knew the answers to these questions? When did the Department first become aware of Yasui's application for a visa? And was it on November 4 for the first time or had you heard of it prior to that time, and from whom had you heard it? And next, was there a file on Yasui in the State Department files here in Washington, and if not, on what basis did you decide to grant the waiver? Did you get more information from Tokyo or get full information from the file there before the waiver was granted?"

"Mr. SOURWINE. Yes. Very good, and the Senator's suggestions remind me of one further question which we perhaps should have answered and that is the basis on which the waiver was granted which I would presume would be a finding that it was in the national interest to bring him here, but I do not want to bind him as to whatever the basis of the grant of the waiver was."

July 23, testimony of Abba Schwartz, page 3118:

"Mr. SCHWARTZ. * * * we furnish—the Secretary furnished to the HUAC a memorandum, a summary of the Yasui case which, I throw out the suggestion, I think the Secretary would be pleased to give you.

"Senator DODD. We will be glad to have it."

Thanking you for your cooperation, I am,

Very truly yours,

JAMES O. EASTLAND,
Chairman, Internal Security Subcommittee.

* * * * *

DEPARTMENT OF STATE,
Washington, D.C., November 6, 1964.

Hon. JAMES O. EASTLAND,
Chairman, Subcommittee on Internal Security,
Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of August 18, 1964, to the Secretary in which you request certain information relating to the testimonies of Mr. Moreland and Mr. Schwartz.

The following is a list of the total number of nonquota visas for 1961 through 1964:

<i>Nonquota visa issuances</i>		<i>Budget document estimates of nonquota visa issuance</i>	
Fiscal year 1961-----	163, 824	Fiscal year 1961-----	No record
Fiscal year 1962-----	183, 735	Fiscal year 1962-----	175, 000
Fiscal year 1963-----	188, 090	Fiscal year 1963-----	175, 000
Fiscal year 1964-----	171, 300	Fiscal year 1964-----	196, 000

A list of the letters and telegrams, referred to in your letter, is enclosed.

Professor Yasui was not advised regarding the finding of ineligibility, and, accordingly, the question of his requesting a waiver did not arise.

Pursuant to your request, I am enclosing a confidential memorandum which summarizes the Yasui case and which had been provided to the House Un-American Activities Committee. I hope the information in this memorandum will answer the other questions raised in your letter concerning the Yasui case.

If I can be of any further assistance, please do not hesitate to call on me.

Sincerely yours,

ROBERT E. LEE,

Acting Assistant Secretary for Congressional Relations.

(Enclosures: (1) List of letters and telegrams; (2) confidential memorandum.)

MISCELLANEOUS PUBLIC INQUIRIES CONCERNING KAORU YASUI

1. November 7, 1963, telegram from Mrs. Cyrus Eaton to the Secretary.
2. November 8, 1963, memorandum to SCA from Russ Nixon, general manager, National Guardian, together with Yasui welcoming committee sponsor list.
3. November 8, 1963, memorandum from Miss Hurley re call from Women's International League for Peace and Freedom.
4. November 8, 1963, telegram from Linus Pauling to the Secretary.
5. November 9, 1963, telegram from Joseph Stokes, Jr., to the Secretary.
6. November 9, 1963, telegram from Eunice Armstrong to the Secretary.
7. November 9, 1963, telegram from Frank A. Anglin, Jr., to the Secretary.
8. November 9, 1963, telegram from Norma and Irving Nebenzahl to the Secretary.
9. November 9, 1963, telegram from Grace Sarniak to the Secretary.
10. November 9, 1963, telegram from F. W. Stover, U.S. Farmer's Association, Des Moines, Iowa, to the Secretary.
11. November 9, 1963, telegram from John Collier to the Secretary.
12. November 9, 1963, note to the Secretary from Henry H. Crane.
13. November 9, 1963, letter to the Secretary from Lucy Haessler.
14. November 9, 1963, letter to the Secretary from Henry B. Epstein, State director, United States Public Workers, Honolulu, Hawaii.
15. November 10, 1963, letter to Mr. Schwartz from Russ Nixon with five attachments.
16. November 10, 1963, letter to the Secretary from Maxwell Geismar.
17. November 10, 1963, telegram to the Secretary from Newton Hiwagi.
18. November 10, 1963, telegram to the Secretary from the Hawaii Branch Women's International League for Peace and Freedom.
19. November 10, 1963, telegram to the Secretary from Erving F. Laucks.
20. November 10, 1963, telegram to the Secretary from W. H. Ferry.
21. November 10, 1963, telegram to the Secretary from Ernest Demaio.
22. November 10, 1963, telegram from Norval Welch, U.S. Committee for Cooperation With Japan Council, to the Secretary.
23. November 10, 1963, telegram from several members of Kaoru Yasui's welcoming committee to the Secretary.

24. November 10, 1963, telegram from Harry Barnard to the Secretary.
25. November 10, 1963, telegram from Corliss Lamonte, chairman, Emergency Civil Liberties Committee, to the Secretary.
26. November 10, 1963, letter from Mr. and Mrs. Munsell to the attention: Mr. Whitaker/VO.
27. November 10, 1963, letter from Lindley J. Burton, Lake Forest College, Ill., to the Secretary.
28. November 11, 1963, letter from Women's International League for Peace and Freedom with one attachment to the Secretary.
29. November 11, 1963, letter from Irving Meyers to the Secretary.
30. November 11, 1963, letter from Leo Berman to the Secretary.
31. November 11, 1963, letter from the Women's International League for Peace and Freedom to the Secretary, one attachment.
32. November 11, 1963, letter from Alice Herz to the Secretary.
33. November 11, 1963, letter from Alice Herz to the Secretary, received subsequent to 32 above).
34. November 11, 1963, telegram from Margaret Russell to the Secretary.
35. November 11, 1963, telegram from Corliss Lamonte, chairman, Emergency Civil Liberties Committee, New York, to the Secretary.
36. November 11, 1963, telegram from Mr. and Mrs. Emanuel Graff to the Secretary.
37. November 11, 1963, telegram from Robert Watson to the Secretary.
38. November 11, 1963, telegram from Rev. M. J. Muste, Fellowship Reconciliation, New York, to the Secretary.
39. November 11, 1963, telegram from Prof. Dale Pontius, Roosevelt University, Chicago, Ill.
40. November 11, 1963, telegram from 20 members of Women's Strike for Peace to the Secretary.
41. November 11, 1963, telegram from Harry and Frieda Canter to the Secretary.
42. November 12, 1963, letter from James Anderson-Dombrowski, Southern Conference Education Fund, Inc., to the Secretary.
43. November 12, 1963, telegram from Rabbi Robert E. Goldberg, Congregation Mishkan, to the Secretary.
44. November 12, 1963, telegram from Stringfellow Barr to the Secretary.
45. November 12, 1963, telegram from Cary Peebles to the Secretary.
46. November 12, 1963, telegram from Carey McWilliams, editor, the Nation, to the Secretary.
47. November 12, 1963, telegram from Rev. Stephen H. Fritchman, First Unitarian Church of Los Angeles, to the Secretary.
48. November 12, 1963, telegram from W. E. Hocking to the Secretary.
49. November 12, 1963, telegram from Harry Bridges to the Secretary.
50. November 12, 1963, telegram from World's Peace Leaders Group (Women's Strike for Peace) of signers to Mr. Mace.
51. November 12, 1963, letter from Wanda Pusey to Senator Philip Hart, copy to the Secretary.
52. November 12, 1963, letter from Carl Haessler to the Secretary.
53. November 13, 1963, reference slip to Frederick G. Dutton from Senator Pat McNamara on behalf of Ben Okshea.
54. November 13, 1963, telegram from Algernon D. Black to the Secretary.
55. November 13, 1963, Executive Secretary action slip with three attachments, from Richard Nobbe, Edwin and Emma Johnson, and Carlton B. Goodlet, chairman, International Peace Action.
56. November 13, 1963, letter to the Secretary from Chauncey D. Leake, School of Medicine, University of California.
57. November 13, 1963, copy of telegram from Fred Linsell, Central Methodist Church, Detroit, to the Secretary.
58. November 13, 1963, memorandum of public inquiry from Mr. Newman of Congressman Ryan's office to SCA/Mr. Scully.
59. November 13, 1963, memorandum of public inquiry from Miss Abbott of Senator Humphrey's office to Miss Kelliher/VO.
60. November 14, 1963, DS-18 from Mr. Scully to Mr. Ylitalo/VO, attached telegram from Eugene V. Rostow, dean, Yale Law School, to Mr. Schwartz.
61. November 14, 1963, DS-10 from Mr. Scully to Mr. Ylitalo with four attached telegrams from Guy E. Shipler, editor, the Churchman; Gerard Piel; Chicago Council of American Soviet Friendship; James H. Laird and Norman E. DeWire, Central Methodist Church, Detroit.

62. November 14, 1963, Executive Secretary action slip with six attachments, from Richard Nobby to Mr. Scully (five same as 61 above, copies; one same as 50 above).
63. November 16, 1963, clipping from the New York Times.
64. November 19, 1963, invitation to Mr. Schwartz from Women's Strike for Peace to lecture by Kaoru Yasui, announcement attached.
65. November 22, 1963, announcement of lecture by Mr. Yasui sponsored by the National Guardian.
66. December 2, 1963, Executive Secretary action slip with two attachments, from S/S-S, Mr. Lubkeman to Mr. Scully (Russ Nixon, general manager, Guardian and program for Mr. Yasui).
67. December 10, 1963, outgoing wire from Mr. Schwartz to Eugene V. Rostow, dean, Yale Law School.
68. January 29, 1964, letter from Mrs. Catherine J. Tilson on behalf of Mr. Rostow to Mr. Schwartz.

* * * * *

**TESTIMONY OF THOMAS FRANCIS VALENZA, CHIEF, SECURITY
BRANCH, VISA OFFICE, DEPARTMENT OF STATE**

THURSDAY, MARCH 5, 1964

Senator Roman L. Hruska presiding.

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

* * * * *

Mr. SOURWINE. The next witness is Mr. Valenza, Mr. Chairman.

Senator HRUSKA. Will you be sworn, sir?

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VALENZA. I do.

Mr. SOURWINE. Will you please give the reporter your name for the record?

Mr. VALENZA. Thomas Francis Valenza.

Mr. SOURWINE. And your address?

Mr. VALENZA. 4610 Roxbury Drive, Bethesda, Md.

Mr. SOURWINE. Are you employed by the Department of State, sir?

Mr. VALENZA. Yes, sir.

Mr. SOURWINE. In what capacity?

Mr. VALENZA. Chief of the Security Branch of the Visa Office.

Mr. SOURWINE. And, in general, will you state what your duties are in that capacity?

Mr. VALENZA. Our job is to formulate security advisory opinions to the field, to consular offices on requests involving the security provisions of the Immigration and Nationality Act, that section being specifically 212(a) 27, 28, 29, the prejudicial classes, the waivers and so on.

Mr. SOURWINE. In other words, putting it another way, your job under the law is to see that those who should not have visas don't get them?

Mr. VALENZA. That is right.

Mr. SOURWINE. How long have you served in the Department of State?

Mr. VALENZA. Since 1928.

Mr. SOURWINE. And how long have you been in your present position?

Mr. VALENZA. In the Security Branch since 1951.

Mr. SOURWINE. And who is your immediate supervisor?

Mr. VALENZA. George Owen is my Division Chief.

Mr. SOURWINE. And Mr. Allen Moreland is what?

Mr. VALENZA. He is head of the Visa Office.

Mr. SOURWINE. How long have you been in the Visa Office?

Mr. VALENZA. Since 1951.

Mr. SOURWINE. During your employment have you noticed any irregularities in the conduct of the work of the Visa Office?

Mr. VALENZA. I am not quite sure I understand your question. I would say no, as far as irregularities are concerned, I have not noticed any, at least among my immediate staff. Of course, I don't have access to the higher echelon activities, no access to the actions taken by the Director of the Visa Office or Mr. Schwartz, the Administrator.

Mr. SOURWINE. Mr. Valenza, what is the orientation of the visa officers with respect to their major task?

Mr. VALENZA. You are speaking, Senator, of—

Mr. SOURWINE. I am not a Senator. I am the subcommittee counsel.

Mr. VALENZA. I am sorry, Mr. Counsel.

Mr. SOURWINE. The training given to those people coming in—well, let me put it this other way: Is it not true that, over a period of many years, the orientation of the visa officers was that their major responsibility was to see to the enforcement of the immigration laws?

Mr. VALENZA. That is right.

Mr. SOURWINE. Now, has there been any change in this orientation in recent months or within the last few years?

Mr. VALENZA. Well, I am under oath, and I feel I have got to explain the situation as I know it.

I have felt that recently or within the past couple of years there has been a lot of stress placed on the public relations aspect of the visa function; that is, to satisfy the public, to expedite the issuance of visas and to facilitate the issuance of visas, the "visa by mail" program and so on.

Mr. SOURWINE. You say the public relations aspect. Do you mean as to citizens of the United States or do you mean citizens, of foreign nationals who seek to come here?

Mr. VALENZA. Well, both, Mr. Counsel. American citizens, of course, have a lot of interest concerning the visas of aliens who are relatives or friends and so on. The facilitation of the visas, of course, affects both the Americans on this end who wish issuance as quickly as possible and the aliens in the field who, of course, always want expeditious handling of their visa cases.

Mr. SOURWINE. Has there been a reorientation of visa officers so that they are now given to understand that their major responsibility is to serve the people in the areas where they are stationed who desire to come to the United States?

Mr. VALENZA. Well, I think that has always been the case. Of course, we have an immigration law that consuls have to implement

and aliens have to be found eligible or ineligible, as the case may be under the law. And consuls certainly are not inflexible, they review visa applications with their heads as well as their hearts and they do what they can to serve the aliens seeking visas, within the limits of the law, at the same time not abusing the law or breaking the law.

And obviously it is our job here, or in the field, in the processing of the visas, to process a visa case in such a manner as to make everyone happy so there would be no complaints on the part of the applicants and at the same time be doing the job we should under the law.

Mr. SOURWINE. Of course, that would be the ideal course, but in practice you must have limits to that—

Mr. VALENZA. That is right, sir.

Mr. SOURWINE. And you have already told us that for many years the orientation was that the major responsibility was the enforcement of the immigration law.

Mr. VALENZA. That is right.

Mr. SOURWINE. Do you think visa officers still feel that this is their major responsibility?

Mr. VALENZA. I would say, in general, it is the feeling among visa officers that this is their first job, but—and I am sure this is common knowledge—there is an awful lot of pressure brought on consular officers and visa officers in the field endeavoring to advise consular officers—

Mr. SOURWINE. Pressure from where and from whom?

Mr. VALENZA. Well, generally, of course, first primarily from our supervisors who get the inquiries from the field and from attorneys; that is, from within the United States. Attorneys or private citizens, Americans, or, in reverse, from abroad, the Consular Office would get pressure from the applicants or even from foreign governments with whom aliens may have influence.

Mr. SOURWINE. Mr. Valenza, has there been substantially more stress laid in recent months, taking the period of time since Mr. Schwartz became Administrator, on this matter of public relations, or serving the visa applicant and his friends and relatives in the United States?

Mr. VALENZA. Well, I would have to say yes, and practically all of our directives have been mindful of our public relations and I think that sometimes—after all, we are civil servants but I seem to have detected, over the past year or year and a half, stress on facilitation.

For example, taking the case of a consular officer who may be in doubt—and here I am taking the case of a visitor, a nonimmigrant, who, I understand from the law, is considered an immigrant unless he can prove he is a nonimmigrant—about a so-called visitor coming over here, being a bona fide nonimmigrant, a nonimmigrant alien who wants to change his status to permanent resident. Now, of course, this is not my line, but I am cognizant of communications on this aspect. I detect that the stress is to encourage consular officers to be as lenient as they possibly can with the evidence by an alien to show that he is a nonimmigrant.

Mr. SOURWINE. Well, I would like to know of any particular visa case in which you know of any such—

Mr. VALENZA. Well, sir, what I am giving you—I am speaking now of our security cases, with which I deal under the law, where a visitor who may be ineligible, clearly ineligible under the so-called proscribed section, that is, section 212(a) (28) which concerns Communist membership or affiliation, that some laws allows those people to come in temporarily on a waiver by the Attorney General after recommendation by the consul or the Secretary of State.

Now, under Mr. Schwartz's direction, most of those cases have to go through his office for final signature before the recommendation goes to the Attorney General or the Immigration Service which has the delegation from the Attorney General. The letters have to have his final initial—his or his deputy's—before they come back to us for submission. There have been several cases lately which we have processed routinely within the law, under the regulations, which have been taken away from us and handled exclusively in the Administrator's office so that the actions taken on them since they left our office—well, I just cannot say exactly what was done, except that the visas were approved or not approved, as the case may be, in those cases taken over by Mr. Schwartz.

Mr. SOURWINE. Have you ever seen a designation of a particular visa case or a list of visa cases in which Mr. Schwartz was said to be interested?

Mr. VALENZA. I have not seen a list as such. I know that there are cases which he has sent down to us for review—former refusal cases where he has had an inquiry direct from an attorney within the States and they have been sent down to us for review.

Mr. SOURWINE. And in effect you have been told to reverse the refusal and grant the visa?

Mr. VALENZA. I would not put it that way, Mr. Counsel, but the impression is that that is what—

Mr. SOURWINE. That is what is done, isn't it?

Mr. VALENZA. In many cases; yes, sir.

Mr. SOURWINE. Yes, sir. Is the visa officer ever bypassed under the present procedure?

Mr. VALENZA. Well, I would not say the visa officer in the field because he is the one that has to eventually sign the visa. We are bypassed in my branch, that is, my division, the division or branch responsible for the rendering of advisory opinion—

Mr. SOURWINE. Well, you used to be responsible, isn't that right?

Mr. VALENZA. Well, on paper we still are.

Mr. SOURWINE. But in fact you are not?

Mr. VALENZA. Yes, sir. It could be that way in any individual visa case.

Mr. SOURWINE. Have you ever been overridden by Mr. Schwartz' office in visa matters in security cases?

Mr. VALENZA. Well, we have been overruled. Of course he has the responsibility there, he is our final authority. I don't want to blow my horn but I received, for 2 years in succession, outstanding efficiency rating awards from a prior supervisor of mine, Frank Auerbach. He pointed out in these awards that the reason that he felt I should be given the outstanding rating was because of my handling of very, very difficult security cases—and I would have to refresh my memory on the names of the cases. Subsequent to that time, since the reorga-

nization in October 1962 when Mr. Moreland came in, I got a new immediate supervisor and since then all of these cases, as I recall, have been reviewed and reversals were made on the original decisions. Now, I am not saying that my opinions are always correct in every instance but the fact is that my opinions were signed ultimately by the head of the area and sent out as the official departmental decisions.

Mr. SOURWINE. And you think that they were right?

Mr. VALENZA. I feel they were right, yes, sir; signed by me, the supervisor immediately above me and all the way up to the then Administrator who also OK'd the decision and that became the departmental decision.

Mr. SOURWINE. Do you believe that morale in the visa division is good?

Mr. VALENZA. I can only voice my opinion. I feel it is not good.

Mr. SOURWINE. Why not?

Mr. VALENZA. We are not getting any—and speaking for myself again, I feel we are not getting adequate guidance or supervision or communication from the top to the bottom and—well, I may be involved, too, from the bottom to the top. I have made recommendations repeatedly over the past several years and in the last couple of years since this new group of administrators or supervisors came in—

Mr. SOURWINE. Excuse me. You said recommendations. What kind of recommendations?

Mr. VALENZA. On security matters, how to tighten up, how to close loopholes in the security processing of visa cases both abroad and here. When I make a recommendation and I draw it up in memorandum form, I never hear from any of these again, they are not acted on. Well, obviously, that is not a very—not a very satisfactory situation. As far as I am concerned, I just feel that I am not being recognized and—

Mr. SOURWINE. How often—excuse me.

Mr. VALENZA. Well, I was going to say, I get the impression that this new situation here, facilitation, facilitation, facilitation—which I am all for, you understand, within reason—that I may be considered an obstructionist; that is, that I am too security conscious, or that I am in the way, that I am unnecessarily security minded. I don't feel that I am that way, but I get the impression that others feel that I am.

Mr. SOURWINE. Do you mean that Mr. Schwartz feels that way?

Mr. VALENZA. Well, Mr. Schwartz and my immediate—that is, the Director of the Visa Office.

Mr. SOURWINE. Mr. Moreland?

Mr. VALENZA. Yes, sir. And my impression is that the way it is now, the accent is on the operations area, where the actual visa issuances are concerned, in the operations of the consular offices abroad.

Mr. SOURWINE. Mr. Valenza, how often does Mr. Schwartz visit the offices of the Visa Division?

Mr. VALENZA. Well, I have commented on that occasionally and I think I have a right to, although of course I know that it is only my impression, and I cannot speak for anyone else other than myself, I cannot speak for my subordinates.

Now, I believe—Mr. Schwartz came in September or October of 1962; I would have to check the date. And to the best of my knowl-

edge, answering your question, sir; he has never set foot in any area of the Visa Office which, as far as I am concerned, is also bad, morale-wise.

Mr. SOURWINE. Do you have any regular contact with Mr. Schwartz at all?

Mr. VALENZA. No, sir. I was in his office once. One night I had to go there on a visa matter which could not be resolved during the day and I had to go up there. I cooled my heels for 2 or 3 hours until I could get hold of the Immigration Service people who had to participate in that particular visa case, and that was my only contact with Mr. Schwartz. I saw him for about 5 minutes as he was leaving his office for the evening.

Mr. SOURWINE. You mean, no weekly or monthly or other regular or periodic conferences by Mr. Schwartz with officials of the Visa Division? Were there any such?

Mr. VALENZA. Mr. Counsel, I have to plead a little ignorance there, as to the contact that he makes from the top. But I do know, as far as I am concerned, that my previous Administrator—well, he had regular weekly meetings with his office heads, he held meetings with all the office heads, that is, the Passport Office, the Visa Office, the Special Consular service office and so on. And I believe that Mr. Schwartz may have started that when he came in but I believe now that his practice is, if he sees his office directors at all, he sees them individually rather than as a group around a conference table as was the practice previously.

Now, I know from experience that, daily, our Director and the Deputy Director are running up to Mr. Schwartz's office, but probably on individual cases rather than on policy or procedures because I have yet to see a directive of any significance from our Administrator since he has been in office.

We got one recently, within the past 6 months, on procedures for processing these so-called waiver cases of Communist affiliated visitors where he wanted the political areas—the directors of the political areas to initial recommendations rather than the country desk officer. On that level. Otherwise I have seen nothing that has come from the Administrator's office.

Mr. SOURWINE. Mr. Valenza, have you, during the past, noted any mishandling or improper handling of visa matters?

Mr. VALENZA. I have known—I have seen two visa cases that have come to my attention routinely for one reason or another where I was not involved in a new action taken, that has surprised me somewhat. That is, the decision made in an individual case, where sometimes it takes a year or 2 years to really go over a former refused case, as I refer to them, on security grounds—there are reams and reams of evidence and reports going back 10 or 15 or 20 years—and the new decision that is made seems to have been done on the basis of two or three top papers which do not really refute or overcome what might be underneath that caused the original refusal to be made in a visa case.

Mr. SOURWINE. Have you noted any departures from policy within the past year; I should perhaps say departures from what used to be the policy, what was formerly the policy?

Mr. VALENZA. Well, the most significant one I have seen is this: The desire that visa issuances be facilitated. Now, while I am not involved in that operation, the publicity that is given, about the visas by mail and visas issued within 15 or 20 minutes—that is, for visitors—immigrant visas always take longer—but I have seen that, in some way or another, we are circumventing or shortcutting the screening to be given these cases, I assume, to facilitate the issuance of these visitors' visas. And to do that—to facilitate issuance of those visitors' visas—you have got to cut corners some way rather than follow the routine mandatory check of all of the physical files in a consulate or in an embassy. We seem to be bypassing that, or at least it is done on a post facto basis of going to the sources subsequent to the visa issuance, that is, checking our office files and then the visa may be issued on that basis. That cannot be as thorough as would be the case were consuls to check all of the sources that are available to consular offices abroad and to us here in the Visa Office.

Mr. SOURWINE. Are you telling us that the checks are not as thorough now as they should be or, as they used to be?

Mr. VALENZA. I have the feeling that something has gone wrong with this program because—and I hope that I am not divulging security information here but strictly procedure—I notice that we are getting from the field more and more derogatory—and I have called this to the attention of my supervisors and I believe that my recommendations are bearing some fruit, that consular offices are reporting, as they are obligated to do under the regulations, derogatory information received subsequent to visa issuances—that is to say, where a visitor's visa has been issued under this facilitation program on the basis of what is in the physical records available to the consuls without taking the time for screening all the other various sources within the country and possibly other countries. After the visa has been issued, they receive derogatory information which has a bearing on eligibility or ineligibility to receive a visa, and then the consul reports that. It is quite frustrating and we get in touch with the Immigration Service, and we must make the decision whether to revoke the visa—and, of course, the act of canceling the alien's visa creates a stir and quite often an uproar arises in the press or we get inquiries complaining because a visa had been canceled after issuance.

Now, all of that depends on the circumstances of each case and often we join with them, we ask Immigration to allow aliens to stay under the waiver procedure, ask the Attorney General to allow the alien to stay under the authority the Attorney General has under section 212(d) (3) of the act—

Mr. SOURWINE. Is it the substance—I do not like to interrupt you, sir, but our time is really short—are you telling us that, as a result of this policy of facilitation, "facilitation," as you have termed it, visa cases are being decided too soon, in the sense that they are being decided before all of the pertinent information is available?

Mr. VALENZA. Yes, sir. And if I may make a little comment on that, so the situation won't be misunderstood, I don't have statistics, but I understand from reading statistical sheets that about 1 million visas are issued every year in all categories. Now, the percentage of cases

that have to come to the State Department for advisory opinions under the regulations, from the consul in the field, are so infinitesimal—I feel we certainly have a perfect right, the law being what it is, to take a very minor percentage of the cases and be a little more careful in evaluating them prior to issuance so that we can resolve any doubt one way or the other.

Now, over the past couple of years it has been my impression that under the—that whereas, in the previous administration, and I am speaking of the Visa Office administration, in doubtful cases, where the doubts could not be resolved, we resolved the doubt in favor of the United States. I have the distinct impression now that the burden of proof which is on the alien in visa cases is now on the consul, or on us in the Visa Office, so that we are resolving the doubt now in favor of the alien. And I am speaking again about security cases.

We are not given time to intelligently evaluate a difficult and serious security case, where information does turn up, where we are asked to review cases that were formerly refused.

Initially, in those cases, they used to say “take your time, don’t rush.” But now, I take a look at the case, and hand it to one of our technicians and the same day or the day after I get a call like this [snapping fingers]: “We have got to make the decisions within the next few days.”

Well, we have not time even to begin to go back, to dig back on the original information and to go back to the sources. And it takes time to check our intelligence services, our FBI and the CIA, they are busy with other matters. We cannot just snap our fingers and get a complete review and reevaluation on each report—

Mr. SOURWINE. So you are forced to act without that information?

Mr. VALENZA. In many cases; yes, sir.

Mr. SOURWINE. And it does, in your opinion, adversely affect the security of the United States?

Mr. VALENZA. I feel it does.

* * * * *

TESTIMONY OF WILLIAM J. CROCKETT

TUESDAY, MAY 4, 1965

Senator Thomas J. Dodd presiding.

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

(Mr. Crockett was previously sworn.)

* * * * *

Mr. SOURWINE. Do you have any information respecting an alien named Del Vayo—Alvarez Del Vayo?

Mr. CROCKETT. I have no personal knowledge of this man.

Mr. SOURWINE. Were you ever consulted about the question of a visa for Mr. Del Vayo? If so, please give the details.

Mr. CROCKETT. No, I was never consulted.

Mr. SOURWINE. Do you or did you know a Dr. Negrin, a former Spanish Communist, who reportedly set up or attempted to set up a Spanish government-in-exile in Mexico? If so, what have been your dealings with him.

Mr. CROCKETT. I believe all this occurred long before I had any connection with my present office I now hold or, in fact, before I transferred to the Department of State in Washington, D.C. I came to the Department in 1958 and have been informed this man died on November 14, 1956.

* * * * *

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