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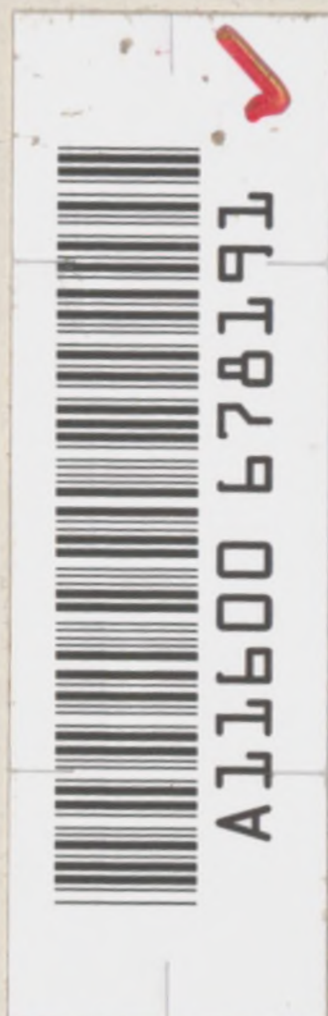
STATE DEPARTMENT SECURITY—1963–65

PART III



REPORT

OF 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

DECEMBER 15, 1967

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RESOLUTION

Resolved, by the Internal Security Subcommittee of the Senate Committee on the Judiciary, That the attached report on "State Department Security" is hereby authorized to be reported favorably to the full committee, to be printed and made public.

Approved: December 15, 1967

FOREWORD

From April 25, 1963, to May 4, 1965, the Internal Security Subcommittee held hearings on security in the Department of State. The record of these hearings was printed and made public in 25 separate volumes between July 19, 1965, and October 2, 1966. Five of these volumes dealt with the Bureau of Security and Consular Affairs and subordinate offices of that Bureau. The other 20 volumes were subtitled as follows:

STATE DEPARTMENT SECURITY—1963–65

Part 1. The Wieland Case Updated
Part 2. The Otepka Case—I
Part 3. The Otepka Case—II
Part 4. The Otepka Case—III
Part 5. The Otepka Case—IV
Part 6. The Otepka Case—V
Part 7. The Otepka Case—VI
Part 8. The Otepka Case—VII
Part 9. Correspondence With Secretary Rusk
Part 10. The Otepka Case—VIII
Part 11. The Otepka Case—IX
Part 12. The Otepka Case—X
Part 13. The Otepka Case—XI
Part 14. The Otepka Case—XII
Part 15. The Otepka Case—XIII
Part 16. The Otepka Case—XIV
Part 17. The Otepka Case—XV
[Appendix to Part 17]
Part 18. The Otepka Case—XVI
Part 19. The Otepka Case—XVII
Part 20. The Otepka Case—XVIII

The subcommittee and its staff have devoted a great deal of time and attention to the preparation of a report covering the area embraced by the testimony contained in the 20 volumes cited above.

It would have been possible for the subcommittee to have filed a report on these hearings at an earlier date, but the subcommittee felt that because Mr. Otto Otepka was an important witness at these hearings, it would not be desirable to make a report while the Otepka case was still pending decision in the Department of State. Perhaps if the committee had known at the time the hearings were concluded how long it would be before the Otepka case would be decided within the Department, the committee might have taken a different view about the timing of its report. Actually, the appeal filed by Mr. Otepka from the State Department's dismissal order, growing out of Mr. Otepka's

actions in furnishing certain information to the subcommittee, did not commence until June 6, 1967. These hearings were concluded June 29, 1967, though the record was technically held open until November 20, 1967, so that the time limit for filing by the hearing officer of his report and findings would not begin to run. The hearing officer's report was filed and presented to the Secretary of State on December 5, 1967, and the Secretary made his decision on December 9, 1967.

The subcommittee has not decided whether a separate report will be filed covering testimony contained in the five volumes dealing with the Bureau of Security and Consular Affairs. Such a report, if made, will be submitted during the next session of the Congress.

INDIVIDUAL VIEWS OF SENATORS EASTLAND AND DODD

This report, carefully documented by sworn testimony reveals many mistakes in management and in the lack of supervision or controls over powers exercised by officials in some management levels. It is to be hoped that the lessons indicated in these hearings and noted in this report have been taken to heart by administrative officials.

During the course of these hearings, and in the intensive study of the hearing record which was necessarily involved in the preparation of this report, the committee has found several areas in which it appears personnel security in the State Department, and in other departments as well, can be strengthened by legislation.

Recommendations in these areas will be made by the committee early in the next session, in combination with other security recommendations, of a legislative nature, growing out of the subcommittee's hearings in 1966 and in 1967 on the subject of gaps in our internal security laws. It is hoped that legislation to implement these forthcoming recommendations can be enacted at the next session of the Congress as the Internal Security Act of 1968.

Much of the testimony in these hearings involve what has come to be known as the Otepka case, and Mr. Otto Otepka was a major witness at the hearings. It is natural, therefore, that the subcommittee's report should discuss various aspects of the Otepka case.

The impact this case has had upon personnel security in the executive branch of our Government has been far greater than is generally recognized. This impact has had both positive and negative aspects.

On the plus side, a number of improvements in security policies and procedures have been put into effect administratively to cure lapses or supply deficiencies to which Mr. Otepka and other witnesses called attention. Another plus is the inspiring example Otto Otepka has set in remaining steadfast to the uncompromising principles and high standards which should and do motivate a majority of the professional security officers who serve our Government.

The most outstanding negative aspect of the Otepka case has been its chilling effect upon all those Government employees, both in and out of the security field, who may quite reasonably see it as an object lesson teaching that honor and virtue are not their own reward if following the path of honor and virtue involves stepping on the toes of entrenched authority, or calls for disclosing matters embarrassing to officials in high places.

The subcommittee, the Senate, the Congress, and the country owe a debt of gratitude—a debt which today remains still unpaid—to Otto Otepka and those who, like him, have told the truth and the whole truth without hedging or covering up for the sake of protecting either themselves or their superiors. For this reason alone, neither the committee nor the Senate nor the Congress should be willing to consider the Otepka case closed until Mr. Otepka stands free of all continuing punishments or harassments of any kind.

Reinforcing this equitable consideration, there is an even stronger reason why we must not rest until full justice has been done to Otto Otepka. No legislative body can discharge its duties with maximum efficiency without the power to conduct effective investigations respecting activities in the executive branch of the Government, most especially where wrongdoing or subversive activity is involved. The legislative body, or the committee of such a body, which cannot protect the witnesses who come before it from reprisals or harassment either because of their testimony, or because of the fact that they have appeared and testified, is in a poor position to seek or expect the full cooperation of other witnesses subsequently called.

Until we can find a way to terminate the Otepka case with full justice to Mr. Otepka and every other witness who testified, and with full and continuing recognition of the right of the Congress and its committees to obtain complete and accurate information with respect to wrongdoing, subversive activity, or any other threat to our security which may exist or take place within the executive branch, we must not rest; for we must recognize that until this has been accomplished, the prerogatives of the legislative branch stand infringed, and its effectiveness stands curtailed.

JAMES O. EASTLAND.
THOMAS J. DODD.

INDIVIDUAL VIEWS OF SENATOR STROM THURMOND

As this is written, the Secretary of State has just decided adversely against Mr. Otto Otepka in charges growing out of actions connected with the investigation conducted by this subcommittee. While the subcommittee has not been investigating the merits of the Otepka case as such, the Secretary of State's decision confirms in many ways the disturbing findings of this report.

The Otepka case, as such, involves much more data than was pertinent to the purposes of this investigation. The brief prepared by his attorney and submitted to the hearing examiner is now a matter of public record, and may be consulted by those who wish to do so in the daily Congressional Record, December 14, 1967, page H17048.

The Secretary's decision largely vindicates Mr. Otepka, since the Department dropped 10 of the original charges, and changed an order for dismissal to a mere reprimand and reduction in grade. Nevertheless, the stubborn insistence upon holding to the remaining three charges must still be considered as the culmination of a grievous scandal which penetrates to the highest echelons of the State Department.

It is important to distinguish between the cause of justice for Mr. Otepka, personally, and the cause for which Mr. Otepka was fighting. It may be appropriate here to quote from a letter to Mr. Dean Rusk, Secretary of State, signed by the members of this subcommittee on October 31, 1963:

> Mr. Otepka's testimony has been a valuable contribution to the Internal Security Subcommittee's current investigation of security in the State Department, and we feel he has performed a substantial service for his country. We would consider it a great tragedy if the services of this exceptionally able and experienced security officer were lost to the U.S. Government on the basis of alleged technical violation growing out of his cooperation with the Senate Internal Security Subcommittee.

Although I was not a member of this subcommittee at that time, I wish to associate myself with these remarks, and to reinforce them. I believe that Otto Otepka is a dedicated and loyal patriot who has suffered extraordinary, calculated harassment because he attempted to carry out conscientiously the national security program prescribed by law or regulation.

There are two issues of paramount importance raised by this report. The first is whether a Government employee loyal to his country can, in the line of duty, furnish information confidentially to the appropriate congressional committees when he sees wrongdoing. Congress has a basic right to receive such information, not only to formulate new legislation, but to review existing programs.

This right has been embodied in a statute, namely, United States Code, title 5, section 652(d):

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

The State Department's position has been, variously, (1) that no wrongdoing may be disclosed unless the disclosure is authorized presumably by the wrongdoers; (2) that information from personnel files may not be disclosed in any case; (3) that any paper may be protected by calling it an official paper. Any of these interpretations is manifestly contrary to the plain meaning of the statute, yet the State Department has found no extenuating circumstances for Mr. Otepka's action in cooperating with the subcommittee.

An agency that had nothing to hide would be anxious for an employee to make use of this right. One would think that such an agency would be looking for extenuating circumstances if an employee had failed to do his duty toward Congress.

As a matter of fact, Mr. Otepka furnished no substantive matter from personnel files that was not already a matter of subcommittee or public record. Mr. Otepka furnished copies of the document only to illustrate security procedures and to prove that his superior had lied under oath to this subcommittee concerning security procedures.

The second issue, therefore, concerns what the Department of State had to hide. As is amply set forth in this report and in the preceding volumes of testimony, the State Department was trying to hide a new policy of phasing out effective security procedures. The highest officers of the State Department no longer believed in the mandate to maintain critical standards of suitability and loyalty in employing personnel. Quite simply, Mr. Otepka, and a small band of associates were in the way.

This attitude is amply documented in this report:

1. Officers with little or no experience in security evaluation were placed in positions making evaluation policy.
2. The functions of the Office of Security were dismantled piecemeal, and its staff transferred out.
3. The specialized personnel security files were broken up.
4. Mr. Otepka was criticized for being "too thorough" in a job where it is impossible to be too thorough.
5. A "personnel panel" with no written guidelines assumed many of the evaluation functions.

Many other moves are covered more fully in the report, but these steps show clearly the new policy. Since the loyalty of Mr. Otepka and his associates stood in the way of that policy, the Department began to move directly against him.

1. He was assigned to attend the National War College, in order to remove him from his duties.
2. He was detailed on make-work projects for the same reasons.
3. After his testimony before this subcommittee, he was publicly humiliated, removed from his offices, deprived of his papers and safe. His telephone was bugged, his trashbag searched, and carbons from his typewriter examined.

4. His loyal associates were transferred away from their work to a make-work project where they had no contact with other State Department employees.

As the situation evolved, the State Department began, finally, to move against this subcommittee.

1. Unusual delays were experienced in summoning witnesses and in official correspondence.
2. Witnesses arrived with instructions to limit their testimony and to refuse to discuss certain vital areas.
3. The "third-agency rule" was given an extreme interpretation which blocked information on many matters.
4. In news releases and public correspondence, the State Department indulged widely in half-truths and quoting out of context.
5. Three State Department officers lied to this committee, and were later forced to recant when the question of perjury became a matter of discussion on the Senate floor.

Perhaps the most illustrative example of the State Department attitude came when John F. Reilly, head of the Office of Security, testified that the reason why he had told half-truths was because the subcommittee had not asked him the right questions. Ironically, one of the original State Department charges against Mr. Otepka was that he had furnished the subcommittee with a list of the right questions.

State Department personnel security policy is manifestly contrary to the intentions of Congress. State Department officers have attempted deliberately to hide this fact from an agency of Congress charged with overseeing security practices. The State Department has indulged in illegal acts, the destruction of the careers of honest men, misrepresentation, and perhaps perjury, in order to prevent Congresss from carrying out its constitutional functions. This is an arrogant challenge, which must not be allowed to stand.

STROM THURMOND.

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STROM THURMOND.

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STATE DEPARTMENT SECURITY—1963–65

ANTI–OTEPKA MOVES STARTED EARLY

Unpleasant things began to happen to Otto Otepka, top State Department security evaluator, long before he found himself in a jam because he had crossed swords with his boss in conflicting testimony before the Internal Security Subcommittee. The moves to get rid of him continued and grew, as the hearing record shows, but there is wonder why it started so soon.

Could it be that departing and newly arrived departmental superiors merely wanted to sweep out the old order? Was there personal malice involved? Were Mr. Otepka and some of his aides inefficient, or too reactionary? Was Mr. Otepka too insistent on raising objections to the employment of leftish candidates for jobs?

Moves eroding Mr. Otepka's powers and the scope of the work of his Evaluations Division multiplied after the Reilly-Belisle team became his superiors. But the beginning was earlier, under the regime of William O. Boswell, who held up the required annual efficiency ratings for Mr. Otepka.

The anti-Otepka procession of events speeded up with the transfer of the Office of Security out of the Bureau of Security and Consular Affairs.[1]

Mr. Reilly saw no problem in the removal of the Office of Security from the SCA bureau. The SY office had been placed there by an administrative decision by a former Secretary of State, he said, and could be removed by the same device. It was that simple.

There followed the transfer of the intelligence reporting function from the Office of Security—involving the data received from the FBI and other intelligence agencies of the United States. This move was blandly supported by Mr. Reilly, who insisted that the Office of Security was getting the same service it had before. But it drew a protest from Mr. Otepka. He said (March 6, 1963):[2]

> * * * It meant that the Office of Security would be deprived of immediate and firsthand knowledge of data appearing in intelligence reports which are useful in the administration of our personnel security cases. Now, I do not mean to say that this information will not be available to us, but it will mean now that we have to depend on other bureaus to offer that information to us if they see fit to do so after reviewing the contents.
>
> Question. Or else you will have to constantly be asking if there is any further information in cases A, B, C, and D, and so on, ad infinitum?
>
> Answer. Yes.
>
> Question. As a practical matter you cannot do that, can you?
>
> Answer. No, sir.
>
> Question. If you had this information flowing through your division, flowing through the Office of Security, I presume that you would have, and have in the past, made it a practice to relate it to other current activities of the Office and of the Division and to make such notes of it for future reference as you think might be useful to the work of the Office and Division?
>
> Answer. Yes, sir; and at the same time seeing to it that the data which was of primary interest to the other bureaus was sent without delay to the other bureaus.

---

[1] See State Department Security hearings, pt. 19, pp. 1587–1589.
[2] Ibid., pt. 19, p. 1589.

OTEPKA RECOGNIZED AS TOP SECURITY REVIEWER

Mr. Boswell, during his service as head of the Office of Security, both criticized and praised Mr. Otepka. He assigned him, in 1960, to head a special staff and to establish methods and procedures to review the security files of all Foreign Service Officers and the higher rank General Schedule employees of the Department. As to this detail for Mr. Otepka, he said in part:[3]

> Both the Administrator of SCA and I consider this review to be of outstanding importance to the Department and to require the full attention of the SY officer best qualified in the field of personnel security.
>
> * * * * * * *
>
> As I have stated, the establishment of an effective organizational arrangement to accomplish this review is most important. There is, in my opinion, no other officer in the Office of Security better qualified in the field of personnel security than you are to undertake this mission. I would like you to keep me fully informed on a current basis of your progress and of your needs. You will have my full support in this respect and, I am sure, that of the Administrator.

Yet, Mr. Boswell criticized Mr. Otepka for not moving cases fast enough to satisfy him (Boswell), and he withheld efficiency reports on Mr. Otepka. He also planned reorganization of the security office.

On this apparent conflict we find:[3]

> Mr. SOURWINE. How do you reconcile your criticism of Otepka with the fact that you personally wrote him on October 26, 1960, that he was the best qualified officer in the Department in the field of personnel security?
>
> Mr. BOSWELL. I think he is. I thought then. I think now.

The heat really was turned on Mr. Otepka after he had refuted various items in Mr. Reilly's testimony before the subcommittee. One result was that the chief evaluator promptly was transferred out of his office.

Mr. Reilly told the subcommittee (Aug. 6, 1963) that it was true that he had determined that Mr. Otepka "never again will be chief of the Division of Evaluations."[4]

This was before formal charges had been preferred, Mr. Reilly agreed. Following is a pertinent segment of the testimony:[4]

> Mr. SOURWINE. Have you made formal charges against Mr. Otepka?
>
> Mr. REILLY. They have not as yet been preferred.
>
> Mr. SOURWINE. Do you think action of this kind can be made, a determination of this kind can be made, properly, in the case of a civil service employee with tenure and service and veteran's preference, without the filing of charges or without the granting of a hearing?
>
> Mr. REILLY. There is nothing to indicate that that is the course of action that is going to be followed, sir.
>
> Mr. SOURWINE. You have been judge and jury and have made up your mind, and you have just testified to it here. There have been no charges, no hearing, and no opportunity for Mr. Otepka to be heard; isn't that right?
>
> Mr. REILLY. As of this moment.
>
> Mr. SOURWINE. Do you think this is right and proper?
>
> Mr. REILLY. Yes, sir.

MR. REILLY BLACKGUARDS OTTO OTEPKA

The Deputy Assistant Secretary for Security had been even more bitter during earlier testimony, raising questions about Mr. Otepka's emotional balance. A few segments of the colloquy on May 21, 1963:[5]

[3] Ibid., pt. 2, pp. 68–69.
[4] Ibid., pt. 1, p. 25.
[5] Ibid., pt. 4, pp. 234–235.

Mr. SOURWINE. Do you think his experience is adequate?
Mr. REILLY. Yes.
Mr. SOURWINE. Do you think his attitude is satisfactory?
Mr. REILLY. No.
Mr. SOURWINE. How is it unsatisfactory? Is he uncooperative?
Mr. REILLY. It is one of these very difficult things to put in words to be totally fair to all individuals concerned. He has a great tendency to dwell in the past.
Senator DODD. What does that mean?
Mr. REILLY. I was going on to explain that, Mr. Chairman. Apropos of almost anything he will talk about, in quite heated terms, "When I was Deputy Director." "I wasn't there then." "I had nothing to do with any of that."
Mr. SOURWINE. You mean he does this in conversations with you?
Mr. REILLY. Yes. He has on numerous occasions, to a point where, with respect to that topic, he does not strike me as being a balanced individual. He seems emotionally overwrought on that topic. Many of us have had changes in position in our life for one reason or another and did not become embittered thereby.
Mr. SOURWINE. Well, I am frank with you: I have been wondering if this was coming. This is the first suggestion we have heard from anybody that Mr. Otepka was mentally unbalanced. But I have been wondering if that wasn't about due.
How long have you noticed this mental unbalance?
Mr. REILLY. Now, I said with respect to a particular subject matter. And I noticed that shortly after I arrived, when I had a session with him that lasted, oh, almost 4 hours.

These Reilly thrusts were promptly answered. Mr. Otepka said it was not good management to criticize publicly the "emotional stability" of a subordinate; that the State Department had a medical office procedure for "unstable" cases; that Mr. Reilly never had been critical (previously) of his work, but on the other hand had praised it as satisfactory (when he told Mr. Otepka of being selected for training at the National War College). He denied he had ever had a 4-hour conference with Mr. Reilly. The longest, he said, was about 2 hours or less, and that was the only one of length.

Mr. Reilly insisted that the Otepka testimony (before the subcommittee) was not resented. There had been "no reprisals at all" because of Otepka's testimony or the nature of it, he said.

But then, the record shows Mr. Reilly called Mr. Otepka a "bottleneck" in the Division of Evaluations, saying "He holds things, many things." This is followed by a Department report showing that Mr. Otepka was holding 11 cases. These were summarized as submitted to the subcommittee.[6]

It developed that in the Evaluations Division, as of January and February 1963, the backlog in the unit was 4 or 5 weeks. As to the Investigations Division, the Reilly testimony indicated there was a backlog of 8 or 9 weeks work, but he saw no "bottleneck" there. Speaking of the closing of "leads" he declared "they are moving along."

On the question of delays and how many evaluators must check a case before it was decided, Senator Dodd nailed down the point that Mr. Otepka had "inherited" the system under which he operated. Mr. Reilly agreed that Mr. Otepka had recommended changes and admitted that they had not been adopted.[7]

Here we find again a reference to a broad Department management study so that it was not an appropriate time "to start with little pieces of changes."

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[6] Ibid., pt. 4, pp. 250–252.
[7] Ibid., pt. 4, pp. 252–253.

REORGANIZATION OF OFFICE OF SECURITY

There had been some signs of a breakup of the Office of Security [7] as it had been operating, but there was shock when it was finalized.

Put into the hearing record was a description of one of the functions of the Office of Security—related to intelligence—as follows: [8]

> Checks, evaluates, and disseminates to responsible areas of the Department and to other agencies, information of a security and intelligence nature bearing on espionage, subversive activities, and violations of internal security laws of the United States.

The record also included an article from Human Events of December 1, 1961, page 806, presenting a protest against reduction of the staff of security experts and quoting John W. Hanes, Jr., former Administrator of SCA: [9]

> Security Sieve: Security experts are up in arms over the recent announcement by the Bureau of Security and Consular Affairs that it will hack 25 trained security agents from its payroll as of December 2. Headed by the controversial Salvatore Bontempo, whose closest previous brush with intelligence operations was as New Jersey's conservation commissioner, the Bureau is charged with protecting the State Department from possible espionage agents and security risks.
>
> Its reduction in trained personnel has brought severe condemnation from former CIA official John W. Hanes, Jr., Bontempo's predecessor as head of the Bureau. Hanes told Human Events last week:
>
> "While I realize that the Bureau must live with recent budget reductions, there is nothing in its pattern of cutting personnel which attempts to keep the integrity of the security section. In fact, just the opposite. I can only say this either is due to incompetence or a deliberate attempt to render the State Department's security section ineffective."
>
> Hanes also criticized the abolition of the reporting branch, a central repository for all reports that come in to the Bureau.
>
> "The elimination of this branch will render security operations far more difficult," he explained.
>
> Hanes also said he was dismayed at the elimination of the post of Deputy Director of Office of Security. The position is presently filled by Otto Otepka, a 19-year veteran of Government service, who has been handling the personnel security section. The Senate Internal Security Subcommittee is now looking into the case.

REORGANIZATION

Mr. Boswell said he alone planned the reorganization of the Office of Security. He added that Murray Jackson participated "in the later stages." He said he never had worked them out in conjunction with Mr. Crockett.[10]

Regardless of who drew the original chart for reorganization, it seems probable that various officials had a hand in it before it was perfected and fully implemented.

In fact, the situation still was in something of a flux in 1964 and Chairman Eastland of the subcommittee addressed requests to the Department, among other things, for clarification of an organization chart and the status of Mr. Belisle.[11]

---

[7] Ibid., pt. 4, pp. 252-253.
[8] Ibid., pt. 4, p. 214.
[9] Ibid., pt. 4, p. 227.
[10] Ibid., pt. 19, p. 1610.
[11] Ibid., pt. 19, pp. 1641-1642.

Did Mr. Boswell's plans call for the elimination of the positions of Mr. Otepka as Deputy Director and Elmer Hipsley as Chief of the Division of Physical Security? [12]

Mr. BOSWELL. They called for—let me say this is my plan. It called for the elimination, not of Otepka, but of the position of Deputy Director. Mr. Hipsley's position was not touched in the sense of elimination. The reorganization changed what had been the form of the division but it didn't call for the elimination of his position.

Mr. SOURWINE. Well, Otepka bumped him. You told us about that.

Mr. BOSWELL. Yes. There was a bumping process.

Mr. SOURWINE. Which you administratively reversed.

Mr. BOSWELL. Well, corrected, if you like.

Mr. SOURWINE. All right.

Among other items in these rather amazing bureaucratic gyrations are these: [13]

1. Functions on personnel transferred from Evaluations Division to Executive Office (of the Office of Security) . . . intelligence reporting taken from Office of Security, where it had been until February 18, 1963, and put in a separate unit: the Bureau of Intelligence and Research. [14]

2. The Executive Office, getting functions from the Division of Evaluations, grew to the size of a division—with about 40 employees.

3. Evaluation functions were scattered. Under questioning on March 11, 1963: [15]

Mr. OTEPKA. At the present time, under the changes which have been put into effect, evaluations are now being performed, in some cases, outside the office, outside the Division of Evaluations by personnel who in my opinion do not have sufficient depth in the various ramifications of personnel security, such as an understanding of the subversive movements operating in the United States, in other words, the whole personnel security picture which has an impact on the problem, the continuing problem of the Department of State.

Mr. SOURWINE. Well, let me see if I can try to pinpoint this. What diffusion has there been of evaluating functions?

Mr. OTEPKA. Well, as I mentioned, the assignment of evaluations outside, to another division.

Mr. SOURWINE. You are referring to the fact that the preemployment investigation and the evaluation of those investigations are being made by the Investigating Bureau?

Mr. OTEPKA. Yes, sir.

Further testimony brought out that this transfer had been ordered by Mr. Reilly, the then Deputy Assistant Secretary for Security.

4. Division of Evaluations is cut out of the process of reviewing and evaluating cases of applicants for jobs within the Office of Security. This function was transferred exclusively to the Office of the Director of Security, completely bypassing the Division of Evaluation. It was ordered by Mr. Reilly.

5. Transfer of national agency checks [16] the initial step in the security process, leading to an evaluation as to whether a full field preappointment investigation would be required.

This was shifted to the Executive Office, where this work was done, the testimony showed, under the supervision of the Chief of the Research and Services Branch, Mr. John Noonan: [17]

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[12] Ibid., pt. 19, p. 1610.
[13] Ibid., pt. 4, p. 193.
[14] Ibid., pt. 4, p. 154.
[15] Ibid., pt. 4, pp. 208–211.
[16] Fingerprint and any other raw file data at various security agencies.
[17] State Department Security hearings, pt. 4, pp. 210–211.

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Mr. SOURWINE. Is he a trained security officer?

Mr. OTEPKA. Mr. Noonan has had long periods of assignment in the Office of Security, including the Evaluations Division.

Mr. SOURWINE. Does he have any evaluators working for him?

Mr. OTEPKA. At the present time, none.

Mr. SOURWINE. Has he personally performed this evaluative work we have just been discussing?

Mr. OTEPKA. No, he does not.

Mr. SOURWINE. All right. It is obvious, then, that it is performed by someone who is not a trained evaluator, isn't that correct?

Mr. OTEPKA. I think for the most part the work is performed by a clerical employee.

Mr. SOURWINE. Isn't that rather a dangerous situation, Mr. Otepka?

Mr. OTEPKA. It is a dangerous situation if the work of this clerical employee is not closely supervised.

Mr. SOURWINE. And do you have any knowledge respecting how closely he is supervised?

Mr. OTEPKA. I don't know, sir. It was closely supervised when it was under my jurisdiction.

Mr. SOURWINE. If you are going to have a security program and you start taking the evaluating functions, which are the heart of a security program, out of the hands of trained evaluators and given to people who are not trained evaluators, would you not say that that is more than a little dangerous?

Mr. OTEPKA. If they are going that far, I would say, "Yes."

Mr. SOURWINE. And isn't that what has happened, Mr. Otepka?

Mr. OTEPKA. I think it has happened to a certain extent.

6. Files pertinent to security cases were ordered out of the Office of Security. This reference was to the intelligence reports that formerly went directly to the SY office. These files and personnel indexing and cross-referencing then were to be removed to the (detached) Bureau of Intelligence and Research.[18]

7. Transfer of the special unit for the protection of foreign dignitaries from SY to the Division of Investigations. This involved the transfers to and then the abolition of this unit called the Division of Physical Security. Mr. Otepka said that because the unit on occasions had to borrow men from the Investigations Division the personnel security investigation program was being hurt.[19]

8. Mr. Otepka protested (Apr. 5, 1962) against the transfer out of the Office of Security of a Records and Services Branch. This was headed by John Norpel, a personnel security specialist. The Branch was a merger of several earlier units. Mr. Otepka recalled the suggestion that this merged branch would be made permanently a part of the Division of Evaluations but in his protests to Mr. Boswell, back in April 1962, he said, in part: [20]

> I am informed that Murray Jackson, Executive Officer, SY, wishes now to transfer the entire operation to the operational jurisdiction of the SY Executive Office—lock, stock and barrel. I am at a loss to understand this proposal. I was personally given assurances by Mr. Roger Jones last November that the functions of the SY Executive Officer (classified at the GS–14 level) was confined to budget and fiscal matters, personnel management, and logistical support of this headquarters and SY field offices.
>
> *   *   *   *   *   *   *
>
> If the proposal is carried out, the SY Executive Office would acquire evaluative functions and evaluator positions and personnel from the Division of Evaluations.

[18] Ibid., pt. 4, pp. 203–204.
[19] Ibid., pt. 4, p. 213.
[20] Ibid., pt. 4, p. 185.

OTEPKA DEMOTED BY JOB AMPUTATION

The story is complicated but a full reading makes the pieces fall into place.

Mr. Otepka was serving as Deputy Director of the Office of Security as well as head of its Evaluations Division. There were those who wanted to get rid of him, or at least to clip his wings. They did. One of the items was to eliminate the job of Deputy Director.

DEPUTY DIRECTOR JOB BOUNCES

One of the steps taken to cut Mr. Otepka down in influence was to abolish his job as Deputy Director of the Office of Security—reducing him to Chief of its Evaluations Division. The argument was that a deputy was not needed. But this beguiling thought that a deputy was not needed was phased out after Mr. Reilly brought in Mr. Belisle as his assistant.

A few excerpts from sworn testimony show that once Mr. Otepka was sidetracked from the Deputy Director post, Reilly's new aide was moved in.

Belisle came into the State Department in August 1962 as Special Assistant for Personnel Security to the Deputy Assistant Secretary for Security. What were his duties? It was brought out that Mr. Reilly had testified that there was no need for a deputy director. But these ideas also were phased out.

It soon developed that Mr. Belisle was no mere messenger boy." [21]

Mr. SOURWINE. Well, doesn't there appear to be some confusion between, or conflict between, the statement that Mr. Belisle was not to be in the line of command between the head of the office and the chiefs of divisions and that he was to perform liaison between the director of the office and the chiefs of divisions?

Mr. OTEPKA. Yes, sir; I would say there appears to be some confusion.

Mr. SOURWINE. Performing a liaison really means carrying the orders from the top down and the answers from the bottom up, doesn't it?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. How can a man do that and not be in the line of command unless he is merely a messenger boy?

Mr. OTEPKA. I don't see how it can be accomplished.

Mr. SOURWINE. The chief of an office does not send his instructions to the heads of divisions by messenger boy anyhow, does he?

Mr. OTEPKA. No, sir.

Mr. SOURWINE. And Mr. Belisle is not a messenger boy, is he?

Mr. OTEPKA. Certainly not.

In fact, it developed, Mr. Belisle automatically assumed the role of Acting Deputy Assistant Secretary for Security, in the absence of Mr. Reilly. As Mr. Otepka put it: [22]

Mr. OTEPKA. Well, I say "automatically" because, on the first occasion of Mr. Reilly's absence, there was an announcement to the effect that during his absence Mr. Belisle would function as Acting Deputy Assistant Secretary. Subsequently during other absences of Mr. Reilly he simply sat in Mr. Reilly's chair.

Mr. SOURWINE. Now, what you are saying, isn't it, is merely that he has been put in the line of succession, he is No. 1 man under Mr. Reilly?

Mr. OTEPKA. That is correct, sir.

Mr. SOURWINE. Do you know of any instances where he has made decisions for the Director or in the name of the Director?

Mr. OTEPKA. I have seen such decisions, yes, sir.

Mr. SOURWINE. He is then acting for all practical purposes as the Deputy Director of the Office of Security?

[21] Ibid., pt. 4, p. 189.
[22] Ibid., pt. 4, p. 190.

Mr. Otepka. Yes; he is, and it would also appear to be so from the position which he occupies on the organization chart of the Office of Security which was the last one issued in November 1962.

But the No. 1 man under Reilly made decisions in the name of the director, acting in all practical purposes as Deputy Director of the Office of Security. Earlier, however: [23]

Mr. Reilly. I do not need an across-the-board deputy, Mr. Sourwine. I think that would be, to me, a form of layering.

Senator Dodd. A form of what?

Mr. Reilly. Running another layer, speaking in "bureaucratese."

The fiction about all this "no deputy business" was rubbed off in testimony by Mr. Crockett. (Jan. 28, 1964): [24]

Mr. Sourwine. * * * You consider Mr. Belisle as Mr. Reilly's deputy?

Mr. Crockett. No; not at the present time. At the time they were both there it was a principal-deputy relationship.

Mr. Sourwine. That is what I mean. At the time Mr. Reilly was there, Mr. Belisle was his deputy.

Mr. Crockett. That is the way it was considered; yes.

Mr. Sourwine. Are you aware that both Mr. Reilly and Mr. Belisle have denied that he was Mr. Reilly's deputy?

Mr. Crockett. I am not aware of this, but I know in fact this is the way it worked.

Mr. Sourwine. Yes; this is true. This is the way it worked.

Mr. Crockett. Yes; technically he may not——

Mr. Sourwine. There was considerable point made about the fact that, under the reorganization, the Office of Security had abolished the position of deputy. It was said this position was not necessary in the Office. It was apparently the only office in the Bureau of Security and Consular Affairs, or which had been there, which did not have a deputy. It is one of the very few offices in the Department which did not have a deputy and the fiction was preserved, if I may use the word in the testimony here, that there was no deputy, and there was no principal-deputy relationship between Mr. Reilly and Mr. Belisle.

Mr. Crockett. Well, you know, these kinds of things are sometimes technical, sometimes fictional, and sometimes practical. In my present job I have no deputy. This is technically true. Yet in the actual respect I use a man as my deputy when I am gone or use him in my place when I am gone. So I was really speaking in the practical way of work. When Reilly was gone, Belisle acted.

Belisle's salary was a grade higher than the salary carried by Otto Otepka as former Deputy Director: [25]

Mr. Sourwine. * * * We then asked Mr. Reilly if Mr. Belisle has more responsibility than the former deputy director had and he dodged the question. Can you answer that question—does Mr. Belisle have more responsibility than you had as Deputy Director?

Mr. Otepka. I do not think he has any more. I can say that he was not given the same responsibilities or many of the same responsibilities that I had when I was Deputy Director.

Mr. Sourwine. You say you can say this?

Mr. Otepka. Yes.

Mr. Sourwine. He does not have such responsibilities except with respect to the Division of Evaluations and the Division of Investigations; is that right?

Mr. Otepka. Yes; that is correct.

Mr. Sourwine. In that respect, therefore, he has less responsibilities than you had, since you were Deputy Director across the board for all of the divisions in the office?

Mr. Otepka. I would say, on paper, he has less responsibility.

Mr. Sourwine. Why do you say on paper—do you think in fact he has more responsibility?

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[23] Ibid., pt. 4, p. 245.
[24] Ibid., pt. 19, p. 1604.
[25] Ibid., pt. 4, p. 241.

Mr. OTEPKA. Mr. Sourwine, I, of course, lived there from day to day and, certainly, I am cognizant of the feelings of the respective divisions. There are five of them. They look upon Mr. Belisle as a deputy director. They come to him for advice, all of them, even on matters which he is not conversant in or which have not been the subject of expressions by Mr. Reilly in writing. Mr. Reilly first let it be known that Mr. Belisle was going to coordinate all aspects of personnel security and it was thought that this would include the Division of Investigations and the Division of Evaluations only. But the division chiefs distinctly will tell you that they consider that Mr. Belisle is the No. 2 man.

An announcement of the reorganization came from G. Marvin Gentile, Deputy Assistant Secretary for Security, in an April 6, 1964, notice to all officials of the Office of Security. It provided, among other things, for establishment of two "Assistant Director" positions. Mr. Reilly had insisted earlier, before he acquired Mr. Belisle, that he didn't need a deputy director. This Reilly statement was made before they put Mr. Otepka on the sidetrack.[26]

REFERENCE TO WIELAND CASE

Mr. Reilly denied there were any reprisals against Mr. Otto Otepka because of his handling of the Wieland case. He said: "None whatsoever." [27]

Mr. SOURWINE. Well, you resented what he said when he was up here?

Mr. REILLY. That I resented what he said?

Mr. SOURWINE. Did you?

Mr. REILLY. No. I have no reason to.

Mr. SOURWINE. Well, I thought you took the testimony he gave as a basis for your decision that there was something wrong.

Mr. REILLY. Oh, you are now—I am sorry. We are talking about his recent testimony here vis-a-vis the recommendations previously made to me.

Mr. SOURWINE. Yes.

Mr. REILLY. I thought we were talking about earlier testimony.

Mr. SOURWINE. Well, let's separate them.

Mr. REILLY. Yes.

Mr. SOURWINE. There was resentment because of his recent testimony but not on the basis of his earlier testimony, is that right?

Mr. REILLY. Again, I don't say resentment. I don't resent his coming up here and testifying. But I do like to feel if he makes recommendations to me that he will not then—and these recommendations are carried out in substance—to have him then convey to the committee that for whatever reasons other than those of good management, functions have been taken from the Division of Evaluations.

Mr. SOURWINE. Have there been——

Mr. REILLY. It seems to me he is misleading one or the other of us.

Mr. SOURWINE. Have there been any reprisals taken against Mr. Otepka because of his testimony here or the nature of it?

Mr. REILLY. No reprisals at all.

Secretary of State Dean Rusk, in meeting with the subcommittee on October 21, 1963, discussed various topics including reorganization. As to the Bureau of Security and Consular Affairs:[28]

The subcommittee has inquired about a plan for reorganization of the Bureau of Security and Consular Affairs. The facts are these:

Obviously, we are always examining the operations of the Department to see if improvement is possible. This is one of our continuing responsibilities. For some time the Bureau of Security and Consular Affairs has been the focus of a number of suggestions for change.

The functions of the Bureau are, in many ways, unique in the Department. Both in this country and abroad, these functions involve contacts and relation-

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[26] Ibid., pt. 17, p. 1347.
[27] Ibid., pt. 4, p. 236.
[28] Ibid., pt. 5, p. 269.

ships with the public that are different from those of any other office in the Department. The Bureau must perform its duties within an intricate framework of U.S. domestic law. Finally—unlike, for example, the regional offices in the Department—the Bureau combines a number of somewhat unrelated functions. For these reasons suggestions are periodically made to revise some aspect of the Bureau's affairs.

Mr. William Crockett became Deputy Under Secretary for Administration this past June. I asked him to undertake a review of the entire operation of the Bureau, which falls under his jurisdiction, and to report any recommendations for changes in policies, procedure, or personnel.

Mr. Crockett recommended Ambassador Flake, a distinguished retired Foreign Service officer with whom I myself had had previous service, to conduct the study. Ambassador Flake has been pursuing his investigation since that time. When it is completed he will report his recommendations directly to me for such action as I consider appropriate.

As to the Office of Security, he said, in part: [28]

The subcommittee recommended [in 1962] the establishment of a fixed and responsible chain of command from the Office of Security through the Department's top administrative officers to the Secretary. Such a chain of command exists. The Office of Security is directly under the jurisdiction of the Deputy Under Secretary for Administration who reports directly to me, and who meets with me, I might say, five mornings a week.

The Director of the Office has personal access to me on any matter that he thinks warrants my attention.

PROMOTION

There were various other items in the Otepka-Office of Security story. Some of these:

Promotions for SY personnel ran into difficulties. Mr. Otepka said this was due only partly to a budgetary situation. A new cause was the fact that his office and some other divisions had been placed under "a management inspection." Along with this was inability to fill two vacant places on his staff. An official of the Executive Office, Otto Otepka said, told him "that in the present situation, where a reassessment is being made of our operational effectiveness, that these positions would not be filled." [29]

Eight other positions were lost to Otepka with the transfer of the intelligence reporting function.

Mr. Reilly conceded in May 1963 that promotions in the Evaluations Division were being held up. He said this was due to a "temporary monetary freeze." [30]

JUSTICE DEPARTMENT ASKED TO INVESTIGATE

The Department of Justice was asked to investigate Mr. Otepka but at first efforts were made to keep this quiet—even though both Mr. Otepka and counsel of the Internal Security Subcommittee had been interviewed by the FBI.

David Belisle, testifying July 29, 1963, contended he could not answer some questions because of instructions from Mr. Crockett. But, reluctantly, he said that "a letter went to the Department of Justice requesting the investigation." He didn't know what Mr. Reilly may have said to the Department of Justice or the FBI.

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[28] Ibid., pt. 5, p. 269.
[29] Ibid., pt. 4, p. 170.
[30] Ibid., pt. 11, p. 728.

Mr. Reilly, testifying August 6, 1963, likewise said he had been instructed not to talk about his trip to the Justice Department but finally the subcommittee got this:

Mr. SOURWINE. Can you tell me whether anything written was given to the Department of Justice in the nature of charges or specification of charges or memorandum respecting this matter?

Mr. REILLY. During my absence, I understand a letter from Mr. Crockett went over to the Department.

Mr. Crockett advised the subcommittee on May 4, 1965, that the request to Justice for an investigation of Mr. Otepka was made at the request of the Secretary of State, Mr. Rusk. Mr. Crockett said that he (Mr. Crockett) activated the request to Justice.

Mr. SOURWINE. When Mr. Reilly went to the Justice Department in an effort to have Otepka prosecuted criminally for violations of the espionage laws, was this with your knowledge or by your authority?

Mr. CROCKETT. Mr. Reilly went to the Department of Justice with my knowledge and consent. When the word came to us from the FBI that material which we had reason to believe was leaving the State Department in an unauthorized manner, and that it was not being received by this subcommittee, we felt a deep concern for the security of the United States and felt that the matter must be resolved with all diligence both for the protection of the Government, as well as for the protection of the individuals concerned.

Mr. Belisle declared it wasn't true that Mr. Otepka had been charged with violating the law by giving information to the Internal Security Subcommittee. Mr. Reilly admitted he had gone to the Justice Department with regard to the investigation of Mr. Otepka. He denied he had left anything written with the Department. He said "No. I brought back with me what I took over."

Edwin A. Burkhardt, personnel security officer, and John R. Norpel, Jr., personnel security specialist, both confirmed that the FBI had investigated Mr. Otepka. They knew because both of them (Otepka supporters) had been questioned about him.

OTEPKA 'SENT TO COVENTRY'

Mr. Crockett, the Deputy Under Secretary for Administration, confirmed that Mr. Otepka was barred from official contacts with his own division. He issued the instructions. He said:[31]

Mr. CROCKETT. I have never given any instructions that anyone was to "have nothing to do with Mr. Otepka." I have no interest in people's social activities or in their friendships, but certainly until this matter is cleared up there was to be no official connection between Mr. Otepka and the present operation of the Office of Security.

Mr. SOURWINE. Do you think this puts Mr. Otepka more or less in the position of an outcast without any normal relationship with the head of the office in which he was employed?

Mr. CROCKETT. This was just recognizing a fact that was already in existence, Mr. Sourwine.

Mr. Crockett said Mr. Otepka had no business in the Division of Evaluations and that he had no access to files—except on a determination of "need to know." He denied that Mr. Otepka's work had been hampered by his isolation. He said the Department had tried to accomplish reasonable requests "to the extent of our ability." For instance, Mr. Crockett recited that Mr. Otepka had been given a secretary, a private phone, and "adequate office space."[31]

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[31] Ibid., pt. 5, p. 307.

OTEPKA HUMILIATED BEFORE STAFF

When Mr. Otepka was ousted from his office, it was done openly, for the staff to see.[32]

Mr. SOURWINE. Didn't you shame him before his employees? Didn't you publicly, in the daytime, in the sight of all, take his keys, change the locks on his desk and safe?

Mr. REILLY. We took no keys from Mr. Otepka.

Mr. SOURWINE. Did you change the locks?

Mr. REILLY. Yes; we did.

Mr. SOURWINE. Did you give, or cause to be given, instructions to the members of his staff, or what had been his staff—that is, the employees of the Division of Evaluations—not to furnish him with any information or with any information in particular categories?

Mr. REILLY. That is correct.

Mr. SOURWINE. In other words, for practical purposes, he was removed as Chief of the Division for Evaluations; isn't that right?

Mr. REILLY. But still retains the title.

Mr. SOURWINE. Yes?

Mr. REILLY. Yes.

Mr. SOURWINE. An empty title.

How empty a title became clear when Mr. Belisle agreed that all employees had been instructed not to discuss any cases with Mr. Otepka. Also, he was instructed not even to enter the Division of Evaluations.[33]

The combinations to 14 safes which had been under his jurisdiction were all changed, Mr. Otepka said.[34]

The nameplate on his door was removed. And he was dropped, after June 1963 from service on the Interdepartmental Committee on Internal Security, and from a list of emergency contacts in the Office of Security.[35]

As in the case of his title, Mr. Otepka kept his security clearance, but Mr. Reilly saw to it that Mr. Otepka could see no classified material except on a need-to-know basis—as determined by Mr. Reilly.[36]

Mr. Otepka, testifying February 21, 1963, said at that time he thought "reprisals" was a rather strong term—he hadn't yet been transferred out of his division.[37] But he confirmed that his authority had been reduced, his staff cut, his access to information reduced, etc.[38]

John Norpel confirmed a variety of moves taken against Mr. Otepka.[39]

Mr. Reilly contributed to the story by conceding that the administration of the Department's security violations program had been taken from Mr. Otepka—the review of reports on such things as a failure to lock a safe or mishandling of a classified document.[40]

Mr. Reilly, on June 27, 1963, lowered the boom on Mr. Otepka. He assigned him "effective immediately," to occupy a different room and devote his full time to update and revise the Office of Security

[32] Ibid., pt. 1, p. 25.
[33] Ibid., pt. 1, p. 88 and pt. 8, p. 499.
[34] Ibid., pt. 1, p. 12.
[35] Ibid., pt. 1, p. 17.
[36] Ibid., pt. 1, p. 26.
[37] Ibid., pt. 4, pp. 151–155.
[38] Ibid., pt. 4, p. 257.
[39] Ibid., pt. 17, p. 1328–1329.
[40] Ibid., pt. 11, p. 728.

Handbook.[41] He conceded that this was done to take him out of the Division of Evaluations and to put him where "he couldn't do any harm."

Mr. Belisle said that this detail effectively ousted Mr. Otepka from his job as chief of evaluations.[42]

There was much additional testimony concerning denial of an in-grade pay raise, withholding of Mr. Otepka's efficiency ratings, and other items.

ARE THESE POLICE STATE TACTICS?

Mr. Crockett discussed various phases of the Otepka case in testimony dated May 4, 1965. Here is a portion: [43]

Mr. SOURWINE. The committee had a letter from Mr. Dutton,[1] sir, indicating that "no police state tactics" have ever been used in Mr. Otepka's case or any other personnel case in the State Department. Would you agree with this?

Senator DODD. What is that, again?

Mr. SOURWINE. Mr. Dutton's letter to the committee indicated that "no police state tactics" had been used. Those are his words.

Mr. CROCKETT. Certainly, the State Department has examined the burn bag in Mr. Otepka's case, and has constantly indicated that it has an interest in the personal lives of its people, in a security sense. So, I think the allegation might be made, and in some minds upheld, that we do use these kind of tactics against our people occasionally. But it is done in each case with specific instructions and not as a general rule.

Mr. SOURWINE. Do you consider assignment of an employee to a "made work" project to be a police state tactic?

Mr. CROCKETT. It is not our practice to engage in "make work" projects even though employees themselves may disagree with the objectives that management may have in making certain assignments.

Mr. SOURWINE. Do you consider your intimidation of prospective witnesses in behalf of an employee at his hearing on a dismissal question to be police state tactics?

Mr. CROCKETT. Mr. Sourwine, to my knowledge I have never intimidated a witness nor asked them to be any more than cooperative and to tell the truth at any congressional hearing including those hearings before your committee.

Mr. SOURWINE. Do you regard underhanded efforts to discredit such prospective witnesses as a police state tactic?

Mr. CROCKETT. I am not aware of any efforts or attempts to discredit any witness.

[1] Frederick G. Dutton, Assistant Secretary for Congressional Relations.

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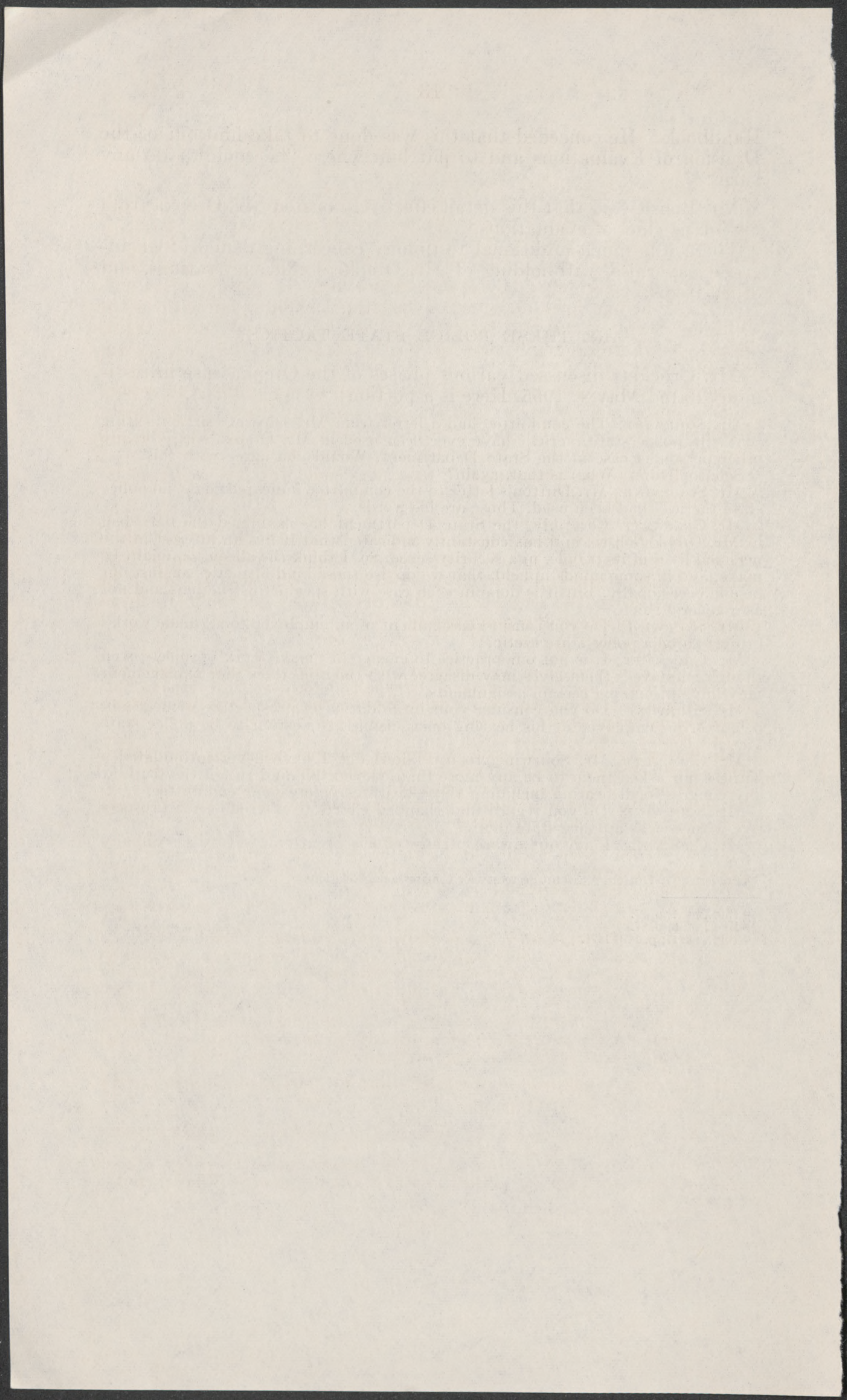
[41] Ibid., pt. 1, p. 27.
[42] Ibid., pt. 3, p. 87.
[43] Ibid., pt. 17, p. 1470–1471.



New Assignments for Otepka

The Get-Rid-of-Otepka drive was rolling in 1963. He was given another new assignment and it was to prove to be another dead end.

Already he had been deprived of his title of Deputy Director of the Office of Security; he had suffered the loss of valuable aides, transferred elsewhere; and he suspected in the spring of 1963 that he was under surveillance.

Back in 1960, Mr. Otepka had been given an assignment to review and up-date the security files on all top-level State Department officials.[1] But when he submitted detailed plans for getting this job done, ways were found to keep him from doing it.

But the "special assignment" ploy was used further, apparently, as a means of keeping Mr. Otepka busy and out of the way.

After he had been transferred out of the Office of Security, June 27, 1963, Mr. Otepka was assigned to prepare a handbook for the use of security evaluators. Like some other special assignments that sounded important but proved otherwise, this one was found to be only a switch to the sidetrack. He was refused access to facilities necessary to perform the assignment.

Mr. Otepka tells about it:[2]

Mr. Otepka, after you had been detailed out of the Office of Security, were you, in connection with your new assignment or detail, charged with the responsibility of developing a set of procedures and standards for the State Department to use in the evaluation process?

Mr. Otepka. Yes, I was.

Mr. Sourwine. Were you asked to prepare material respecting standards of values and judgments to be used by security evaluators?

Mr. Otepka. That would be encompassed by my assignment; yes, sir.

Mr. Sourwine. You were told to write a handbook for use by security evaluators, to guide them in the evaluation of security cases?

Mr. Otepka. Yes, sir.

Mr. Sourwine. Were you provided with the necessary facilities to permit you to perform this detail?

Mr. Otepka. No; I was not.

Mr. Sourwine. What facilities were you not provided with, or what facilities were denied to you?

Mr. Otepka. To begin with, I was ejected from my office in the Division of Evaluations, assigned to a much smaller office, in complete isolation, where there were given to me only a limited amount of documents, most of them public in nature. Other documents which I had in my custody, having material bearing on the assignment I was to perform, were impounded, taken from my possession, and I was allowed no further access to them. These documents more significantly, are the history of the security problem in the Department of State and contain much useful material which I felt might be included in the handbook.

Mr. Otepka's testimony disclosed that he was also denied admittance to files on security cases.

Mr. Sourwine. Did you ask for access to this material and point out that you needed it for the new assignment?

Mr. Otepka. Yes, I did. I was specifically informed that I was not to have access to any cases involving present or former employees of the Department of

[1] State Department Security hearings, pt. 2, pp. 68–69.
[2] State Department Security hearings, pt. 8, pp. 501–502.

State and that I was not to discuss with any members of the Division of Evaluations any case of any Department of State employee.

Still another special assignment was in the works in April 1964, and it was a long step down from being deputy director of the Office of Security. He was to prepare a congressional guide on security problems. He describes the assignment to the Internal Security Subcommittee:[3]

Mr. OTEPKA. My present assignment involves the preparation of a catalog and index of the opinions and views and recommendations of Members of Congress with respect to the security program of the Department of State and security programs of other departments and agencies as they related to the Department of State.

Mr. SOURWINE. Is this your sole assignment at present? Does it supersede the assignment you told us about earlier in connection with your original detail?

Mr. Otepka. Yes. This supersedes my previous assignment.

Mr. Otepka received written instructions about this assignment from Mr. Crockett, on April 30, 1964, as follows:[4]

DEPARTMENT OF STATE,
DEPUTY UNDER SECRETARY FOR ADMINISTRATION,
April 30, 1964.

Memorandum for : SY, Mr. Otepka.
From: William J. Crockett.
Subject: Preparation of a congressional guide on security problems.

Through the past years the Members of Congress in the various committees have conducted extensive inquiries and hearings on various phases of the security/loyalty programs of the Department of State and other Government agencies. During the course of these hearings the Members of Congress and the staff of these committees have expressed in the written record their concepts and opinions on a wide range of security problems. From time to time these committees have forcefully enunciated their criticism of and concern for the positions taken and the decisions made by the Department of State and some of the other Government agencies in discharging their security responsibility.

It is requested that a comprehensive review be conducted of the Congressional Record, the studies made by these committees, and the published testimony taken during these inquiries for the purpose of attaining an insight into congressional attitudes, ideas, and thinking on security problems. The subject matter and the concepts or criticisms should be cataloged or indexed together with appropriate conclusions and whatever recommendations the Congress had made in such a fashion that it could be used as a ready reference and guidance to congressional interpretation of Executive Order 10450 and related procedures. It is anticipated that such a compilation of congressional expression and criticism would provide valuable body of precedent which could be of value in our security operations.

This memorandum is intended to provide general instruction and authorization for you to undertake such a study and analysis of the Congressional Record and other publications emanating from the congressional committees. The overall organization and the methods used to index these problems and criticisms is being left to your professional discretion. However, it is recommended to you that emphasis should be limited whenever possible to the opinions, attitudes, and expressions formulated during the past 4 years that would be of value in the Department's security program. Completion of previous assignments made by your supervisors may be held in abeyance while your efforts are directed to this task.

THE FREEZE-OUT IS APPLIED

Added to other difficulties placed in his path, Mr. Otepka faced the business of being put into Coventry. He was snubbed, ignored, and given minimum aid, brushoff answers. He tells about it in a letter of protest and appeal to Raymond Laugel, acting Deputy Assistant

[3] State Department Security hearings, pt. 8, p. 502.
[4] Ibid., pt. 8, p. 503.

Secretary for Security, dated January 20, 1964. This had reference to the assignment to prepare a handbook for evaluators.[5] But it was becoming symptomatic. He was put "off-limits." Among other things, he protested that his activities, conversations, and personal documents relating to his case were under surveillance; that one of his prospective witnesses was reprimanded for speaking to him there; and that since this first incident this witness and others who had promised to assist him had flatly refused to confer with him in his State Department quarters.

COVENTRY IS INVOKED

G. Marvin Gentile at the time of the congressional guide assignment was Deputy Assistant Secretary for Security and was designated as Mr. Otepka's supervisor. But apparently he had influence with higher-ups for he took the assignment with the stipulation he would have nothing to do with Mr. Otepka.

The testimony by Mr. Otepka confirmed this: Mr. Gentile refused to discuss any assignment subjects although Mr. Otepka was detailed to be under the supervision of Mr. Gentile.[6]

Mr. Sourwine. Has Mr. Gentile in fact supervised you in this project?
Mr. Otepka. No; he has not.
Mr. Sourwine. Did you ever have a conference with him about it?
Mr. Otepka. Yes; I did.
Mr. Sourwine. During that conference did he discuss with you either your present or your former assignment or any future assignment?
Mr. Otepka. I called on Mr. Gentile on June 30 of this year—this was at my request—for the purpose of obtaining a clarification with respect to my future duties in that my previous detail which was limited through June 26 was expiring. Mr. Gentile told me that he did not wish to discuss any aspect of my present or future assignment because he accepted his position on the condition that he would have nothing to do with me, and we had quite a discussion concerning the unusual nature of his attitude in that I pointed out to him specifically the provisions in my job description which said that I was under the immediate supervision of the Deputy Assistant Secretary for Security. I felt that he had a responsibility then toward me as my immediate superior. He repeated to me a number of times during our conversation that he wished to have nothing to do with me, and he referred me for advice and guidance to the executive officer of the Office of Security who was a subordinate of Mr. Gentile's but certainly not a subordinate of mine. That gentleman, Mr. LaSelle,[7] is in a staff function.

* * * * * * *

BIG BRUSH FOR LEAVES

Under this state of contrived confusion there was difficulty even over an Otepka request for annual leave. Who should approve it—Mr. LaSelle or Mr. Gentile? Or should it be Mr. Grignon, or George W. French, Jr., a retired colonel called into play.

The leave slip was shunted back and forth for a while but was approved, Mr. Otepka presumed, by Mr. LaSelle—not by anyone designated as Mr. Otepka's supervisor.[8]

Mr. Sourwine. Have you every requested leave in a memorandum addressed to Mr. Grignon? [9]

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[5] State Department Security hearings, pt. 2, p. 21.
[6] State Department Security hearings pt. 8, pp. 506-507.
[7] Mason C. LaSelle.
[8] State Department Security hearings, pt. 8, pp. 507-508.
[9] Henri G. Grignon, Assistant Director for Personnel Security.

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. I will tell you Mr. Grignon in testifying told us that such a memorandum was brought to him by Mr. LaSelle after he had instructed Mr. LaSelle in case anything came from you not to bother him, Grignon, with it but to take it up with Colonel French and that with regard to this matter which Mr. LaSelle did bring to Mr. Grignon, Mr. Grignon then instructed him to take it up with Colonel French. Mr. Grignon, however, stated that he did not contemplate and did not think his orders to Mr. LaSelle covered Mr. LaSelle exercising this authority himself and that he, Mr. Grignon, did not think Mr. LaSelle had authority to supervise you even to the extent of granting leave, that he had in mind that Colonel French would do this.

Will you tell us, did Mr. LaSelle grant the leave or deny it or did Colonel French grant it or deny it or did someone else grant it or deny it?

Mr. OTEPKA. The memorandum I have in my possession here indicates that the leave was granted to me by Mason C. LaSelle.

Mr. SOURWINE. By him or merely that you were informed by him that it had been granted?

Mr. OTEPKA. In his handwritten notation on his memorandum he indicates "Your request for leave is approved," and there is no further——

Mr. SOURWINE. And his name?

Mr. OTEPKA (continuing). ——no further clarification. And his name.

Mr. SOURWINE. Is that a customary form used by persons who grant leave requests?

Mr. OTEPKA. That is correct.

Mr. SOURWINE. Or do such persons ordinarily say, "I approve your leave request"? Is the third person the usual form for approving leave requests?

Mr. OTEPKA. That is not the usual form; no.

Mr. SOURWINE. What is the usual form?

Mr. OTEPKA. The usual form is for the immediate superior of the person to say, "I approve your leave," if you submit a request for such leave in writing.

Mr. SOURWINE. So this might be open to the interpretation that someone else had approved your leave and that Mr. LaSelle was merely informing you.

Mr. OTEPKA. That is possible, sir.

Mr. SOURWINE. Since we know that Mr. Grignon did not approve it, if Mr. LaSelle was advising you of someone else's action in approving it, do you know who the other person would be?

Mr. OTEPKA. No; I do not.

Then there were some of the many shifts in command. William J. Crockett, the Deputy Under Secretary of State for Administration, on July 7, 1964, issued instructions that Colonel French was to be Mr. Otepka's supervisor for the Congressional Guide project. Colonel French had been named a special assistant to Mr. Crockett.

It was a move toward clarity but raised some additional questions:[10]

Mr. SOURWINE. Well, now, could you be supervised by a person not in the Office of Security while you are in the Office of Security?

Mr. OTEPKA. I would say that this could be possible in some circumstances, but I did not think it was proper in this circumstance because it would be in conflict with my official job description.

Mr. SOURWINE. Have you ever received anything to indicate that it was a memorandum or order intended to supersede your official job description in this respect?

Mr. OTEPKA. No, sir.

Mr. SOURWINE. All right. Now, with regard to your conference with Mr. Gentile, do we understand correctly that you repeatedly, a number of times during that conference, raised the point or a point which resulted in Mr. Gentile reiterating that he had agreed not to have anything to do with you and was not going to have anything to do with you?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. Were you ever told by Mr. Grignon that he had a similar agreement or that he had a similar attitude toward you?

Mr. OTEPKA. I have never seen Mr. Grignon.

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[10] State Department Security hearings, pt. 8, p. 508–509.

Mr. SOURWINE. Did Mr. Gentile ever tell you or did you ever learn from any other source with whom Mr. Gentile had his agreement or from whom he had his instructions not to have anything to do with you?

Mr. OTEPKA. No, sir.

Mr. SOURWINE. Do you know where the idea of assigning you to study congressional reaction originated?

Mr. OTEPKA. I believe on good authority that the idea originated as a result of a conversation between Mr. Gentile and Mr. Bernard Rosen that took place on April 24, 1964.

Mr. SOURWINE. Is that Mr. Bernard F. Rosen who was or is Deputy Assistant Secretary for Personnel?

Mr. OTEPKA. He was then in that position; yes, sir.

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DEPARTMENT OF STATE,
DEPUTY UNDER SECRETARY FOR ADMINISTRATION,
July 7, 1964.

Memorandum for: Mr. Otto F. Otepka.
Subject: Preparation of a congressional guide on security problems.

This is in reference to my memorandum to you dated April 30, 1964, on the above subject.

I have designated Mr. French of my office as your supervisor and contact on this project. I stated in my memorandum of April 30, 1964, that this project would have priority and all previous assignments made by your supervisors may be held in abeyance while your efforts are directed to this task. I would like a report on the status of this project as soon as possible.

Mr. French will discuss with you the questions you have raised in reference to my memorandum to you dated May 18, 1964.

WILLIAM J. CROCKETT.

Mr. Otepka's initial contact with Colonel French, and Ambassador Flake was on December 26, 1963, when they were under an assignment to delve into security procedures in the State Department—partly at least as a result of the shocks that followed disclosure of the bugging of the office of Mr. Otepka, Chief of the Evaluations Division.

When the Flake-French team proposed to discuss a list of specified subjects with Mr. Otepka he told them he could not go into matters that would have a bearing on his own case. In this he was following advice which had been given to him by his attorney.[11]

Colonel French was startled to hear, Mr. Otepka said, that the latter had been barred from the premises of the Division of Evaluations.[12]

Mr. SOURWINE. Did you ever discuss with Colonel French the matter of your prohibition against going into the premises of the Division of Evaluations?

Mr. OTEPKA. I did.

Mr. SOURWINE. You told him about it?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. Did he express any opinion with regard to it?

Mr. OTEPKA. He was startled to hear about it, and he said that—he first asked me for copies of the memorandums.

Mr. SOURWINE. Did you furnish them?

Mr. OTEPKA. Yes; I did.

Mr. SOURWINE. Then what?

Mr. OTEPKA. Then subsequently he told me that he had shown the memorandums to Mr. Crockett and that Mr. Crockett had not known previously that such memorandums had been issued.

Mr. SOURWINE. You mean Mr. Crockett told him he had not known previously?

Mr. OTEPKA. That is right.

Testimony indicated that Mr. Belisle did not comprehend the import of his instructions to Mr. Otepka.[13]

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[11] State Department Security hearings, pt. 8, p. 510.
[12] State Department Security hearings, pt. 8, p. 511-512.
[13] State Department Security hearings, pt. 8, p. 512.

Mr. SOURWINE. Did Mr. French characterize these instructions or say whether he thought they were justified or did he indicate whether Mr. Crockett thought they were justified?

Mr. OTEPKA. Mr. French said that he did not feel that such instructions were justified, and he also told me that Mr. Crockett expressed the opinion that Mr. Belisle, who issued the instructions, did not mean what he said.

The instructions were not rescinded, Mr. Otepka testified, although there were questions about them.

Mr. Crockett offered "special circumstances" as an explanation of having a Security Office employee supervised by a man in another division.[14]

Mr. SOURWINE. There is nothing unusual, is there about having an employee in the Office of Security supervised by a man who is not in the Office of Security?

Mr. CROCKETT. There would be, were it not for the special circumstances under which Mr. Otepka is now employed.

Mr. SOURWINE. Hard cases make bad law?

Mr. CROCKETT. Hard cases make nonjudicial rules, I guess.

Mr. SOURWINE. But unusual circumstance require unusual remedies?

Mr CROCKETT. That is best. I accept that.

Mr. Crockett also argued that it was proper to change Mr. Otepka's supervision without changing his job description.[15]

Mr. SOURWINE. Do you know whether Mr. Otepka's official job description names his official supervisor?

Mr. CROCKETT. I don't think it may by name; it may by title, perhaps.

Mr. SOURWINE. Would you check that?

Mr. CROCKETT. Yes.

Mr. SOURWINE. If it designated his supervisor ex officio, that was then changed by your designation of Colonel French?

Mr. CROCKETT. Yes; except that I am sure that we have never changed it on the official form.

Mr. SOURWINE. Can such a change be made properly without amending the job description?

Mr. CROCKETT. I think so; yes, sir.

GENTILE, GRIGNON, AND OTEPKA

Testifying August 14, 1964, Mr. Grignon said that Mr. Otepka's position was that of Chief of the Division of Evaluation—in name but not in fact.[16]

Mr. SOURWINE. I see. Is Mr. Otepka employed in the Office of Security?

Mr. GRIGNON. I presume that he is holding one of the positions that is allotted to the Office of Security.

Mr. SOURWINE. You do not know what his present position is?

Mr. GRIGNON. Well, he is the Chief of the Division of Evaluations.

Mr. SOURWINE. In name?

Mr. GRIGNON. In name.

Mr. SOURWINE. But not in fact?

Mr. GRIGNON. Not in fact; no, sir.

Mr. Grignon was unsure about several aspects of the case and agreed that he could not explain how a person not in the Office of Security could supervise one who was assigned there—like Mr. Otepka.

He was not Mr. Otepka's supervisor, Mr. Grignon said. In fact, he had instructions to the effect that he was not, he added. He said

[14] State Department Security hearings, pt. 19, p. 1645.
[15] State Department Security hearings, pt. 19, p. 1646.
[16] State Department Security hearings, pt. 19, pp. 1628–1629.

these were given to him orally by the Deputy Assistant Secretary for Security, Mr. Gentile.[17]

Mr. Otepka's unique position of being supervised by a person in another division was the subject of considerable testimony by Mr. Grignon. Some of it: [18]

Mr. SOURWINE. I am a little puzzled as to how a person who is not in the Office of Security can supervise or be named as supervisor for a person who is in the Office of Security. Can you explain this for me?

Mr. GRIGNON. I am afraid I cannot explain it. It is apparently tied in with the reassignment of Mr. Otepka.

Mr. SOURWINE. He is not assigned out of the Office of Security, is he?

Mr. GRIGNON. Not reassigned out of the Office of Security, but he has been reassigned certain specific duties to which he is limited, is my understanding.

Mr. SOURWINE. You mean he is detailed duties outside of the Office of Security?

Mr. GRIGNON. I think the term "detailed" could be used.

Mr. SOURWINE. Yes, but outside the Office of Security?

Mr. GRIGNON. It is difficult to say as to whether or not it is inside or outside of the Office of Security. Actually he occupies office space within the contiguous area of the Office of Security.

Mr. SOURWINE. That might be of little significance or might be of more significance, but if Mr. Otepka has not been transferred or detailed out of the Office of Security, he really could not be supervised by an individual who is not in the Office of Security, could he?

Mr. GRIGNON. Well, my understanding—and as you know, I have not been involved in Mr. Otepka's situation—is that due to the developments in his particular case, that this was the approach that was taken by apparently Mr. Crockett——

Mr. SOURWINE. I see.

Mr. GRIGNON (continuing). ——to furnish supervision by Colonel French to Mr. Otepka.

Mr. SOURWINE. Had you concluded your statement on that point?

Mr. GRIGNON. I believe so, sir.

Mr. SOURWINE. What is still bothering me, sir, and I ask your help in resolving it for our record, is not how Mr. Otepka can be paid from your payroll and still be supervised elsewhere, but how he can have duties which are under the Office of Security and still be supervised elsewhere. Am I wrong in assuming that he has been assigned the duties under the Office of Security—duties of a security nature, duties involving a need for a security officer in order to perform them?

Mr. GRIGNON. We are discussing something which is really outside my realm.

Mr. SOURWINE. You mean you just do not know? You nay say so if that is the case. Is that the fact?

Mr. GRIGNON. That really is the fact since I have not been involved in Mr. Otepka's case, and it is difficult for me to interpret.

* * * * * * *

Mr. SOURWINE. How did the question come up? Did he raise it or did you? [19]

Mr. GRIGNON. I believe it was in connection with his own questioning of Mr. Crockett as to whether or not he had any responsibilities for Mr. Otepka.

Mr. SOURWINE. That is, Mr. Gentile wanted to know whether he, Gentile, had any responsibilities?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. And he asked Mr. Crockett about it?

Mr. GRIGNON. And the understanding is he does not have any supervisory responsibilities for Mr. Otepka, and in view of that, neither do I.

Subcommittee counsel wondered how Mr. Grignon, being Assistant—and at the time Acting—Director of the Office of Security, could avoid involvement in the Otepka case.[20]

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[17] State Department Security hearings, pt. 19, pp. 1627-1628.
[18] State Department Security hearings, pt. 19, p. 1629.
[19] State Department Security hearings, pt. 19, p. 1628.
[20] State Department Security hearings, pt. 19, p. 1630.

Mr. SOURWINE. * * * How have you been able to avoid involvement in Mr. Otepka's case when you are Assistant and now Acting Director of the Office of Security and he is on the rolls as Chief of the Division of Evaluations of that Office?
Mr. GRIGNON. Well, I think it is due to the peculiar situation in which Mr. Otepka has been placed.
Mr. SOURWINE. Have you been told not to become involved in his case?
Mr. GRIGNON. Yes.
Mr. SOURWINE. Who told you?
Mr. GRIGNON. Mr. Crockett.

Testimony disclosed that memorandums sent by Mr. Otepka to the Director of the Office of Security were passed on to the executive officer as a result of Mr. Crockett's instructions.[21]

Mr. SOURWINE. Did Mr. Otepka ever send you reports or memorandums or requests of any kind in writing?
Mr. GRIGNON. I understand that he does address memos to Mr. Gentile, and since Mr. Gentile has been ill, that they have been addressed to me. However, I do not handle those memos.
Mr. SOURWINE. What do you do with them?
Mr. GRIGNON. Actually Mr. Crockett has designated Col. George French to handle the relationship with Mr. Otepka, and as a result, those memos ordinarily are referred to him by our executive officer.

Mr. Crockett acknowledged that he conceived of Mr. Otepka's new assignment when he was detailed out of the Office of Security. He was also responsible for the later shift in Mr. Otepka's assignment:[22]

Mr. SOURWINE. Were you the one, sir, who conceived the subject of Mr. Otepka's new assignment when he was detailed out of the Office of Security?
Mr. CROCKETT. Yes, sir.
Mr. SOURWINE. What was that new assignment, if you remember?
Mr. CROCKETT. On June 27, 1966, Mr. Otepka was temporarily detailed to prepare guidelines for evaluators and to develop recommendations relative to updating and revising the Office of Security Handbook.
Mr. SOURWINE. And then there was a shift. Was that also your decision?
Mr. CROCKETT. Yes, sir. The shift was simply because there was nothing being done on it previously. This was an attempt to get at something that he would be gainfully employed in.

OTEPKA STILL WINS AWARDS AND BIDS TO SPEAK

During his long security career, Mr. Otepka received many letters of praise, special awards, and invitations to speak. Two Americanism awards were offered to him in 1964. He testified that, as always, he informed his superiors about the invitations.

One came from the Coast Cities Freedom Program in Los Angeles, Calif. He requested permission to accept that one. It was granted.[23]

In the second case the offer came from an organization called the Christian Crusade—the Billy James Hargis outfit.[24]

Instead of requesting permission to accept, Mr. Otepka elected to ask his superiors for information. Barred from access to the security records since June 27, 1963, he could not make his own evaluation. He asked that the Department inform him on the character of the Christian Crusade and Billy Hargis and whether he should accept the invitation.

He did not accept this award.

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[21] State Department Security hearings, pt. 19, p. 1628.
[22] State Department Security hearings, pt. 19, p. 1644.
[23] State Department Security hearings, pt. 5, p. 315.
[24] State Department Security hearings, pt. 5, p. 314.

HATCH ACT WARNING

In 1964, also, a representative of the Republican National Committee asked Mr. Otepka if he would be willing to appear as a witness before the Republican Platform Committee, to meet in San Francisco. Mr. Otepka put the matter before his superiors for advice and decision. Mr. Otepka said it was possible he might get a similar invitation from the Democratic Party. He told his superiors he was willing to attend either or both.

Mr. Crockett promptly wrote to the chairman of the Civil Service Commission, John W. Macy, Jr., for an opinion as to whether the Hatch Act would apply. The answer, from L. V. Maloy, general counsel, was that since Mr. Otepka was in the competitive civil service he was subject to Commission jurisdiction concerning possible violation of the Hatch Act (which prohibits an employee from actively engaging in partisan political management or campaigns).

The letter then said: [25]

"The Commission cannot approve Mr. Otepka's request. The Commission cannot foresee all the ramifications that may develop from his appearance before the Platform Committee or to what extent he may become involved in the establishment of the platform of the Republican Party."

Mr. Maloy warned that if Mr. Otepka appeared before the Platform Committee "he does so at his own risk and must assume the responsibility of his actions weighed in the light of future events."

Mr. Otepka did not go.

Mr. Otepka also was invited to appear on Senator Simpson's radio program. This, too, was referred to the Civil Service Commission and the same answer came back.

Mr. Otepka did not participate.

In testimony before the Internal Security Subcommittee on August 17, 1964, Mr. Otepka made it clear that he had not sought the invitation to the Platform Committee.[26]

> Mr. SOURWINE. Now moving to something else, Mr. Otepka, newspaper stories a month ago or a little more indicated that you had sought to appear before the Republican platform committee in San Francisco. Is that correct?
>
> Mr. OTEPKA. May I point out what happened in this way.
>
> I was invited by the Republican platform committee to appear as a witness before the platform committee preceding the convention.
>
> Mr. SOURWINE. You did not seek this invitation?
>
> Mr. OTEPKA. I did not seek the invitation.
>
> Mr. SOURWINE. You did not do anything to communicate your willingness to attend if you were invited?
>
> Mr. OTEPKA. I submitted a memorandum to Mr. Crockett requesting permission to appear.
>
> Mr. SOURWINE. After you had been invited?
>
> Mr. OTEPKA. After I had been invited.

Mr. Crockett agreed with the Maloy view on the responsibility of Mr. Otepka if he appeared as a Platform witness.[27]

> Mr. SOURWINE. Sir, do you think permission to perform an act which does not in and of itself violate the Hatch Act should be denied because of the possibility that the individual concerned might thereafter perform some other act which would be a violation of the Hatch Act?

[25] State Department Security hearings, pt. 5, pp. 311–312.
[26] State Department Security hearings, pt. 5, pp. 312–313.
[27] State Department Security hearings, pt. 5, p. 310.

Mr. CROCKETT. Actually, I don't think we are in a position to deny people the right to perform an act, because most of their activities are outside of duty hours on their own time and their own decision and their own discretion. I don't know whether that was the issue in the Otepka case. He sought our advice, and we advised him of the way we saw it—as we got it from the Civil Service Commission.

Mr. Crockett testified on May 4, 1965, that he had been desirous of settling the Otepka case. But apparently no concrete effort ever was made.[28]

Mr. SOURWINE. You have expressed yourself as desirous of settling the Otepka case, have you not?
Mr. CROCKETT. Yes, sir.
Mr. SOURWINE. Have you had in mind or have you attempted to arrange any settlement not involving dismissal of the charges against Otepka or his clearance and reinstatement to duty?
Mr. CROCKETT. I have had this in mind, yes, but I have not had any means of exploring it, really.

Mr. Crockett denied having a personal opinion on whether Mr. Otepka's services could be best used in the Office of Security.[29]

Mr. SOURWINE. Do you think, if he should be reinstated in the good graces of the Department, his services could best be utilized in the Office of Security?
Mr. CROCKETT. I am really not prepared to answer. This is really one that the Secretary would have to pass on.
Mr. SOURWINE. You have spoken of how good and experienced he was, and I thought you might have an opinion on this. I didn't mean to bind the Secretary on this, but only your personal opinion.
Mr. CROCKETT. No, I do not.
Mr. SOURWINE. Do you have any desire that Otepka should not be returned to duty in the Office of Security?
Mr. CROCKETT. I have no specific desire. I think it should be done in the context of what Mr. Grignon's and Mr. Gentile's needs are in the Office. It can be worked out if he is restored.

*　*　*　*　*　*　*

Mr. SOURWINE. Mr. Crockett, have you formed any opinion with regard to the pending Otepka disciplinary case?
Mr. CROCKETT. I think I would not be quite truthful if I did not say I had formed some opinion. Yes, sir.
Mr. SOURWINE. Would you be willing to tell us what it is?
Mr. CROCKETT. I think it is inappropriate under the same injunction that the Secretary has given the others, honestly.

Mr. Crockett said he did not know of any effort made by Secretary of State Rusk to settle the Otepka case.[30]

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[28] State Department Security hearings, pt. 19, p. 1646.
[29] State Department Security hearings, pt. 19, p. 1646; pt. 5, pp. 308–309.
[30] State Department Security hearings, pt. 5, p. 303.

Reduction in Force Hits Security Office

Few if any Federal agencies are granted, from year to year, all of the funds they request. At times when appropriations are limited, or cut below former levels, reductions in staff are expected. Or, as an alternative, there is a ban on promotions, or a freeze on new positions, or the filling of old ones becoming vacant.

But how the RIF was used on the State Department's Office of Security—at a time when the "get-rid-of-Otepka" movement was in its early phases—raised eyebrows and stirred protests both in and out of the Department.

There had been, indeed, a heavy cut made by Congress in foreign aid funds, and in theory at least all units had to bear a share of the cut. There were protests, however, that too great a share was placed on SY—the Office of Security

There was a freeze there on promotions as well as a supposed ban on new appointments and cuts in the allowed numbers on the SY staff.

Suspicions of dirty work arose when Mr. Otepka was shifted to a new assignment, eliminating his position as Deputy Director of the Office of Security and when, along with other personnel changes, two new appointees were named to assist the SY Director.

Mr. Otepka contended that in the RIF as applied to SY, *individuals* were lost to the unit but that the *positions* were retained.

When Mr. Otepka was on the stand August 16, 1963, he was asked if there had been any salary increases since the first of the year (1963) and the witness said he didn't know.[1]

Mr. Sourwine. But as far as the Division of Evaluations is concerned, the freeze was still on at the time you were detailed away?

Mr. Otepka. The appointment freeze and the promotion freeze, yes, both. I got no satisfaction out of requests that I made for promotions.

Mr. Sourwine. Mr. Reilly testified on May 21, 1963, that there was in fact a reduction in force in connection with the r.i.f. in October of 1961. He said there was later a successful effort to get restoration of the positions cut. Is this correct? Was there in fact as much as a single position eliminated by the r.i.f.?

Mr. Otepka. Mr. Sourwine, I have gone over these charts time and time again, and I could not see where, in my arithmetic, there was a single position lost.

Mr. Sourwine. The elimination was individuals, not positions, wasn't it?

Mr. Otepka. Absolutely.

Who stayed on, or who was transferred or "bumped", according to Mr. Otepka, was determined by a "private grading system" used by the incumbent SY chief, William O. Boswell.

Here's what Mr. Otepka said about it:[2]

Mr. Sourwine. Do you know what the basis was for the selection of individuals to be eliminated under the r.i.f.?

Mr. Otepka. I believe it was this, Mr. Sourwine: Mr. Boswell had a private grading system, and he had, for the purpose of that grading system, a committee which met with him, consisting of the division chiefs, including the Deputy Director and the executive officer. We went over the records of the officer per-

[1] State Department Security hearings, pt. 16, p. 1278.
[2] State Department Security hearings, pt. 16, p. 1287.

sonnel in the Office of Security to determine their future potential, each division chief offering his comments with respect to subordinates under his jurisdiction. As this project was completed, these individuals were indicated by gradings assigned to them by Mr. Boswell as prospects of promotion or nonpromotion.

When the reduction in force was effected, I ran down that list, and I found that most of the people who were selected for the reduction in force were those who had been given low ratings by Mr. Boswell's private grading system.

What was the result of all the reshuffling of personnel under the RIF in 1961?

Mr. Otepka was asked by subcommittee counsel if he could supply something for the record.[3]

Mr. OTEPKA. Yes, I have a memorandum dated January 16, 1962, addressed by the then executive officer for the Office of Security, Mr. Murray E. Jackson, to the Classification Division in the Office of Personnel, Mrs. Jean W. Tavel, indicating the personnel actions resultant largely from the reduction in force.

Mr. SOURWINE. Is this a classified document?

Mr. OTEPKA. It is not.

The document received for the record started this way:

DEPARTMENT OF STATE,
OFFICE OF SECURITY,
January 16, 1962.

MEMORANDUM

To: CWD Mrs. Jean W. Tavel.
From: SY/EX Murray E. Jackson.
Subject: Urgent personnel actions pending in SY.

In accordance with your request of January 15, 1962, I am submitting a list of urgent personnel actions pending in SY.

* * * * * * *

The memorandum showed, among 94 listed items, that Mr. Otepka was put down as chief of the Division of Evaluations, a change down from the position of Deputy Director of the Office of Security.

It showed, also, that new position descriptions were requested for, among others, Charles W. Lyons, chief of the Personnel Security Branch; Carl L. Bock, chief, Applicant Section, Personnel Security Branch; and Raymond P. Levy, chief, Review Section, Personnel Security Branch.

And it showed that 90-day details were requested for the following, and some others: John R. Norpel and Edwin A. Burkhardt, two of the security men who were regarded as "Otepka supporters."

The document listed 40 employees in Category I as requiring new position descriptions; named 54 others in Category II. The latter had a heading saying that the listed additional personnel actions would be required. But instead of individual actions, the Jackson memorandum requested a blanket transfer.

Mr. Otepka challenged some of Mr. Reilly's statements about who failed to do something about vacancies. Specifically there was the case of a vacancy in the position of an evaluator in the Office of Security. Despite his requests, he said, the job remained vacant for months both before and after the official "freeze".

Testifying August 16, 1963 he was asked about Reilly statements made earlier in the year:[4]

Mr. SOURWINE. Mr. Reilly told us also on May 22, page 729, part 11 of this series, that he had had no request to fill the one officer vacancy which existed in the Division of Evaluations. I think you told us here today that you had made a request. Did you make such a request?

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[3] State Department Security hearings, pt. 16, pp. 1287–1290.
[4] State Department Security hearings, pt. 16, pp. 1290–91.

Mr. OTEPKA. Yes; I think I covered that ground.
Mr. SOURWINE. Did you make more than one?
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. You made these requests in writing?
Mr. OTEPKA. Some in writing and some orally; oral followups.
Mr. SOURWINE. Do you have access to records which will let you either furnish a copy of these written requests or a sample of one, or show the dates of them, or is that among the records that were taken from you and impounded?
Mr. OTEPKA. I do not have that among the records now in my possession.
Mr. SOURWINE. In his testimony of May 22, page 730, part 11 of this series, Mr. Reilly told us that you had not showed any interest in getting this officer vacancy filled, that you had not made any recommendations. Your statement is that Mr. Reilly was incorrect in that respect?
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. Mr. Reilly told us that it was your job to make a recommendation if you had a vacancy and wanted it filled. Is that correct?
Mr. OTEPKA. Yes, it was, and I already had made a recommendation.
Mr. SOURWINE. How long ago did you first make a recommendation for filling the officer vacancy?
Mr. OTEPKA. Well, in September 1962, I lost an evaluator who was transferred to the Miami field office, and I made a request for the filling of that vacancy concurrently.
Mr. SOURWINE. Now, how about the particular vacancy, the officer vacancy, which existed as of May 1963? Did you make a recommendation to fill that vacancy?
Mr. OTEPKA. Well, that was the same vacancy.
Mr. SOURWINE. That was the same vacancy?
Mr. OTEPKA. Certainly.
Mr. SOURWINE. You had made the recommendation then, the year before?
Mr. OTEPKA. Yes.
Mr. SOURWINE. Mr. Reilly told us he was not keeping that vacancy from being filled. Do you know who is keeping it from being filled?
Mr. OTEPKA. Well, of course, it would have been kept from being filled since January 1963 by the freeze. I saw the memoranda that were issued with respect to the personnel freeze.
Mr. SOURWINE. Who ordered the freeze?
Mr. OTEPKA. That came out of the Bureau of Administration. It was either Mr. Crockett, and he was then, I think, the Assistant Secretary for Administration, or Mr. Pollack.
Mr. SOURWINE. Can you tell us whether it is true that Mr. Belisle ordered the freeze on promotions?
Mr. OTEPKA. Yes, I was the recipient of a memorandum from him saying that there would be no more promotions until further notice.
Mr. SOURWINE. That was in January of this year?
Mr. OTEPKA. Yes.
Mr. SOURWINE. And that is still in effect?
Mr. OTEPKA. It was still in effect as of June 27.

Representative Joel T. Broyhill wrote a strong protest to Secretary Dean Rusk, on November 15, 1961, against the loss of 25 positions in the Office of Security, under the reduction in force.

He received a reply dated December 1, 1961, from Herman Pollack, acting Assistant Secretary for Administration, which sought to quiet his fears and to assure him that all that had been done was justified.[5]

But others did not agree with Mr. Pollack's defense of the reshuffling.

Mr. Otepka, for instance, testifying August 12, 1963, called the SY personnel cuts unjustified and inequitable. As the subcommittee examined key statements made by Mr. Pollack, in his reply to Mr. Broyhill, we find that Mr. Otepka not only challenged the idea that there was going to be a reduction in the workload but declared that, instead, the backlog of cases had built up.[6]

[5] The two letters in full appear on pp. 8–10, pt. 2, State Department Security hearings.
[6] State Department Security hearings, pt. 2, p. 10–11.

Mr. SOURWINE. This letter of reply, Mr. Otepka, discussing what had happened in the way of reductions in the Office of Security stated:

"Twenty-five positions are being abolished out of a total of 273 domestic positions. Eighteen of twenty-five reductions are in anticipation of a falling off in the workload."

Was there in fact at that time any reasonable anticipation that the workload of the Office of Security would fall off?

Mr. OTEPKA. There possibly may have been on the part of Mr. Boswell who was then my superior, but as later events proved, there was no falling off of the work. In fact, there was an increase.

Mr. SOURWINE. This letter states:

"The Office of Security is bearing an equitable and not an undue share of the overall reduction of 500 filled positions throughout the Department of State."

Was that an accurate statement?

Mr. OTEPKA. It would be my opinion that the Office of Security was assigned an inequitable share of the positions scheduled for reduction in force.

Mr. SOURWINE. This letter states:

"Of the 25 domestic positions to be eliminated as mentioned above, 18 relate to the investigation and evaluation of applicants for employment with the Department."

That meant a cut of 18 in the Division of Evaluations?

Mr. OTEPKA. Not in the Division of Evaluations.

Mr. SOURWINE. What other divisions shared in that cut of 18? The Division of Investigations?

Mr. OTEPKA. The Division of Investigations.

Mr. SOURWINE. How was that cut apportioned as between the two Divisions?

Mr. OTEPKA. I think my previous testimony before this committee will bear out that 18 of the positions to be abolished were in the Division of Investigation and the others were in the Division of Evaluations and Division of Physical Security, and the position of Deputy Director.

Mr. SOURWINE. You say 18 were in the Division of Evaluations?

Mr. OTEPKA. I would like to—I would have to refresh my recollection on that, Mr. Sourwine. There were 17 in the Division of Investigations.

Mr. SOURWINE. Out of 25?

Mr. OTEPKA. That is correct. Six in the Division of Evaluations.

Mr. SOURWINE. This letter states:

"The investigative evaluation workload which lies ahead for the next 18 months is going to be less than the workload of the past few years."

That statement was proved untrue by the developments that followed; is that correct?

Mr. OTEPKA. Yes, sir.

Senator SCOTT. How? How was it proved?

Mr. OTEPKA. The influx of work subsequent to the announcement that there was going to be a reduction in force resulted in production backlogs.

In other words, for comparable periods of time in previous years, as the records of the Department of State will bear out, subsequent to November 1961, we had more cases to process than in previous years.

Senator SCOTT. Thank you. Go ahead, Mr. Sourwine.

Mr. SOURWINE. This letter concludes:

"I would like to express my conviction that the reductions in the Office of Security will not adversely affect the quality of the work of that Office."

Was that prediction borne out? Was the quality of the work of the Office of Security affected by the reductions?

Mr. OTEPKA. In my opinion, yes.

Mr. Otepka protested when he first got word of the reduction in force. He protested orally to William O. Boswell, his immediate superior at the time. Then later he wrote two memorandums to the chief of the Division of Personnel Operations in the Office of Personnel, Mr. John Ordway.

In the first, dated December 18, 1961, he noted that he had been advised of an impending reassignment and asked for clarification as to whether he still would be SY Deputy Director. He put his finger also, in one paragraph, on an apparent downgrading of his Evaluations unit, or of himself: [7]

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[7] State Department Security hearings, pt. 4, p. 174.

I have been a security officer for 19 of the 25 consecutive years I have thus far served in the career civil service system. I have been the Deputy Director, Office of Security, since April 1957. You are aware that the Bureau of Security and Consular Affairs consists of six major subdivisions each currently headed by a Director. Each of the six offices has as its second ranking officer a Deputy Director, including two relatively small offices. The Office of Security with 273 authorized positions is the second largest in the Bureau, exceeded only by the Passport Office. Except for the Office of Security none of the six offices has eliminated the position of Deputy Director in the current reduction in force.

The second letter of protest, sent to Mr. Ordway January 19, 1962, is presented here in full since it documents more angles in the bumping and switching: [8]

JANUARY 19, 1962.

Mr. JOHN ORDWAY,
Personnel Operations Division,
Department of State.

DEAR MR. ORDWAY: As you know I have been furnished with a letter dated December 5, 1961, signed by you informing me that "due to a redistribution of funds and positions within the Department" it was necessary to effect a personnel reduction "in positions comparable to mine." The letter stated that I would be reassigned effective January 7, 1962, from the position of Supervisor Security Specialist (General) GS–15 $15,030 per annum to the position of Supervisory Security Specialist (General) GS–15 $15,030 per annum. No mention was made in your letter to my present functional title "Deputy Director, Office of Security" nor to the functional title to which it is proposed to reassign me. It would appear from the terminology used no change is being made in my position.

In my reply to you I stated that in view of the terminology in your letter and as the result of my separate conversations with Mr. William O. Boswell, Mr. Roger Jones, and Mr. Herman Pollack, and from copies of correspondence furnished to me relating to the Department's reduction in force which, in essence, indicated to me I would not be demoted, I did not intend to appeal (under reduction in force regulations) the proposed action abolishing my job as Deputy Director, Office of Security. However, I reserved the right to appeal if necessary within the prescribed time under section 14 of the Veterans Preference Act of 1944, on the basis of the fact I would be diminished in rank.

On January 5, 1962, Mr. Pollack by a blanket notice extended the effective date of all reduction in force actions in the Office of Security to January 21. In the intervening time the Office of Security has issued Office Letters Nos. D–62/1. D–62/2, and D–62/3 establishing January 15, 1962, as the effective date of a reorganization in SY. These letters contained statements that as of that date I am "Chief, Evaluations Division." Since my position as Deputy Director is not to be abolished until January 21, 1962, the statements in these office letters seem premature.

I have been informed by Mr. John Drew, Personnel Operations Division that as the result of the reduction in force and in accordance with the Department's retention register regarding Office of Security positions I must "bump" within my own competitive group; i.e., series 080.00. Technically, I am to displace Elmer Hipsley, Chief, Division of Physical Security, GS–15, who would "bump" into a lower grade position. Because Emery Adams vacated the position of Chief, Evaluations Division. I have been informed that Mr. Hipsley by administrative action shall be assigned to that vacant position and that by further administrative action Hipsley and I would then "switch" positions. Had it not been for Mr. Adams vacating his position I am told Mr. Hipsley would have "bumped" down to a GS–13 position in the Office of Security.

By the cited office letters (not by reduction in force) and despite statements made for publication that Mr. Hipsley's position "is not affected by the current reduction in force" the position of Chief, Division of Physical Security, was abolished on January 15, 1962, and that Division was divided and compartmented into three new Divisions with Mr. Hipsley being designated as the Chief of a new Division called Division of Domestic Operations and given authority and control over approximately 23 headquarters positions whereas before he had an authorized complement of 40 positions (including himself). Further, Mr.

[8] State Department Security hearings, pt. 4, pp. 175–176.

Hipsley also lost all jurisdiction over approximately 104 positions (including vacancies) at security offices abroad which shared direction from the former Division of Physical Security and the Division of Investigations. These positions will now receive direction from a new Division named "Division of Foreign Operations" headed by Mr. Hipsley's former deputy, a calss 4 Foreign Service officer. The third new Division called the "Division of Technical Operations" is being headed by a class 3 Foreign Service officer also formerly subordinate to Mr. Hipsley. Thus an experienced career civil service employee's supervisory jurisdiction in the Office of Security apparently must be limited only to domestic operations while his former subordinates are elevated in rank to give them jurisdiction over foreign operations. Another change affecting Mr. Hipsley's former Division is the abolishment of the Security and Compliance Branch of that Division and its transfer to the Office of the Director. The new component is headed by a Foreign Service officer who has been given the functional title of Special Assistant to the Director. Technically, if I were to displace Mr. Hipsley in his new position it would indeed be a considerable diminution in my rank as it now must be for him.

You are aware that I became the Chief of Evaluations Division, on April 25, 1954, and that on April 7, 1957, I was promoted to the higher rank of Deputy Director although the grade of that position, GS–15, is the same as that of the Chief, Evaluations Division. The action to reassign me, therefore, in any event is certainly retrogression for a career civil servant of over 25 years service including 19 years of continuous security experience.

I cannot help being concerned with the several office letters and other correspondence I have thus far received from the Director, Office of Security, since January 1, 1962, indicating that some of the functions assigned to the Evaluations Division as the result of the reorganization of SY will not remain in that Division but will be transferred under the jurisdiction of the Executive Officer together with functions that heretofore were not under the Executive Office. Previously I was orally assured by Mr. Roger Jones, and I have noted in correspondence furnished to me, that the functions of the Executive Officer shall be limited to personnel management, budget and fiscal matters, and logistical support of SY operations. I trust that when it becomes necessary in the future to consider the transfer out of the Division of Evaluations some of its present functions that the above assurances together with the successes as well as the propriety of those operations under the Evaluations Division shall fully be taken into account.

To recapitulate, since November 1961, when notice was first given to me by the Director of the Office of Security that he did not need a Deputy Director, the Office of the Director has been supplemented with two new positions, a Special Assistant, GS–14 (proposed) and an Executive Officer, GS–14, both Foreign Service officers. The latter was placed in command over the existing Executive Officer, GS–13 who was made an Assistant Executive Officer. Further, two new Divisions both headed by Foreign Service officers have been established giving the Office of Security a total of five Divisions at the GS–15 level whereas only three existed before. I believe it is legitimate for me to ask that if economy factors brought about a reduction "in positions comparable to mine" what is the justification for creating two new Division Chief positions at the GS–15 level in the Office of Security following on the heels of a "reduction in force."

Despite my own personal feelings about the present situation I intend to do my best, as I feel I have always done, to carry out the decisions of management. I trust I will receive within a reasonable time the proper written notifications for my records reflecting my reassignment in accordance with the regulations of the U.S. Civil Service Commission and the Department of State.

Sincerely yours,

Otto F. Otepka,
Deputy Director, Office of Security.

Some of the strange effects of the economizing with the Office of Security were cited by Mr. Otepka in his testimony on February 12, 1963. He found the workload in the reduced Evaluations Division was higher on a per man basis. He found also that there was no actual reduction in the personnel in the Office of Security—because field office personnel were brought in to help out with the work. And he contended there had been no actual savings.

Pertinent segments:[9]

Mr. SOURWINE. Is your present workload high?
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. What is the present size of the Evaluations Division?
Mr. OTEPKA. I have 30 employees.
Mr. SOURWINE. That is 10 less than you had a year ago?
Mr. OTEPKA. Yes, sir.

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Mr. SOURWINE. Taking into account the functions which have been transferred away from your division, is your workload now greater or less than it was a year ago?
Mr. OTEPKA. The workload is greater than it was a year ago.
Mr. SOURWINE. It is greater per man?
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. For those who have been retained in the division?
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. Now, this reduction in force which you spoke about was, I think, indicated by you as the primary reason why you have been cut 25 percent in your division. But tell me, how much has the reduction in force cut the Office of Security in total personnel?
Mr. OTEPKA. Well, according to the Department's official announcements at the time of the reduction in force, the total funded positions at that time in the Office of Security was 273.
Mr. SOURWINE. Mr. Otepka, I don't mean—go ahead. Maybe you are going to give us the information.
Mr. OTEPKA. Yes, sir. At the present time, the Office of Security has 274 funded positions.
Mr. SOURWINE. You mean it has one more now than it had then, before the reduction in force?
Mr. OTEPKA. Unless my arithmetic is awfully bad.
Mr. SOURWINE. But your division has been cut 25 percent?
Mr. OTEPKA. Yes.
Mr. SOURWINE. Has the workload of the Office of Security dropped?
Mr. OTEPKA. No, sir.
Mr. SOURWINE. What savings, if any, that you know of, have resulted from this so-called reduction in force?
Mr. OTEPKA. I know of no savings.

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Mr. SOURWINE. You had additional help from the field?
Mr. OTEPKA. Well, excuse me, sir. Yes; these persons are from our field office. They are helping our headquarters personnel.
Mr. SOURWINE. I see——
Mr. OTEPKA. They are included in the 274.

Mr. Otepka explained (Aug. 12, 1963) that at the time of the RIF he was senior in job retention rights to the one other in his competitive group. This was Elmer Hipsley.[10]

Mr. SOURWINE. Therefore, your demotion meant that Mr. Hipsley would be bumped out of his job as Chief of the Division of Physical Security?
Mr. OTEPKA. Bumped by me; yes.
Mr. SOURWINE. Where would he go?
Mr. OTEPKA. According to the retention register, which I examined in the Office of Personnel, Mr. Hipsley would bump a grade 13 evaluator in the Division of Evaluations.
Mr. SOURWINE. Now, Mr. Hipsley was an old hand, an experienced security officer; was he not?
Mr. OTEPKA. Yes; he was.

It was a complicated maneuver.[11]

Mr. SOURWINE. Did it actually operate the way it might have been expected to? Did you bump Mr. Hipsley?

[9] State Department Security hearings, pt. 4, pp. 178–179.
[10] State Department Security hearings, pt. 17, p. 1325.
[11] State Department Security hearings, pt. 17, p. 1326.

Mr. OTEPKA. Technically, yes; and according to the documentation of the State Department, I became the Chief of the Division of Physical Security.

Mr. SOURWINE. How long did you maintain that position?

Mr. OTEPKA. From January until April 1962, according to the journal actions which are part of my personnel record.

Mr. SOURWINE. What were you actually doing during that period of time?

Mr. OTEPKA. I was actually serving as the Chief of the Division of Evaluations.

Mr. SOURWINE. How did that come about?

Mr. OTEPKA. Mr. Boswell simply detailed me to that position and retained Mr. Hipsley in his position as Chief, Division of Physical Security.

Mr. SOURWINE. Well, technically, was Mr. Hipsley detailed to that position while you were, on the record, the actual Chief of the Division of Physical Security?

Mr. OTEPKA. On the record I was the actual Chief of the Division of Physical Security.

Mr. SOURWINE. And what position did Mr. Hipsley hold on the record at that time?

Mr. OTEPKA. I understood that he, on the record, occupied the position of evaluator, GS–13.

Mr. SOURWINE. But he never actually functioned as this?

Mr. OTEPKA. He did not.

Mr. SOURWINE. He stayed with the Division of Physical Security until he got an oversea assignment?

Mr. OTEPKA. That is correct.

Mr. SOURWINE. And is he overseas on that assignment now?

Mr. OTEPKA. Yes, he is.

The August 16, 1963, examination of Mr. Otepka brought out that it was William O. Boswell, as chief of the Office of Security, who had recommended the elimination of the post of Deputy Director, and therefore the demotion of Mr. Otepka.[12]

Mr. SOURWINE. This committee has been informed, Mr. Otepka, that, during consideration of the proposed reorganization of the Office of Security in 1961, it was Mr. William Osgood Boswell who made the motion regarding your demotion from the Office of Deputy Director. Do you have any knowledge as to the fact?

Mr. OTEPKA. Yes, sir.

Mr. SOURWINE. Is the committee's information correct in this respect?

Mr. OTEPKA. Yes, sir. Mr. Boswell told me so himself, that he was responsible for the decision and the recommendation that the position of Deputy Director be abolished.

Mr. Boswell's report of 18 positions being cut from the staffs of two units—Investigations and Evaluations—was checked out, with Mr. Reilly on the stand May 23, 1963. And here it was brought out that a reduction in the workload of the Evaluations Division had been achieved by the transfer of some of its functions to other units.[13]

Mr. SOURWINE. Now, if you look at the top of page 545, you notice, in the second paragraph, Mr. Boswell's statement that 18 positions were cut in Investigations and Evaluations. Do you know how that cut was apportioned between the two Divisions?

Mr. REILLY. Fourteen of the positions were investigator positions.

Mr. SOURWINE. That were cut?

Mr. REILLY. Yes.

Mr. SOURWINE. And only four in the Evaluations Division?

Mr. REILLY. I find only three in Evaluations Division.

Mr. SOURWINE. Now, it is true, isn't it, that Investigation's workload was greater in 1962 than 1961?

Mr. REILLY. Yes.

Mr. SOURWINE. And Investigation's workload is even greater this fiscal year than it was last fiscal year?

Mr. REILLY. That is correct.

Mr. SOURWINE. Now, is the workload of the Evaluations Division greater this year than it was last year?

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[12] State Department Security hearings, pt. 17, p. 1326.
[13] State Department Security hearings, pt. 11, p. 740.

Mr. REILLY. Projecting the first half year figures, it would appear that it will come out to be greater.

Senator DODD. That is on the basis of what you know now?

Mr. REILLY. Yes.

Mr. SOURWINE. Now, certain functions of the Division of Evaluations have been transferred away from it, have they not, which should result in a reduction of the workload?

Mr. REILLY. That is—yes, under our new procedures that is correct.

Mr. SOURWINE. Are you saying that, even with the remaining functions and duties, the workload is still greater than it was before?

Mr. REILLY. No. If I may, I will correct myself on that. I was thinking of the overall Office of Security workload as opposed to the specifics of the Division of Evaluations under my present procedures.

Mr. SOURWINE. Actually, the things you have transferred out of Evaluations into Investigations and elsewhere have substantially lessened the workload of Evaluations. Isn't that right?

Mr. REILLY. Yes.

Once the idea of a RIF was accepted, the economizers kept chipping away. The Evaluations Division lost one "body" after another.[14]

Mr. SOURWINE. Of the 31 positions, how many were officers and how many were clerks?

Mr. OTEPKA. Well, let's see; by that time, I had lost one more position, by transfer of one of my evaluators to the Division of Domestic Operations.

Mr. SOURWINE. There was then, a continuing decimation of the Office of the Division of Evaluations in the Office of Security? Your number of positions——

Mr. OTEPKA. I'll answer that "Yes," after adding that I had another vacancy.

Mr. SOURWINE. Well, then, the situation was, was it not, that you had gone down in positions authorized from 34 to 33 to 32 to 31?

Mr. OTEPKA. Yes.

Mr. SOURWINE. And you had gone down in bodies to—was it 29 or 30?

Mr. OTEPKA. Twenty-nine.

Mr. SOURWINE. So your authorizations had gone down to 31, you had lost 3 positions officially, and you lost 5 bodies?

Mr. OTEPKA. That's correct.

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Mr. SOURWINE. Each time you lost a position, was it brought about by some written memorandum eliminating or transferring the position?

Mr. OTEPKA. Yes, when I lost a position.

Mr. SOURWINE. You always got notice of this in writing?

Mr. OTEPKA. Yes, and sometimes, long after the body had left, I was still under the impression that the position was vacant and that it would be filled. I did not know that the position was taken away from me until sometime later.

Mr. SOURWINE. You eventually were told?

Mr. OTEPKA. I eventually was told.

Mr. Otepka related here again that requests for the filling of vacancies brought no results.

Senator Thomas J. Dodd, vice chairman of the Internal Security Subcommittee, sent a protest to the State Department November 20, 1961, asserting that the reduction in force "is being used as an excuse" for taking the post of SY Deputy Director away from a career civil servant, Mr. Otepka, and giving it to a Foreign Service officer.

Senator Dodd's letter: [15]

NOVEMBER 20, 1961.

Mr. ROGER W. JONES,
Deputy Under Secretary of State for Administration,
Department of State, Washington, D.C.

DEAR MR. JONES: The hearing on November 16 on the State Department reduction in force as it applies to the Office of Security raised several questions.

[14] State Department Security hearings, pt. 16, p. 1285.
[15] State Department Security hearings, pt. 2, p. 6.

One is the overall effect on national security. Another is whether the Office of Security is bearing more than its fair share of the cuts. Still another is the budgetary propriety of reducing departmental personnel to meet a cut in foreign aid funds.

Leaving all these questions aside for the moment, and leaving aside also any decision respecting further hearings, it does appear that one point was definitely established at the hearing on November 16, and requires correction. It is entirely clear that the reduction in force is being used as an excuse for taking the No. 2 position in the State Department Office of Security away from the incumbent, a career civil servant, and giving it to a Foreign Service officer. The incumbent is Mr. Otto Otepka, a veteran, a highly knowledgeable security officer with great experience in this field, and a dedicated anti-Communist. To demote him in order to give his authority and responsibility to a Foreign Service officer of lesser skill and experience is unconscionable, whatever may be done about juggling job designations from "deputy director" to "security officer," or any other title.

This one matter, it would seem, can be set right immediately; and assurances that Mr. Otepka is to continue with undiminished responsibility and authority would remove one of the arguments for holding further and possibly public hearings.

Sincerely yours,

THOMAS J. DODD.

Under the date of November 22, 1961, Senator Dodd received a long reply from Mr. Jones. In this the Deputy Under Secretary defended the program and said it would have no adverse effect on national security. He also contended that the apportionment of the RIF cuts had been fair and declared that the reductions in force would not be used as an excuse to give Mr. Opteka's Deputy Director post to a Foreign Service officer. He did add, however, that the previously abolished position of Executive Director of the Office of Security was to be reactivated.

The Jones letter: [16]

NOVEMBER 22, 1961.

Hon. THOMAS J. DODD,
U.S. Senate.

DEAR SENATOR DODD: Thank you for your frank letter of November 20. The Department will be glad, whenever convenient to you, to go further into any of the questions raised by the November 16 hearing of the Senate Subcommittee on Internal Security on the State Department reduction in force as it applies to the Office of Security. In the meantime, may I comment on the three questions raised in the early paragraphs of your letter?

First, I am convinced that the reductions being applied to the Office of Security will have no adverse effect on the national security. In this connection, I believe it is pertinent to mention that the recruitment program of the Department of State for the remainder of this fiscal year will be severely limited. Current plans with respect to fiscal year 1963 do not contemplate any overall expansion of personnel. Accordingly, the investigative workload which lies ahead for the next 18 months is going to be less than the normal load of the past few years. Additionally, I assure you that no existing security measure is going to be eliminated, nor will any significant change be made in present security regulations or practices as a result of the pending reductions. We are reviewing our procedures to see whether they are fully effective.

A second question inquires as to whether the Office of Security is bearing more than its fair share of the cuts. In my judgment the reduction is fair and proportionate and has taken into account all factors.

A third question relates to the propriety of reducing departmental personnel to meet a cut in foreign aid funds. The management of the Department's financial resources is, as you know, exceedingly complicated. It is our belief that the Department's financial problems arose in part from the fact that it is experiencing an abnormally high rate of expenditures. This has had the effect of limiting its ability to meet the financial crises caused by political and other emergencies in the world. Consequently, a reduction of 50 percent in a $6 million

[16] State Department Security hearings, pt. 2, pp. 7–8.

appropriation provided by section 637(b) (formerly sec. 411(c)) of the Act for International Development of 1961 made it necessary to reevaluate our entire salaries and expenses base. The 411(c) appropriation has been made to the Department of State in the mutual security bill since the inception of that legislation. It has been justified to the Congress and used by the Department to finance the cost of positions and services, both in Washington and abroad. The loss of $3 million in this appropriation was the major, but not the exclusive factor in determining the necessity for a reduction in force. As mentioned above, the Department's heavy expenditure rate aggravated and contributed to the problem imposed by the reduction in anticipated appropriations.

Your last question relates to whether the reduction in force is being used as an excuse for taking a Deputy Director position away from Mr. Otepka and assigning his authority and responsibility to a Foreign Service officer of lesser skill and experience. This is not intended and will not be done. The Deputy Director has not in the past several years served as the alter ego to the Director, nor has he served in an across-the-board manner with respect to the management of the Office of Security. Because of the nature of the workload and in order to take advantage of Mr. Otepka's extensive experience and considerable skill in evaluation activities, the Deputy Director position has been devoted principally to evaluation work. I believe that continuation of a fictional job can only detract from the efficiency of both the Office of Security and the incumbent.

It is my expectation that we shall be able to work out an assignment for Mr. Otepka which will enable him to consolidate the special personnel security undertaking that has occupied him for the past year—and which will take from 1 to 2 years more to complete—with the regular evaluation work. This will enable him to concentrate exclusively on his field of specialization. I do not consider the change a demotion. The old job title and duties were not accurate. There will be no reduction in Mr. Otepka's salary.

In turn, the elimination of the position of Deputy Director of the Office of Security will enable and will require the Director to deal directly with each of his several division chiefs on matters falling within the area of their respective responsibilities. This has been in fact the actual situation during the past year. In the Director's opinion, it has worked and worked well. Thus, future Directors will continue to have the benefit of Mr. Otepka's counsel with no loss of continuity or cohesiveness of the functions of the Office of Security.

The position of Executive Director of the Office of Security was abolished a year ago. While it has been possible to get along without the services of either a Deputy or an executive officer, the burden on the Director led me to concur in the wisdom of reactivating a position of executive officer. The incumbent, however, will deal with matters relating to budget formulation and presentation, fiscal planning and implementation, personnel administration, and the logistic support of the headquarters and 19 field offices in the United States and 36 security offices overseas. The position will be at the GS–14 level. No decision has yet been made as to who will fill it but regardless of whether the choice is made of a Foreign Service officer or a Civil Service officer the position will in no sense become the No. 2 position in the Office of Security.

In summary, I should like to assure you that there has been no change whatsoever in the Department's determination to provide itself with the most effective security possible. We have a good security staff, but it would be foolish not to remain continuously aware of possibilities for improvement, in techniques, organization, and the general quality of our security personnel. It is my hope that the Department's plans and programs to achieve these improvements will continue to produce tangible results over the next several years.

Sincerely yours,

Roger W. Jones.

The protest by Representative Broyhill and the reply by Acting Assistant Secretary Herman Pollack are as follows:[17]

Congress of the United States,
House of Representatives,
Washington, D.C., November 15, 1961.

Hon. Dean Rusk,
Secretary of State,
Washington, D.C.

Dear Mr. Rusk: I would like to strongly protest the excessive reduction in force which has been unofficially announced for your Office of Security. The

[17] State Department Security hearings, pt. 2, pp. 8–10.

general reduction in force in the Department of State has roughly averaged 1 percent for each department but I am told that 25 of the 144 people in the Security Office are to be separated. This figure excludes stenographers and clerks and the separation applies in GS–9 to GS–15 grades.

I hope an immediate review will be made of this situation as I do not feel it is in the best interest of the Department of State or the Federal Government to radically reduce such an important office. I see no reason why this Office should be so drastically affected as compared to other divisions. In fact, in this sensitive agency, I would think it appropriate that the Office of Security would be increased rather than decreased. It is my understanding that the workload in the Security Office is such that an increase is needed and a reduction would create an even greater problem. I am told nine men have been brought in from your branch office to help with the Washington area backlog. This means that the branch office work will suffer and further, the Federal Government must bear the cost of $16 per day extra expense while those branch office men are working away from their regular location. It would appear far more logical to avoid the proposed reduction and save the expense and resulting difficulty in transferring men here from your branch offices.

Obviously, from your normal turnover, the future workload in your security work will continue to be heavy. It is not possible to accomplish this workload with the staff remaining after the proposed reduction. If your plan is to turn over some of the investigations to the Civil Service Commission, I do not believe it is a good plan. I believe records will show that your Security Office can make these investigations at a substantial savings over what your agency would pay to the Commission for the same service. Further, the Commission investigations cannot be specialized to your particular needs as is now done within your organization. Further, to pay out funds to the Civil Service Commission in lieu of salaries to your staff would not result in any true savings.

I would also like to point out that under reduction-in-force procedures the Veterans' Preference Act would cause you to lose many employees with the greatest experience and training. These are valuable people and it would be impossible to replace them at a later date. It takes many years to train an investigator. The work they perform at the beginning of their appointment can not help but be imperfect. If your investigations are turned over to the Civil Service Commission, the Commission would be forced to hire new employees to accomplish the additional work. Consequently, this transfer of investigations would result in some measure of having your work performed by people of lesser ability and experience. Surely in a sensitive agency this factor would be considered of utmost importance. Similarly your announced intention of using untrained Foreign Service officers to help in various divisions would be to the detriment of your organization if any are intended for use in the division of investigations.

In view of the above and in view of the tremendous hardship employees who are downgraded or separated must suffer, I urgently request that this decision be reversed. I would personally appreciate your assistance in this regard as I am deeply concerned over the welfare of our Nation and the employees affected in this case.

Thanking you, I am,

Sincerely,

JOEL T. BROYHILL, *Member of Congress.*

DEPUTY UNDER SECRETARY OF STATE FOR ADMINISTRATION,
Washington, December 1, 1961.

Hon. JOEL T. BROYHILL,
House of Representatives.

DEAR MR. BROYHILL: The Secretary has asked me to thank you for your letter of November 15. The Department will be glad, whenever convenient to you, to go extensively into the questions you have raised. In the meanwhile, may I comment on them?

Twenty-five positions are being abolished in the Office of Security out of a total of 273 domestic positions. Eighteen of the twenty-five reductions are in anticipation of a falling off in workload. The reduction of 25 positions in the Office of Security is part of a larger reduction affecting every bureau and office in the Department of State. The Department-wide reduction is necessary if the Department is to live within its appropriations. The Office of Security is bear-

ing an equitable and not an undue share of the overall reduction of 500 filled positions throughout the Department of State. It is losing 25 officers: 140 officers supported by 108 clerical employees will remain to carry on the important and vital security work of the Department. The fact is that the security of the Department's offices abroad is being strengthened by the addition of 35 positions to its oversea security force—an increase of almost 50 percent, and a net increase of 10 positions in the overall strength of the security force.

Of the 25 domestic positions to be eliminated, as mentioned above, 18 relate to the investigation and evaluation of applicants for employment with the Department. This decision was predicated upon a sharp curtailment in the recruitment program of the Department of the remainder of this fiscal year, coupled with plans with respect to fiscal year 1963 which do not contemplate any overall expansion of our personnel. Thus, the investigative evaluation workload which lies ahead for the next 18 months is going to be less than the workload of the past few years. The reductions have been geared to this situation.

You refer to the presence in Washington of nine men who have been brought in on temporary detail from various of our field offices throughout the country. The Department's investigative workload is not of such a nature that it results in a steady volume of work throughout the year at each of our 19 field offices. On the contrary, there are peaks and valleys. Over the years we have found it more efficient and less expensive to detail officers temporarily from the less heavily to the more heavily burdened field offices. Surely, this is preferable to maintaining permanently at all of these offices staffs geared to peak workloads but who would be underemployed for extended periods at other times during the year.

You point out that under reduction-in-force procedures the Veterans Preference Act would cause the Department to lose many employees with the greatest experience and training. This is only partially true. For example, 5 of the 16 investigators we will lose have been with us less than 1 year. We retain the services of over 70 investigators who have been with us for periods ranging up to 19 years.

With regard to the incumbents of the 25 positions being eliminated, 5 are eligible for retirement, 3 are to be reassigned elsewhere in the Department or Foreign Service, 6 have already obtained employment. The Department is endeavoring and I am confident will be successful in obtaining offers of employment for the remaining 11 prior to the termination of their services with the Department.

In summary, and also in connection with the other points raised in your letter, I would like to assure you that there has been no change whatsoever in the Department's determination to provide itself with the most effective security possible. We have a good security staff, but it would be foolish not to remain continuously aware of possibilities for improvement, in techniques, organization, and the general quality of our security personnel. This will be the basis for any future plans and programs undertaken by the Department.

Lastly, I would like to express my conviction that the reduction in the Office of Security will not adversely affect the quality of the work of that Office nor will they endanger the welfare or security of the Nation.

Sincerely yours,

HERMAN POLLACK,
Acting Assistant Secretary for Administration.

65-860—67—pt. 3——4

The Otepka Case

THE CHARGES

On September 23, 1963, Otto Otepka received a letter from Secretary Rusk, advising him of the Department's proposal to remove him from his appointment as supervisory personnel security specialist. Secretary Rusk, in his testimony, summarized the charges as follows: [1]

> There are three main groups of charges. The first is that Mr. Otepka furnished to Mr. Jay Sourwine, chief counsel to the Senate Internal Security Subcommittee, classified information concerning the loyalty of prospective State Department appointees. The letter of charges states that this conduct violated a Presidential directive issued on March 13, 1948, of which Mr. Otepka was aware.
>
> A second group of charges is that, in two cases, Mr. Otepka furnished a detailed series of questions for the use of Mr. Sourwine in his interrogation of Mr. Otepka's superiors.
>
> The third group of charges is that Mr. Otepka was responsible for cutting off the classification indicators from a number of classified documents, and that he thereby declassified the documents in violation of the Department's procedures, although the information contained in the documents remained classified. By the same act, it is charged, he mutilated the documents in violation of a criminal statute.

On October 14, 1963, Otepka replied to the charges in a letter to John Ordway, Chief, Personnel Operations Division, Department of State. Secretary Rusk summarized Mr. Otepka's reply:

> Mr. Otepka was afforded the opportunity to reply to the charges, which he has now done. In substance he admits having done the acts alleged in the first two groups of charges summarized above, but denies that this violated any applicable standard of conduct. As to the third group, he denies having done the acts charged.

Mr. Otepka's assertion that doing the acts alleged in the first two groups of charges did not violate any applicable standard of conduct was the subject of comment by the committee. Senator Hruska put it this way: [2]

> Yet, as I understand it, when he [Otepka] asked for specifics, there are not any standards set, it is whatever the standards are in the mind of the accuser of Mr. Otepka.

During the appearance of William J. Crockett, Deputy Under Secretary for Administration, reference was made to his recent testimony before another congressional committee in which he stated that the Department was trying very hard not to punish officers who are proven wrong by hindsight, and that he (Crockett) would watch out so that people are not punished for exercising the right of dissent. Whether this gesture of fair play was meant to apply to Mr. Otepka is not clear in view of Mr. Crockett's subsequent comment about Mr. Otepka taking the law and regulations into his own hands. Mr. Crockett further observed that when people dissent they are running a risk, and he agreed that Mr. Otepka is paying a very heavy price

[1] State Department Security hearings, pt. 5, p. 268.
[2] State Department Security hearings, pt. 5, p. 276.

because of the method he employed in his dissent. Here is the testimony referred to above:

Mr. Sourwine. Sir, there was some interest in your testimony before the Subcommittee on National Security Staffing and Operations of the Committee on Government Operations on November 21 of last year.*

Mr. Crockett. Yes, sir.

Mr. Sourwine. It is noted that at page 294 of that record, after describing yourself on the previous page as a nonconformist, you said: "We are trying very hard not to punish officers who are proven wrong by hindsight."

A little later on the same page, you promised Senator Jackson unqualifiedly that you "will really watch out so that people are not punished for exercising the right of dissent, the willingness not to conform."

Mr. Crockett. Mr. Sourwine, I think that it is inherent that responsible officers have to object whenever they find that they cannot agree with the policies and programs of their superiors or the Department. Certainly it is the responsibility of an officer to bring forth or to explain his personal feelings and his objections to a policy. It is certainly the responsibility of an officer to expose wrongdoing and evil.

On the other hand, I think that it is certainly the responsibility of every person to fully explore and use every available avenue provided by the regulations and by the law before he resorts to taking the law or the regulations into his own hands. I think this is the basic difference in the Otepka case.

Mr. Sourwine. Mr. Otepka took the law and the regulations into his own hands?

Mr. Crockett. I have not rendered judgment, but this is what the charges so state. And it seems to me that—to go one step further—certainly there isn't any question that the loyalty to the United States comes first. This is paramount. We must preserve this.

On the other hand, there isn't anything that would be more devastating to orderly government than to permit a million employees of the Federal Government to each decide, individually, which regulation they would break.

Mr. Sourwine. Is it your point that this right of dissent is to be maintained but that it is to be confined entirely to confidential channels within the Department?

Mr. Crockett. Not necessarily within the confidential channels. Certainly there may be other channels, but I think that the right to dissent in other channels is always risky and that when people dissent in that manner they are running a risk.

Now we are trying very hard to insure that there are channels for dissent; that, if a policy decision is made, officers involved in it have an opportunity to voice their own opinions. But, certainly, I think that once policies are made, once a decision has been made by responsible officials, you can't have the policy tried in the press or questioned by the very people that are charged with carrying it out.

Mr. Sourwine. The right of dissent is circumscribed in that respect?

Mr. Crockett. To some extent, surely.

Mr. Sourwine. Mr. Otepka is paying and will pay a very heavy price for his dissent; right?

Mr. Crockett. I would say not for his dissent, but for his method of employing his dissent. He did not avail himself of any channel within the Department to my knowledge. He never asked to see me, never asked to see my predecessor, never asked to see the Secretary. So far as I know, he did not avail himself of any of the normal channels of procedures that were available to an employee of the Department.

Mr. Sourwine. And in that respect you consider that he was culpable?

Senator Dodd. Was what?

Mr. Sourwine. In that respect you consider he was culpable?

Mr. Crockett. At least this is what the charges state.

*   *   *   *   *   *   *

Secretary Rusk commented on this point: "I can assure you, however, that the charges were not brought in retaliation for Mr. Otepka's testimony before the subcommittee, nor do they mark any attempt by the Department to interfere with the work of the subcommittee." [3]

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*State Department Security hearings, pt. 5, pp. 264-266.

[3]State Department Security hearings, pt. 5, p. 268.

INFORMATION TO SISS, BASIS OF THE OTEPKA CHARGES

John F. Reilly, Deputy Assistant Secretary for Security, drew a distinction between giving information to the committee and "back-door dissemination to staff members." He obviously felt departmental employees are acting improperly if they furnish information to committee staff employees rather than directly to Members of the Senate. Likewise he believed an employee is "doing wrong" if he discloses departmental dishonesty or bad security to a Senate committee "without first having told his superiors." He adhered to this view notwithstanding that an act of Congress protects the right of civil service employees to give information to Congress. Pertinent testimony follows: [4]

Mr. SOURWINE. Do you think an officer of the Department of State is committing an offense if he gives information to the Senate of the United States?

Mr. REILLY. That again is an area covered by my instructions.

Mr. SOURWINE. I respectfully suggest it is not. There is nothing in that question about Mr. Otto Otepka.

Senator HRUSKA. And the Chair so rules. There is no connection at all with the instructions as you have described them, Mr. Witness.

Mr. REILLY. Mr. Chairman, I would say this—I would draw a distinction between the presenting to Members of the Senate or the Representatives or to their committees, openly, information, and the private back-door dissemination of information to staff members.

Mr. SOURWINE. Mr. Reilly, don't you think a committee of the Senate of the United States has the right to interview prospective witnesses who are employees of the Department of State?

Mr. REILLY. I haven't quarreled with that, have I, sir?

Mr. SOURWINE. Do you think that, in the case of such interviews, they must be conducted by Senators? Don't you think a committee can have a staff member or staff members interview employees of the Department of State with perfect propriety?

Mr. REILLY. Mr. Sourwine, we would be getting into an area here where I think you and I are going to disagree.

Mr. SOURWINE. I am quite sure we are.

Mr. REILLY. Fine.

Mr. SOURWINE. But I want to make a record on what your feeling is with regard to these matters. I think it is important as the responsible head of the Office of Security that we should know what your view is in this regard. Do you remember the question?

Mr. REILLY. Now, will you repeat the specific question?

Mr. SOURWINE. I would be glad to. Don't you think that a committee of the Senate of the United States can send staff members to interview or a staff member to interview an employee or employees of the Department of State, with perfect propriety?

Mr. REILLY. I think upon due notice given to the head of the agency that that is what they are going to do.

Mr. SOURWINE. Do you think it is necessary for this committee or any other Senate committee to give notice to the head of the agency before it can interview employees of an agency in the executive branch?

Mr. REILLY. I think propriety would dictate that.

Mr. SOURWINE. Suppose an employee in one of the agencies in the executive branch knows of something that is wrong, either from a security standpoint or from the standpoint of honesty or ethics or the proper conduct of the affairs of the Government, and he goes to the appropriate committee of the Senate or to a member of the staff of that committee and discloses his fears and tells what he knows. Is he doing wrong?

Mr. REILLY. If he does this without first having told his superiors what it is he feels is wrong.

Mr. SOURWINE. He is doing wrong?

Mr. REILLY. I say "Yes." You and I may differ on this. We do.

[4] State Department Security hearings, pt. 2, pp. 28–29.

Mr. SOURWINE. Do you realize that you are rewriting an act of Congress when you add that condition?

Mr. REILLY. Which act?

Mr. SOURWINE. You probably don't. You don't realize that?

Mr. REILLY. Which act of Congress is this, sir?

Mr. SOURWINE. Are you familiar with the act approved June 10, 1948, it is in 62 Statutes,[5] which provides the right of persons employed in the U.S. civil service either individually or collectively to petition Congress or any Member thereof or to furnish information to either House of Congress or to any committee or member thereof, shall not be denied or interfered with. Didn't you ever hear of that law?

Mr. REILLY. I have.

Mr. SOURWINE. Did you take that law into consideration in all your actions against Mr. Otepka?

Mr. REILLY. Yes, sir.

Richard A. Frank, attorney, Office of the Legal Adviser, testified that Mr. Otepka furnished three classified documents to the committee:

Mr. SOURWINE. Do you know that Mr. Otepka's superiors contended he should not have given certain security information to the Internal Security Subcommittee?

Mr. FRANK. I know that that is the feeling of some in the Department of State, sir.

Mr. SOURWINE. Do you know what security information he was alleged to have given the committee that his superiors felt he should not have given?

Mr. FRANK. Yes, sir; I do.

Mr. SOURWINE. And what is the nature of that security information? I am not asking for the content now. Was it a classified document? Was it something from his security file which was unclassified but which the Department figures should not have been given because it was out of that file, or just what was the nature of the information?

Mr. FRANK. There were three documents which did have a classification on them. I don't remember now the exact titles of the documents. I'm sure I could check my files for that information.

Secretary Rusk says Mr. Otepka's testimony before this committee has "nothing to do" with the charges against him:

Senator MCCLELLAN. Now, let me ask you this, is this man Otepka in danger of losing his job because he testified before this committee?

Secretary RUSK. His testimony before this committee has nothing to do with it, Senator.[6]

SECRETARY RUSK'S PART IN THE OTEPKA CASE

Appearing before the subcommittee on October 21, 1963, Secretary Rusk testified he ordered the investigation of the Otepka case, but did not participate further at that time.[7]

During the past summer, evidence came to my attention concerning alleged activities of Mr. Otepka. This evidence, if true, seemed to me on its face to present some serious questions of security in the Department. I asked the appropriate officers to make a thorough investigation of all the evidence and to analyze the questions of law involved. I directed them to prefer charges only if they were satisfied that there was evidence and basis in law sufficient to warrant such action.

I abstained from further participation in the matter because I will make the ultimate departmental decision, as the President mentioned in his last press conference.

[5] Title 5 U.S.C. 652(d), 62 Stat. 354, which reads as follows:

"(d) Right to petition Congress.

"The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with."

[6] State Department Security hearings, pt. 5, p. 277.

[7] State Department Security hearings, pt. 5, pp. 267–268.

On May 4, 1965, Mr. Crockett testified as to his version of Mr. Rusk's participation in the Otepka case: [8]

Mr. SOURWINE. Sir, it has been reported to the committee that you have stated that the Secretary of State considers the Otepka case as "his case." Is that correct?

Mr. CROCKETT. Yes; that is correct, in the sense that he has deep personal interest in it. There is no one, I think, in the whole Department who wants to see justice done more than he. And he was the person that caused the regulations to be changed so as to be more compassionate to people, in this kind of situation, until the case is brought to conclusion.

So the Secretary has indicated a continued personal interest in the case.

Mr. SOURWINE. Has the Secretary made any of the basic decisions with respect to the case?

Mr. CROCKETT. It depends on when you say the case started. For instance, he made a basic decision that there should be the investigation.

Mr. SOURWINE. Did the Secretary make a personal decision that Otepka was to be formally charged?

Mr. CROCKETT. Yes; I am sure he was involved in that decision.

Mr. SOURWINE. Did the Secretary make the decision that Otepka was to be dismissed?

Mr. CROCKETT. I think it depends again on what—I don't want to quibble, Mr. Sourwine, but I don't want to answer inappropriately.

Mr. SOURWINE. I don't mean to quibble, either.

Mr. CROCKETT. But I don't know what "dismissal" means.

Mr. SOURWINE. I am talking about the dismissal order which was entered and which is now on appeal. It isn't final yet.

Mr. CROCKETT. That is right. But I didn't want the implication to be that he was——

Mr. SOURWINE. I want to be precise.

Mr. CROCKETT. Yes; he did participate in this.

Mr. SOURWINE. Has the Secretary made any decisions about who ought to be the State Department's witnesses?

Mr. CROCKETT. No, sir.

Mr. SOURWINE. Did he make any decision about Mr. Otepka's new assignment or his reassignment?

Mr. CROCKETT. No, sir.

Mr. SOURWINE. Would you say the Secretary is substantially in charge of the Otepka case?

Mr. CROCKETT. Yes, sir; insofar as its final determination is concerned. The Legal Adviser's Office is in charge of the appeal now pending on Mr. Otepka's dismissal and, actually, I guess you would say they are in charge of the case.

* * * * * * *

CHARGES AGAINST OTEPKA

It took quite a bit of doing to run out even the question of just who ordered, who drew up, and who filed the charges against Mr. Otepka. Various persons and offices were involved.

There was testimony (May 4, 1965) by Mr. Crockett indicating that the charges were filed by the Chief of the Personnel Operations Division, who also sustained them after Mr. Otepka had made his answers. Mr. Crockett said his part was to "order" the charges: [9]

Mr. SOURWINE. The letter to Senator Clark from Mr. Dutton under date of May 18, the second paragraph, the next to the last sentence says, "Charges were subsequently filed." There are two questions about this. Who made these charges; who ordered that they be made?

Mr. CROCKETT. The Chief of the Personnel Operations Division, in accordance with our regulations to bring charges for misconduct. They were made after the Department's investigation of the case had been made and were ordered by the Deputy Under Secretary for Administration.

[8] State Department Security hearings, pt. 5, pp. 294–295.
[9] State Department Security hearings, pt. 3, p. 148.

Mr. SOURWINE. The last clause of that second paragraph states that "the initial Departmental decision was upheld." And the question is, Who made the decision, who was responsible for that decision?

Mr. CROCKETT. The Chief of the Personnel Operations Division notified Mr. Otepka of the charges and then gave Mr. Otepka an opportunity to answer them. After his answer, the Chief of the Personnel Operations Division determined, in the first instance, that these charges were sustained and notified Mr. Otepka he could appeal that decision.

Months subsequent to the above, in connection with correcting his testimony, Mr. Crockett supplied the following answers in writing: [10]

Mr. SOURWINE. What, if anything, did you have to do with drawing up the charges against Mr. Otto Otepka?

Mr. CROCKETT. Although I was aware that the charges were being prepared against Mr. Otepka, I did not personally have anything to do with the development of the charges or the phrasing of the charges.

Mr. SOURWINE. What did the Secretary of State himself have to do with drawing up the charges against Mr. Otepka?

Mr. CROCKETT. To my knowledge he had no more to do with it than I.

Mr. SOURWINE. What did Mr. Ball have to do with it?

Mr. CROCKETT. To my knowledge Mr. Ball had nothing specifically to do with this.

* * * * * * *

Who prepared the charges? It was Abram Chayes, while he served as State Department legal adviser. His testimony (Aug. 14, 1964): [11]

Mr. SOURWINE. Did you have any official part to play in connection with the Otepka case?

Mr. CHAYES. Yes.

Mr. SOURWINE. Did you perform work in the preparation of the Department's charges?

Mr. CHAYES. Yes.

Mr. SOURWINE. If I proceeded further under the circumstances, Mr. Chairman, about that case, I think I would be likely to run into the rule involving the privileged attorney-client relationship, so I will not.

Mr. CHAYES. I would just for the record like to say in a procedural way, if I could, what I did.

Mr. SOURWINE. All right.

Mr. CHAYES. When the material was produced by Mr. Reilly and disclosed to the Secretary from the so-called burn bags, Mr. Ball and the Secretary called me in, asked me—it was the first time I had seen anything of this or had any knowledge of it, of any of it—asked me to review the material and make recommendations to them as to whether there had been violations of regulations or violations of law and whether charges should be preferred. And I did that and I did make such recommendations.

Mr. SOURWINE. Having volunteered this much, do you want to state what your recommendations were? I don't ask you if you don't want to.

Mr. CHAYES. Oh, I think it is fair to say I recommended that charges be preferred.

Mr. SOURWINE. In other words, what was done was on your recommendation.

Mr. CHAYES. Well, I recommended that. They made their own decision.

Mr. SOURWINE. Can you tell us if it is correct that Mr. Rusk and Mr. Ball have made most of the decisions, have themselves made most of the decisions in the Otepka case?

Mr. CHAYES. Well, you say most of the decisions. Every major step in the case has been considered either by Mr. Rusk or Mr. Ball.

Mr. SOURWINE. Is it a correct statement that Secretary Rusk is deeply interested in this case?

Mr. CHAYES. Well, once the charges were preferred—excuse me. I had better back up.

Mr. SOURWINE. Yes.

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[10] Ibid., pt. 8, p. 556.

[11] State Department Security hearings, pt. 8, p. 497-499.

Mr. CHAYES. Because during the period of the examination of the evidence and decision to prefer the charges and so on, we specifically routed matters to Mr. Ball for his decision because we knew that Mr. Rusk ultimately would have to review any decision, and we didn't want to have the question of prejudgment there at all.

Mr. SOURWINE. You mean the decision to bring the charges was Mr. Ball's?

Mr. CHAYES. Was made by Mr. Ball.

Mr. SOURWINE. Yes, sir.

Edwin A. Burkhardt, a personnel security officer, who worked with Mr. Otepka, calls the charges against Mr. Otepka a "frameup." His statement appears in a letter to the Appeals Examining Office, U.S. Civil Service Commission, dated April 7, 1964. "I previously informed the FBI that I was of the opinion the charges were a frameup, and as of this date, from the information coming to my attention through the news media and the release of records of Congressional hearings, I have no basis to change my opinion." [12]

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[12] State Department Security hearings, pt. 17, p. 1351.

Otepka Case—Procedure

The May 4, 1965, testimony of Deputy Under Secretary William J. Crockett included discussion of Otto Otepka's procedural rights and the departmental regulations governing his case. The current regulations permitted the Department to keep Otepka in a pay status pending his appeal from the dismissal notice. Pertinent portions of this testimony follow: [1]

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

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

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

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

Mr. Crockett. Yes, sir.

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

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

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

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

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

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

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

Mr. Crockett. May I supply that?

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

Senator Dodd. Yes.

Mr. Sourwine. Is that standard procedure?

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

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

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

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

Mr. Crockett. Yes, sir.

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Mr. Sourwine. In cases like this under the present regulations is there an option in the Department to suspend or continue the employee? [2]

Mr. Crockett. No, sir.

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

[1] State Department Security hearings, pt. 7, p. 464.
[2] Ibid., pt. 7, pp. 483–484.

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

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

Mr. SOURWINE. And there is not now?

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

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

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

Mr. SOURWINE. Yes.

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

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

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

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

Mr. CROCKETT. It is not true that we did not suspend him because we did not feel that we could meet the procedural requirements. We chose not to suspend him and to keep him on the rolls out of compassionate considerations for the employee. The Secretary himself stated that if an individual ever needed his income it was during periods of trial like this, and, therefore, he wanted the employees of the Department of State to have this in most cases at our discretion.

Mr. SOURWINE. That would have involved a hearing?

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

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

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

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

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

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

Mr. CROCKETT. I believe that you have in mind personnel security regulations based on Executive Order 10450 when you speak about the procedural requirements on suspension before a hearing is held. Mr. Otepka has not been charged under the security regulations but under applicable civil service regulations.[3]

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Earlier, on October 21, 1963, Secretary Rusk had dealt with the Otepka case at some length. Regarding the procedures to be followed, Mr. Rusk said: "Both the law and applicable regulations fully protect the rights of Mr. Otepka and assure that the issues will be decided fairly according to established procedures and due process of law." [4]

Information furnished to the committee subsequent to Mr. Crockett's testimony of August 19, 1964, revealed that Department

[3] Applicable regulations of Apr. 14, 1964, with comparative copies of the regulations as of Oct. 17, 1963, July 11, 1963, and Oct. 5, 1962, commence p. 466, pt. 7, State Department Security hearings.

[4] State Department Security hearings, pt. 7, p. 268.

regulations provide that a hearing shall begin within 5 days after a hearing officer has been designated, but do not fix any time limit within which a hearing officer is to be named.[5]

Mr. SOURWINE. Sir, do the regulations of the State Department fix any time limit within which a hearing officer is to be named after an employee has appealed to the Department from an order of dismissal?

Mr. CROCKETT. I would have to supply that, Mr. Sourwine. I'm not sure.

Mr. SOURWINE. Would you do that?

Mr. CROCKETT. Yes, sir.

Mr. SOURWINE. Thank you, sir.

(In a letter to the chairman dated March 17, 1965, Assistant Secretary MacArthur wrote as follows:)

> Department regulations do not fix any time limit within which a hearing officer is to be named after an employee has appealed to the Department from a decision on an adverse action.

Mr. SOURWINE. Is there any limitation in the State Department regulations as to the time within which an employee must be given his hearing after a hearing officer has been named in such an appeal case?

Mr. CROCKETT. I'm not sure of that, either. I'll have to supply it.

(Assistant Secretary MacArthur, in a letter to the chairman dated March 17, 1965, suppled the following answer:)

> Department regulations provide that a hearing shall begin within 5 working days after the hearing officer has been designated, although this time limit may be extended by the Director of the Office of Personnel if he finds such action to be necessary.

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On August 11, 1964, Mr. Richard L. Frank, an attorney in the office of the Legal Adviser to the Secretary, testified as to the regulations governing the scheduling of hearings and the designation of hearing officers.[6]

Mr. SOURWINE. Has a date been set for the hearing yet?

Mr. FRANK. Not to my knowledge, sir.

Mr. SOURWINE. Does the State Department have a regulation covering the period within which a hearing should be set in such a case?

Mr. FRANK. I believe there is a State Department regulation which indicates that there is a specific amount of time after the hearing officer is chosen before which the hearing must start.

Mr. SOURWINE. What is that period of time?

Mr. FRANK. I believe, although I'm not sure, that it is 5 days unless there are extenuating circumstances.

Mr. SOURWINE. How long has it been since the hearing officer was chosen in the Otepka case?

Mr. FRANK. To my knowledge, he has not been chosen.

Mr. SOURWINE. He has not been chosen?

Mr. FRANK. The person who will be the hearing officer has been selected, as I understand it. However, he has not been formally appointed.

Mr. SOURWINE. You are in a technicality again, aren't you? Mr. Otepka has been notified of the selection?

Mr. FRANK. I believe that Mr. Otepka was notified that Mr. Dragon of the State Department would be appointed as the hearing officer.

Mr. SOURWINE. What is there beyond the Department's choice and notification of Mr. Otepka that has to be done in order to trigger the effectiveness of a regulation which requires a hearing within 5 days after the hearing officer is selected?

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Mr. SOURWINE. Do you recall the last question?

Mr. FRANK. No, sir; will you repeat it?

Mr. SOURWINE. I'll give you the substance of it.

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[5] Ibid., pt. 8, p. 552.

[6] State Department Security hearings, pt. 2, p. 36.

You have testified about a regulation that indicates, you say, that there should be a hearing within 5 days after the hearing officer is named. I ask you, after the hearing officer has been fixed upon, the Department has decided who they want, and after Mr. Otepka has been notified of this selection, what else has to be done to trigger the effectiveness of that regulation?

Mr. FRANK. He would have to be formally appointed in writing. I am not sure which Department official would have to give that notification.

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During the course of the Otepka appeal there was correspondence between Mr. Otepka, his attorney, Mr. Roger Robb, and various representatives of the State Department, discussing arrangements for the hearing itself and other pertinent matters. On January 6, 1964, Mr. Bernard Rosen, Acting Director of Personnel, Department of State, submitted to Mr. Otepka a list of six persons, together with their biographical summaries. He requested Mr. Otepka to select from this list one person to conduct the hearing on his appeal.[7]

On January 13, 1964, Mr. Otepka replied to Mr. Rosen, objecting to the names submitted. Four of the names on the list were Foreign Service personnel, and because of serious disagreements between the Foreign Service as a group and the professional security officers of the Department, Mr. Otepka was of the view that the request for him to select a hearing officer from this group would fall short of the requirements of a hearing by an impartial panel. Likewise, Mr. Otepka objected to the other two names on the panel as not being members of the competitive civil service to which he belonged. Accordingly, Mr. Otepka requested that he be permitted to select a hearing officer from a panel of independent individuals, unconnected with the Department.[8] In a letter to Mr. Otepka dated January 15, 1964, Mr. Rosen denied this request, stating that it was the Department's view that all of the proposed hearing officers were considered well qualified to perform this function.

DEPARTMENT DELAY IN OTEPKA APPEAL

Mr. Otepka's misgivings about his chances of obtaining an impartial hearing before any member of the panel suggested by the Department were shared by this subcommittee. On January 15, 1964, a letter on this subject, signed by all the committee members was sent to Secretary Rusk. The text of the letter follows:[9]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
January 15, 1964.

Hon. DEAN RUSK,
The Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: It has come to the attention of the Internal Security Subcommittee that the panel of names from which Mr. Otto Otepka was asked to choose a hearing officer to hear his appeal from the Department's order of dismissal based on his cooperation with this subcommittee contained the names of none except State Department employees, four of the six being connected with the Foreign Service.

In view of the many evidences of a top-level attitude that Otepka "must be punished" (the quoted phrase is that used by Mr. Crockett in a statement for publication), it is hard to see how a State Department employee could do anything else but rule against Otepka in order to avoid flouting the expressed wishes of his superiors.

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[7] State Department Security hearings, pt. 8, pp. 562–563.
[8] Ibid., p. 564.
[9] State Department Security hearings, pt. 7, p. 565.

It would seem desirable that the hearing officer in Otepka's case should be as completely impartial as possible. Would it not be feasible for the Department to borrow a qualified trial examiner from some other agency, to serve as hearing officer in this case? This is the procedure the Department followed in connection with the passport appeals of a number of known Communists. Since there was no specific authorization in law for the State Department to employ or borrow trial examiners for those cases, it would seem that the absence of such specific authorization could not well be pleaded as a bar to handling the Otepka case in this way.

It might, of course, be possible to provide for this by statute, but it would seem more desirable, under all the circumstances, for such provision to be made by order or regulation of the Secretary of State.

Thanks for your consideration of this matter.

Sincerely,

James O. Eastland, John L. McClellan, Thomas J. Dodd, Sam J. Ervin, Jr., Roman L. Hruska, Everett M. Dirksen, K. B. Keating, Hugh Scott, Olin D. Johnston.

On January 20, 1964, Mr. Otepka again wrote to Mr. Rosen, renewing his request that his case be assigned to an independent hearing officer. Mr. Otepka stated that if his request were denied, he would select Mr. Edward A. Dragon as the hearing officer in his case. Mr. Otepka's letter was acknowledged by Mr. Rosen, February 19, 1964.[10]

The Department adhered to its position, and Mr. Otepka was advised by letter on July 21, 1964, that Mr. Dragon would be designated as the hearing officer in his case.[11]

The procedures and other items of agreement were discussed in conference and through exchange of letters between Mr. Dragon, Mr. Roger Robb (Otepka's attorney), and Mr. Richard D. Kearney, Deputy Legal Adviser, Department of State. The parties concerned agreed that the hearing would commence on November 16, 1964.[12]

The hearing officer indicated, with the consent of both parties, that it would be acceptable to admit into the record the transcript of testimony of various witnesses who appeared before this subcommittee in its State Department Security hearings. Mr. Robb wrote letters to the committee in an effort to determine when the hearing record would be published.[13]

In response to these inquiries, the subcommittee advised Mr. Robb that there was no way to determine the publishing time of the hearing record. Accordingly Mr. Robb requested, and was granted by the Department several postponements of the hearing on the Otepka appeal.

Mr. Crockett commented as follows on the possible remedies available to Mr. Otepka:[14]

Mr. Sourwine. Well, you remember the State Department issued a press statement that the Department had upheld the Department's charges against Otepka and that Mr. Otepka would have a right of appeal to the Department from its affirmation of its charges?

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[10] Ibid., pt. 8, pp. 565–566.
[11] State Department Security hearings, pt. 8, p. 566.
[12] Ibid., pt. 8, pp. 567–568.
[13] Letters from Robb to subcommittee: Oct. 12, 1964; Dec. 12, 1964; Jan. 12, 1965. Replies from subcommittee to Robb: Oct. 14, 1964; Jan. 13, 1965.
Letters from Robb to Department requesting postponement: Oct. 15, 1964; Jan. 14, 1965; Feb. 8, 1965; Feb. 26, 1965; Apr. 26, 1965.
Letters from Department to Robb granting postponement: Feb. 3 and 12, 1965; May 6, 1965.
Some requests and responses were made orally of which the subcommittee has no record.
State Department Security hearings, pt. 8, pp. 568, 569, 571, 572, 573, 574, 575, 576.
[14] Ibid., pt. 12, p. 941.

Mr. CROCKETT. Yes, I remember this.
Mr. SOURWINE. He still has a further right of appeal to the Department——
Mr. CROCKETT. He has several rights.
Mr. SOURWINE (continuing). —from its upholdings of its charges.
Mr. CROCKETT. This is entirely governed by civil service regulations. We are just following the regulations. He had a right to appeal for the withdrawal of the charges and that was the first thing that was done. But the State Department upheld its own charges.

Secondly, he has a right to appear before a hearing officer. This is the second step. So we are merely following the civil service procedures in this case.
Mr. SOURWINE. Do you think he has a right to an impartial hearing officer?
Mr. CROCKETT. Certainly. In fact, at any time he can withdraw his case from us and take it to the civil service or wait until he has been heard by the State Department and then take it to civil service.
Mr. SOURWINE. Are you implying that he can't have an impartial hearing officer in the State Department?
Mr. CROCKETT. Not at all. Not at all. It is my honest opinion that he can have.
Mr. SOURWINE. Why shouldn't the Department in this case go at least as far in providing him an impartial hearing officer as it did in providing impartial hearing officers for Communist applicants for passports, by bringing in a trial examiner from some other agency to hear the case?
Mr. CROCKETT. It so happened that the regulations were written this way.
Mr. SOURWINE. Regulations didn't provide for it in the other case, either, did they?
Mr. CROCKETT. Well, the regulations are written this way. We have changed the regulations once for the benefit of Mr. Otepka to keep him on the payroll until the hearing is finally ended.

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Mr. Crockett further testified that Secretary Rusk is favorably inclined toward the subcommittee's suggestion that the Otepka hearing be conducted entirely outside the Department; however Mr. Crockett indicated he favored a board comprised of three individuals instead of a single trial examiner.[15]

Mr. SOURWINE. Are you familiar with the letter addressed to the Secretary by all the members of this subcommittee with respect to this matter of a hearing officer for the Otepka hearing?
Mr. CROCKETT. Yes, I am, and——
Mr. SOURWINE. I don't think the committee has received any acknowledgment of it or reply yet.
Mr. CROCKETT. That is right. Despite the fact that it is my judgment and the Secretary's judgment that there isn't any question that Mr. Otepka could have a fair and impartial hearing within the State Department, I think the Secretary thought that this was an excellent suggestion by the committee, provided Mr. Otepka himself would agree. Regulations are written one way; and we couldn't force this upon him.
Mr. SOURWINE. Has his agreement been sought?
Mr. CROCKETT. Not yet, because the letter has not been written, and there is no final determination.
Mr. SOURWINE. It is your intention to seek his approval of that procedure?
Mr. CROCKETT. It is our intention at this time. The Secretary hasn't signed the letter, so I can't say what the Department's intention is until he has signed it.
Mr. SOURWINE. Of course.
Mr. CROCKETT. But the letter is being written back to the committee indicating that we will select an outside board to hear the case provided Mr. Otepka agrees to the procedure.
Mr. SOURWINE. An outside board or a trial examiner?
Mr. CROCKETT. An outside board, a board of three.
Mr. SOURWINE. Why not a trial examiner?
Mr. CROCKETT. We thought a board of three would even be better.

Mr. Robert L. Berry, Chief, Division of Investigations, Office of Security, testified August 17, 1964, with reference to a meeting held about a year previously in Mr. Crockett's office at which time Mr.

[15] Ibid., pt. 12, p. 942.

Crockett said the Department did plan to continue to pursue the Otepka case.[16]

Then came another shift. Mr. Crockett testified that there had been a "change in plans" and that the hearing officer would be selected from the State Department, rather than a hearing officer borrowed from another agency.[17]

Mr. SOURWINE. Did you tell me that, while it was true that Mr. Ball had decided to adopt the Internal Security Subcommittee's unanimous suggestion, and to have the Otepka hearing presided over by an Administrative Procedure Act (APA) trial examiner borrowed from another agency, and while it was true that you told Senator Dodd this in my presence and had reiterated it to Senator Dodd later, nevertheless there had been a "change in plans" and this would not be done?

Mr. CROCKETT. Yes, sir. But in a further check with the Civil Service Commission it was determined that the Department should follow its own regulations which called for a hearing officer selected from the State Department, rather than a hearing examiner borrowed from another agency.

Mr. SOURWINE. Did you tell me you thought Mr. Ball had talked with Senator Dodd about this, but that you did not know whether Mr. Ball had told Senator Dodd about the "change in plans"?

Mr. CROCKETT. I am not sure, but I certainly could have.

Mr. SOURWINE. Did you tell me this "change in plans" was made necessary when Mr. Macy of the Civil Service Commission advised that the Department should not try to borrow a trial examiner, because this exceeded their authority?

Mr. CROCKETT. To the best of my recollection the Civil Service Commission did advise against borrowing a trial examiner. The regulations in this type case would be followed.

Mr. SOURWINE. Did you say the matter had been put up to Mr. Macy 3 weeks or more before we talked about it, and that Mr. Macy had not given the name of an examiner, though you had been "pressing" him for 2 weeks to do so, and that finally Mr. Macy had said the Department could not borrow a trial examiner, and had advised against trying to do so?

Mr. CROCKETT. I am not sure, but I do recall that I pressed Mr. Macy several times for the name of such an examiner and that the Commission later advised that, rather than selecting an examiner, we should follow our own regulations.

Mr. SOURWINE. Had you made any written request of the Civil Service Commission for an examiner?

Mr. CROCKETT. No, sir.

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Mr. Crockett, in his testimony on May 4, 1965,[18] discussed, in general, the procedures on the Otepka appeal, and said it was on Secretary Rusk's order that the Otepka request for an independent examiner to preside at his hearing was denied.[19]

Mr. CROCKETT. The procedures to be followed in Mr. Otepka's hearing are covered by civil service laws and regulations and the Department's personnel security regulations on the subject. The question of passports is covered entirely by the Immigration and Nationality Act and by a different set of rules and regulations.

Mr. SOURWINE. Did you tell me you could see the point, and that you would take this up with Mr. Ball?

Mr. CROCKETT. Yes, sir.

Mr. SOURWINE. Did you tell me that Mr. Ball had "really taken to" the suggestion of having the Otepka hearing chaired by a trained trial examiner, and had been disappointed when Mr. Macy's recommendation forced the "change of plans"?

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[16] Ibid., pt. 12, p. 937.

[17] State Department Security hearings, pt. 8, p. 553. The conversation referred to was held on July 10, 1964.

[18] Many of the questions asked on this date were answered in writing, many months later, in connection with Mr. Crockett's correction of his testimony.

[19] State Department Security hearings, pt. 8, pp. 554–556.

Mr. Crockett. Yes, sir. Provided that it could be done in such a manner that in itself would not constitute violation of our rules and regulations that could be used by the courts to nullify the outcome of the Otepka case because we had failed to follow our own written procedures.

Mr. Sourwine. Did we talk about the same matter the next day?

Mr. Crockett. I could have, Mr. Sourwine, but again it is impossible for me to recall specifics that long ago.

Mr. Sourwine. Did you, in that second conversation, tell me that Mr. Macy had warned that, if the State Department used an APA trial examiner for the Otepka hearing, the Civil Service Commission might have to reverse the ultimate decision?

Mr. Crockett. I truthfully don't remember all the aspects of our conversation but it was certainly of concern to the CSC that we handle procedural aspects of the case in full accord with our own regulations so that the outcome could not be nullified on a procedural technicality.

Mr. Sourwine. You realize, do you not, that the only kind of decision which would be appealable, and therefore subject to reversal, would be a decision against Mr. Otepka? The Department could not appeal its own decision?

Mr. Crockett. Certainly, but if the outcome were unfavorable we would not want the decision overturned because of a technicality.

Mr. Sourwine. Isn't it true that if Mr. Otepka waived any right he might have to an examiner who is an employee of the Department of State, he would not be in a position to raise that point on appeal?

Mr. Crockett. This is a point of law, Mr. Sourwine, and I am not qualified to make a statement on this point. However, as stated before, Mr. Otepka's appeal procedures are clearly outlined in the regulations.

Mr. Sourwine. Isn't it also true that, before we talked, Mr. Otepka had formally and in writing asked the Department to name an independent examiner?

Mr. Crockett. Yes, sir.

Mr. Sourwine. What is the experience of any of the individuals the State Department has named to preside at Mr. Otepka's hearing, in presiding over hearings or other judicial or quasi-judicial proceedings?

Mr. Crockett. Mr. Dragon has been involved in special administrative hearings both within and outside the Department.

Mr. Sourwine. When was the hearing officer chosen by the State Department in the Otepka case notified of his appointment?

Mr. Crockett. Mr. Otepka selected Mr. Dragon as hearing officer, from a list given him, on January 20, 1964.

Mr. Sourwine. When was he, in fact, appointed?

Mr. Crockett. He has not yet been appointed officially by the Department. He is the designee hearing officer.

Mr. Sourwine. When was Mr. Otepka notified of this?

Mr. Crockett. On July 21, 1964, the Department replied to Mr. Otepka's views concerning the hearing and told him that, in accordance with his letter, Mr. Dragon would be appointed hearing officer.

Mr. Sourwine. Do not the rules of the Department require a hearing within 2 weeks?

Mr. Crockett. The laws require that a hearing must be held 2 weeks after the appointment of an officer. We have delayed making that appointment in order to accommodate Mr. Otepka's requests for a delay in the hearing.

Mr. Sourwine. What has been done to comply with these rules?

Mr. Crockett. These rules have been complied with fully and faithfully.

Mr. Sourwine. What is the name of the person named to preside at the Otepka hearing?

Mr. Crockett. Mr. Otepka selected Mr. Edward Dragon. He has not been officially designated yet.

Mr. Sourwine. Is this person an employee of the Department of State, or an employee of the Agency for International Development (AID), or both?

Mr. Crockett. He is an employee of AID but qualifies within the meaning of State Department regulations since AID is a legal part of the Department of State and subject to the jurisdiction of the Secretary.

Mr. Sourwine. Is he eligible under the State Department regulations?

Mr. Crockett. Yes, sir.

Mr. Sourwine. Have you ever had any question about this?

Mr. Crockett. Not besides your concern, Mr. Sourwine.

Mr. Sourwine. Hasn't an inquiry been ordered to determine if he is eligible? This was done when?

Mr. CROCKETT. It was determined by both the Legal Adviser's Office of the Department and AID that employees of AID were eligible to act in this capacity.

Mr. SOURWINE. Did he get any answers? When?

Mr. CROCKETT. The question has been resolved to the full satisfaction of officials of the Department that an employee of AID is qualified under our regulations to serve in this capacity.

Mr. SOURWINE. How do you explain a situation in which the Department reverses itself after a commitment to accept the unanimous advice of the Internal Security Subcommittee in this matter, on the ground that it cannot do so without violating its regulation, and then proceeds to appoint to the job a man whose employment raises a question of his eligibility under the regulations?

Mr. CROCKETT. I accepted your advice but found it impossible to use it in view of our legal requirements. I would like to state, Mr. Sourwine, that I do not believe I was ever in a position to make a commitment to the committee to have an outside hearing officer but indicated I would communicate the committee's concern and interest in the affair to my superiors which I faithfully did.

Mr. SOURWINE. Did you tell us, Mr. Crockett, if the notice to Mr. Otepka respecting denial of his request for an independent examiner to preside at his hearing went out at your order or at Mr. Rusk's order?

Mr. CROCKETT. I am sure it was discussed with the Secretary; I am sure it was his order; yes.

* * * * * * *

Further information concerning the procedures in selecting a hearing officer for the Otepka case is contained in the following memorandum identified by the testimony immediately preceding it: [20]

Mr. SOURWINE. Here, sir, is a memorandum which I made for my files following a telephone conversation with you. I will give this to you and I will ask you if you will, sir, to take it with you. Don't take the time to study it now.

Mr. CROCKETT. All right.

Mr. SOURWINE. The date of the memorandum is July 10, 1964. If you have no objections to this memorandum going in the record, may the order be that it will go in, and you can lay it in when you correct your testimony. And if you find any errors there, I would appreciate it if you would correct them. I do not claim to be infallible, and I want to be sure that the memorandum speaks truly with regard to the recollections of both of us.

Mr. CROCKETT. It is my recollection that the memorandum of conversation of July 10 is substantially correct. As a matter of fact, it was subsequently decided by the Department not to employ an outside trial examiner but to follow our own departmental regulations in the case.

(The memorandum of July 10, 1964, reads as follows:)

JULY 10, 1964.

MEMO FOR THE FILES

From: J. G. Sourwine.
Subject: Otepka hearing.

In telephone conversation this afternoon Mr. William Crockett told me that while it was true that Mr. Ball had decided to adopt the Internal Security Subcommittee's suggestion and have the Otepka hearing presided over by a trial examiner borrowed from another agency (under the Administrative Procedure Act, and that he (Crockett) had told Senator Dodd this in my presence and had reiterated it to Mr. Dodd later, there had been a "change in plans." Mr. Crockett said he thought Mr. Ball had talked with Senator Dodd about this directly, but that he did not know whether Mr. Ball had told Senator Dodd about the change in plans. Mr. Crockett said this change in plans was made necessary when Mr. Macy of the Civil Service Commission advised the State Department not to try to borrow a trial examiner, because this exceeded their authority.

Mr. Crockett said the matter had been put up to Mr. Macy 3 weeks or more ago, that Mr. Macy had not given the name of an examiner, that they had been "pressing him" for 2 weeks, and that Mr. Macy had finally said that the State Department could not borrow a trial examiner, and had advised against trying to do so.

Mr. Crockett pointed out (or, possibly, intended to convey that Mr. Macy had pointed out) that the State Department's own regulations provide that in a case of a hearing on charges, such as Otepka's, the hearings shall be conducted

[20] State Department Security hearings, pt. 8, p. 558.

by an officer of the State Departmet selected from a panel of such officers. I called Mr. Crockett's attenticn to the fact that the Civil Service Commission had not interposed any objection to the action of the Department in "borrowing" trial examiners for the Elizabeth Gurley Flynn and Herbert Aptheker passport cases, in spite of the Department's lack of statutory authority to employ a hearing examiner. I recalled to him that the Department had issued regulations granting hearings in the cases of Communist applicants for passports, and that in order to hold such hearings it had been necessary to borrow hearing examiners. However, I pointed out further, if the Department having borrowed examiners in order to give Communist passport applicants a hearing, suddenly decided it did not have authority to borrow an examiner in order to give Otepka a hearing (in line with the unanimous recommendation of the Internal Security Subcommittee of the Senate) it would be rather difficult for the Department thereafter to borrow an examiner for another Communist-applicant passport case, and thus the Department's own regulations would be substantially stultified. Mr. Crockett said that he could see the point, and that he would take this up with Mr. Ball. He said Mr. Ball had "really taken to" the suggestion of having the Otepka hearing chaired by a trained trial examiner, and had been disappointed when Mr. Macy's recommendation forced the change in plans.

* * * * * * *

The following is an excerpt from a State Department press briefing announcing postponement of Otepka hearing date: [21]

EXCERPT FROM PRESS BRIEFING, THURSDAY, FEBRUARY 4, 1965

Mr. WRIGHT. As is usual on days in which there is a press conference by the President, we will not have a general press briefing today. However, I have several announcements which may be of interest to you. After this meeting is over, I expect we will have a lid very shortly.

On the Otepka hearing, I have the following announcement: On January 14, Mr. Otepka's counsel, Mr. Roger Robb, requested by letter that Mr. Otepka's hearing, which had been scheduled for February 9, be postponed again. Accordingly, the hearing has been postponed until March 16.

Question. How many postponements does this make?

Answer. This makes the third postponement, each of which has been at the request of Mr. Otepka's counsel.

Question. What is the reason for this postponement?

Answer. I do not know. I should think that information would be available from Mr. Otepka's attorney, Mr. Robb.

The denial by the State Department spokesman, Mr. Wright, of knowing the reason for the Otepka postponement drew criticism from Mr. Otepka's attorney, Mr. Robb. In letters directed to Secretary Rusk and the Washington Star, Mr. Robb points out that all requests for continuances were based upon the availability of committee testimony to be used in Mr. Otepka's defense: [22]

Hon. DEAN RUSK,
The Secretary of State,
Department of State, Washington, D.C.

MY DEAR MR. SECRETARY: On Friday, February 3, 1965, the Washington Evening Star carried an Associated Press story reading in part:

"A hearing for Otto F. Otepka, former chief security evaluator of the State Department, was postponed for a third time at the request of Otepka's lawyer, the Department reported yesterday.

"The hearing, scheduled for February 9, was put off until March 16 at the request of Roger Robb, Otepka's counsel.

"State Department Press Officer Marshall Wright, in announcing this said he did not know why Robb asked for postponement."

My requests for continuances have made it entirely clear, and the Department of State well knows, that I have asked to have the hearing in Mr. Otepka's case postponed until relevant testimony taken by the Senate Internal Security Subcommittee in executive session is released and available for use in his defense.

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[21] State Department Security hearings, pt. 8, p. 562.
[22] Ibid., pt. 8, p. 572.

It has been my understanding that the Department agreed that both fairness and commonsense required such postponement; however, the statement of your press officer, that he did not know why I asked for a continuance, casts doubt upon the legitimacy of my proper and reasonable request. This is unfair to Mr. Otepka and I must protest.

May I express the hope that in the future the Department's releases in the Otepka matter will state the facts with greater accuracy and fairness.

Sincerely,

ROGER ROBB.

FEBRUARY 8, 1965.[23]

The EDITOR, the EVENING STAR,
Washington, D.C.

DEAR SIR: On Friday, February 2, 1965, the Star carried an Associated Press story reporting an announcement by the State Department that the hearing in the Otepka case "was postponed for a third time at the request of Otepka's lawyer." The story said further that "State Department Press Officer Marshall Wright, in announcing this said he did not know why Robb asked for postponement."

The State Department announcement is misleading and unfair to Mr. Otepka. Every one of my written requests for postponement has made it entirely clear, and the State Department knows perfectly well, that I have asked to have the hearing in Mr. Otepka's case postponed until relevant testimony on the Otepka matter, taken by the Senate Internal Security Subcommittee in executive session, is released and available for use in Mr. Otepka's defense. It is clear to me, and I thought it was clear to the State Department, that both fairness and commonsense require such postponement. I am at a loss to understand the Department's profession of ignorance which by insinuation seems to cast some doubt on the propriety of my requests for delay.

Copies of my requests for postponement are enclosed, for your information.

Sincerely,

ROGER ROBB,
Attorney for Otto Otepka.

Much of the testimony related above referred, as will be noted, to the type of hearing which was to be afforded to Mr. Otepka. Originally the Department suggested that Mr. Otepka select a hearing officer from a panel appointed by the Department. Mr. Otepka strenuously objected to this procedure. The subcommittee unanimously supported him in a letter to Secretary Rusk. At times, the Department indicated an agreement to appoint an outside trial examiner. But for unexplained reasons the Department reversed itself in this policy. Finally, Mr. Otepka's attorney, in a letter to the subcommittee counsel dated October 18, 1965, advised of the appointment of Senior Circuit Judge E. Barrett Prettyman as having been designated as the hearing officer with the consent of the Department and Mr. Otepka. The subcommittee has no explanation for the apparent sudden reversal of the Department's policy in this regard. Considerable correspondence and testimony preceded this move which appeared logical and in accordance with the terms of fair play to the committee long ago.

The letter from Mr. Robb:[24]

ROBB, PORTER, KISTLER & PARKINSON,
Washington, D.C., October 18, 1965.

JULIEN G. SOURWINE, Esq.,
New Senate Office Building,
Washington, D.C.

DEAR MR. SOURWINE: In order that your record may be complete, this will inform you officially that the Department of State and Mr. Otto F. Otepka have

[23] Ibid., pt. 8, p. 573.
[24] State Department Security hearings, pt. 8, p. 577.

agreed that Senior Circuit Judge E. Barrett Prettyman shall hear Mr. Otepka's appeal, in lieu of a State Department hearing officer. Judge Prettyman in turn has agreed to undertake this assignment. Counsel conferred with Judge Prettyman on Thursday, October 14, to discuss procedural matters.

It was not possible to fix a date for the beginning of the hearing before Judge Prettyman, because of the uncertainty as to when the publication of the transcript of testimony before the Internal Security Subcommittee will be completed. It is Mr. Otepka's position that he should not be forced to a hearing until this material is available to him.

For your information, it is also Mr. Otepka's position that the hearing before Judge Prettyman should be open to the press and the public. The Department of State, however, refuses to agree to an open hearing.

I shall keep you informed of progress.

Sincerely,

ROGER ROBB.

Otepka Case Official Documents

Thirteen charges that Otto F. Otepka had conducted himself in a manner "unbecoming an officer of the Department of State" were served on him in a letter dated September 23, 1963. It was signed by John Ordway, Chief, Personnel Operations Division. Each charge carried a number of specific allegations.[1]

The charges alleged that Mr. Otepka had furnished classified material to counsel of the Senate Internal Security Subcommittee and also gave to him lists of questions to ask of State Department witnesses. They also accused him of cutting off the classification indicators on classified documents and of having otherwise "mutilated" classified documents.

Attached to the Ordway letter were numerous exhibits,[2] including a statement Mr. Otepka made voluntarily to two special FBI agents. Included also was Mr. Otepka's answer to the charges, which he outlined in a letter dated October 14, 1963.

The letter of charges from Mr. Ordway led off with a notice that it was proposed to remove Mr. Otepka from his position in 30 days. It also recited how John F. Reilly, Mr. Otepka's immediate superior, had caused certain employees to conduct private, periodic searches of material found in Mr. Otepka's classified trash bag—the so-called burn bag. In regard to this, the Ordway letter states:[3]

> (*g*) The contents of your burn bags were carefully examined. All carbon paper or copies were read by turning the carbon side toward the light thus allowing the paper to be read from the back. Torn pieces of paper were grouped together and then pieced together to make readable documents. One-time typewriter ribbons were also read on occasion.
>
> During the course of inspecting the contents of your burn bag on May 29, 1963, a typewriter ribbon was retrieved. This ribbon has been read and the contents are reproduced as Exhibit B. Information contained therein will be referred to specifically in some of the charges listed below.

Mr. Otepka, in his reply to the charges, frankly stated that he had, indeed, given to the subcommittee copies of some documents and memoranda and stoutly defended his actions.[4]

He specified that he had been advised by counsel for the subcommittee that there had been conflicts between his testimony and that of Mr. Reilly. It was due to this, he said, that he had supplied cer tain data to the subcommittee to support his view of the facts.

Part of this story is recounted as follows:[5]

> Following the conclusion of Mr. Reilly's testimony, Mr. J. G. Sourwine, the chief counsel of the subcommittee, requested that I come to see him, which I did, after working hours on the day of his request. To the best of my recollection

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[1] State Department Security hearings, pt. 7. pp. 425–430.
[2] Ibid., pt. 7, pp. 430–463.
[3] Ibid., pt. 7, p. 426.
[4] Ibid., pt. 7, pp. 454–460.
[5] Ibid., pt. 7, pp. 455–456.

this was on May 23, 1963. Mr. Sourwine voluntarily informed me that there were conflicts between my testimony and the testimony of Mr. Reilly. He offered to let me read the stenographic transcripts of Mr. Reilly's testimony and said that when I had done so, I should give him a memorandum that would answer point by point all of those portions of Mr. Reilly's testimony which conflicted with my testimony or which I found inaccurate or untrue. After carefully reading the transcripts of Mr. Reilly's testimony I was both shocked and amazed. I therefore prepared a memorandum consisting of 39 double-spaced pages annotated by exhibits, and I furnished a copy of this memorandum to Mr. Sourwine together with copies of the exhibits mentioned therein. This memorandum was furnished to Mr. Sourwine as the chief counsel, and authorized representatives of the subcommittee. It was intended to serve as my reference in rebuttal, explanation, or clarification of statements made by Mr. Reilly, in any future appearance I made before the committee. I was told that I would be recalled to testify again before the committee.

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

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

Mr. Otepka made the argument that regulations as well as statutes must be interpreted with common sense. He contended it was a familiar rule. He also made the point that he would have been guilty of dereliction of duty had he failed to supply to the subcommittee corrections of the conflicting testimony. In this portion of his reply, he stated: [6]

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

Applying this doctrine to the present case, and assuming without conceding that the memoranda of September 10 and September 17, 1962, fell within the letter of the Presidential directive of March 13, 1948, I submit that those memorandums were not within the spirit of the directive, nor within the intention of its author. As President Truman stated in his letter to the Secretary of State, dated April 2, 1952, the purpose of the directive was "to preserve the confidential character and sources of information, to protect Government personnel against

[6] Ibid., pt. 7. pp. 456–457.

the dissemination of unfounded or disproved allegations, and to insure the fair and just disposition of loyalty cases." The memorandums of September 10 and September 17, 1962, referred to no confidential information, disclosed no confidential sources, and made no allegations. My memorandum of September 10, 1962, merely referred to matters of public record and recommended that these matters should be investigated. There was no loyalty case, pending, or contemplated, involving any of the individuals mentioned. In short, in the context of the Presidential directive of March 13, 1948, the two memorandums were completely innocuous and clearly not the kind of papers that the directive was designed to protect.

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

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

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

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

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

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

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

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

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

DEPARTMENT "SUSTAINS" ITS CHARGES

Mr. Otepka's replies covered all 13 charges.

His pleas fell on deaf ears at the Department of State. It notified him on November 5, 1963, that it had carefully considered his reply but that the charges were "sustained." The letter, signed by Mr.

Ordway, contended that Mr. Otepka had not refuted the charges. The Department thus upheld the Department's own charges.[7]

Among other things, the Ordway letter declared that there were other ways open to Mr. Otepka in challenging testimony by Mr. Reilly. Apparently this would have meant he would have had to protest to Mr. Reilly, his immediate boss, or to appeal over his head to higher officers, instead of being frank with the investigating Senate subcommittee. The Ordway letter put it this way: [8]

Departmental Regulations (3 FAM 1611) provide:

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

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

OTEPKA REASSERTS HIS ARGUMENTS

As a next step, on November 4, 1963, Mr. Otepka filed an appeal from the Ordway decision and asked for a hearing. He reasserted the arguments contained in his initial reply. He said Mr. Reilly and Mr. Belisle were unworthy of belief and that therefore the ouster proceeding was tainted. On this point, he said, in part: [9]

The case against me was to a large extent built by John F. Reilly, either personally or through others under his immediate direction and control. Prosecution of the charges was instigated by Reilly and the charges are in substantial part based upon Reilly's statements and those of his special assistant, David I. Belisle. Charges so conceived and so founded, I submit should not receive serious consideration. It has now been established that in his overzealous attempts to build a case against me Reilly was guilty of serious misconduct, and that he thereafter testified untruthfully under oath when questioned about his improper activities. Specifically, in a letter dated November 6, 1963, and addressed to the chairman of the Subcommittee on Internal Security of the Senate Committee on the Judiciary, Reilly admitted that he directed a subordinate to tap my telephone—a breach of departmental regulations [9a] and a violation of a Federal statute [9b] and that he testified untruthfully about the matter before the subcommittee. Reilly's assistant Belisle has made similar admissions of untruthfulness, although he disclaims any active participation in the tapping operations. A copy of the Senate subcommittee document relating to this matter is attached. As you know, Reilly's misconduct is now being investigated by the Department.

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

The facts and circumstances of this case demonstrate that in instigating the charges against me John F. Reilly did not act in good faith; on the contrary, his action was prompted by personal bias, prejudice and malice and by a desire to

[7] Ibid., pt. 7, pp. 461–463.
[8] Ibid., pt. 7, p. 463.
[9] State Department Security hearings, pt. 7, p. 488.
[9a] Department of State memorandum dated Dec. 15, 1961.
[9b] 47 USCA 605.

punish me for telling the truth to the Senate subcommittee, and thereby embarrassing Mr. Reilly. The purpose of the charges was not to protect the interest of the Government, but rather to shield Mr. Reilly.

OTEPKA HAD NOTHING TO HIDE

Mr. Otepka assured the subcommittee, in testimony August 17, 1964, that he had cooperated fully and voluntarily with the FBI agents when they informed him of the subject of their inquiry—that is, the Department complaint that he had supplied confidential data to an unauthorized person, etc. He said: [10]

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

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

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

Mr. OTEPKA. I did not.

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

Mr. OTEPKA. I did not.

Mr. SOURWINE. You cooperated fully?

Mr. OTEPKA. Yes.

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

Mr. OTEPKA. No, I did not.

Mr. SOURWINE. That is correct, you say?

Mr. OTEPKA. That is correct, sir.

The State Department, as well as Mr. Otepka, furnished to the subcommittee a copy of the Otepka statement to the FBI. In the Department's copy the subcommittee found notations in the left margin of the pages.[11] There were no such notations in the copy supplied by Mr. Otepka. They appeared to be an appraisal by someone at the Department as to the classification—or lack thereof—of the various items. Some of the notes said: No classification, no control, not classified, or OUO (official use only) or LOU (limited official use).

The "confidential" label was put next to a five-page memorandum from Mr. Otepka to Mr. Reilly in reference to nominations to the Advisory Committee on International Organization Staffing. Mr. Otepka said the document carried the classification of "secret" but with a stamped notation that the document would be considered "confidential" upon removal of attachments—tabs A, B, C, and D. He added that "These attachments were not furnished to Sourwine." [11]

A "confidential" label also had been placed along side three other items on appointments of members of the Advisory Committee on International Organization Staffing.[11] But the marginal notation added: "But this memo was rejected. Perhaps it has no official standing: Ergo: no classification."

The Otepka report recited lists of data which he had furnished to counsel for the Internal Security Subcommittee.[11]

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[10] Ibid., pt. 7, pp. 423–424.
[11] State Department Security hearings, pt. 7, pp. 432–436.

Following this are extensive notes which Mr. Otepka later supplied to the subcommittee.[12] This was in defense and explanation of Department personnel moves against him. This is labeled as exhibit B in the document as supplied by the Department. As stated in the Ordway notice to Mr. Otepka that he was to be removed from his Department job, these Otepka notes were transcribed from a typewriter ribbon which had been retrieved from Mr. Otepka's burn bag during the Department's surveillance of his activities.[13]

"EVIDENCE" FOUND IN BURN BAG

The document also included an account by Mr. Belisle, Terrance J. Shea, and Joseph E. Rosetti as to how they were able to make an "evaluation" of clippings they said were found in the Otepka burn bag during an inspection February 18, 1963. They said they had checked the clippings against filed copies of certain documents and found that they matched up.

Those conducting the surveillance of Mr. Otepka also found carbon paper in the Otepka burn bag, which they reproduced and reported the finding of lists of questions Mr. Otepka prepared for the subcommittee to ask of Mr. Reilly and Mr. Belisle in the subcommittee hearings.[14]

From Robert Joseph McCarthy, a supervising security specialist, subcommittee counsel brought out that the cutting of portions from a classified document and disposing of the scraps by a security officer was perfectly proper and was practiced.

He testified on January 23, 1964:[15]

Mr. SOURWINE. Mr. McCarthy, have you ever cut up or torn up or otherwise mutilated any classified document?

Mr. MCCARTHY. I presume the question is, without authority. And to my knowledge I have not.

Mr. SOURWINE. No; I did not mean without authority. The point I was trying to bring out is the case of that being done with complete authority.

Mr. MCCARTHY. Complete authority—certainly.

Mr. SOURWINE. To destroy materials?

Mr. MCCARTHY. Yes.

Mr. SOURWINE. If you are working with classified documents, do you sometimes make copies of the documents?

Mr. MCCARTHY. Yes, sir.

Mr. SOURWINE. For the purposes of your work?

Mr. MCCARTHY. Yes, sir.

Mr. SOURWINE. And to get an abstract from a classified document, do you sometimes cut out the portion you want and lay it on your report?

Mr. MCCARTHY. Yes, sir.

Mr. SOURWINE. And then properly destroy the rest of it?

Mr. MCCARTHY. Yes, sir.

Mr. SOURWINE. Put it in the burn bag?

Mr. MCCARTHY. Yes, sir.

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[12] Ibid., pt. 7, pp. 436–448.
[13] Ibid., pt. 7, p. 426.
[14] Ibid., pt. 7, pp. 430, 450, 453.
[15] Ibid., pt. 3, p. 119.

Was Subcommittee Staff Involved in Violations?

Throughout the course of events which eventually came to be known as The Otepka Case, the State Department implied, and sometimes directly stated, that the staff of this subcommittee had engaged in activities without knowledge of the members and beyond authority of the staff.

It is true that the members of the subcommittee were not aware of every detail of this investigation. However, the very purpose of a subcommittee staff is to relieve the members of tedious, time-consuming work which, though necessary, would impair their broad effectiveness if done personally.

Senator Hruska, during the October 21, 1963, hearing with the Secretary of State, said:

> * * * I have followed this matter quite closely, and frankly, Mr. Secretary, in some levels of your Department, there seems to have been a resentment at our chief counsel here going into matters that were not gone into by Senators themselves. If we were to undertake to do these things ourselves we would be completely immobilized. It is totally impossible. To deprive the chief counsel here of his truly delegated powers within the scope of the authority extended by the Senate committee would be a travesty.[1]

The main contention of the State Department was, of course, in its charges against Mr. Otepka, which says that he furnished Mr. Sourwine, chief counsel of the subcommittee, classified information concerning the loyalty of prospective State Department appointees. The letter of charges indicated that this conduct violated a Presidential order issued on March 13, 1948, of which Mr. Otepka was aware. Mr. Otepka denied that the information he furnished violated the Executive order.

What of the charge that the subcommittee's counsel was involved in the violation of this Executive order? Let us look at his version of the incident from the record of the same hearing:

> Mr. Sourwine. Well, the fact is that Mr. Otepka did furnish the committee with certain documents. These documents have been identified by him in testimony and placed in the committee's record.
>
> Mr. Otepka was asked to read the testimony of another State Department witness—who had, in his testimony, contradicted what Otepka had testified to—and to support with a memorandum and documentation each point on which there was a conflict. Mr. Otepka did this and he provided a memorandum which has been made a part of the record.
>
> I do not know of any information that Mr. Otepka has furnished that has not now been made a part of the executive record.
>
> I would like to say, if the committee will permit, that I have never sought nor received any information from Mr. Otepka except in my capacity as counsel for the committee. He never gave Sourwine, individually, anything. He gave Sourwine, counsel, information.
>
> And I will state this one further thing: Mr. Otepka did not come to the committee to volunteer any information. He was sought out and called before the committee and asked for information. And he furnished it only in response to the committee's request.[2]

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[1] See State Department Security hearings, pt. 5, p. 280.
[2] Ibid., pt. 5, p. 279.

The subcommittee does not for one moment approve of the use of an Executive order to conceal misstatements of fact by State Department witnesses. We do not believe that this Executive order was issued for that purpose.

It was also charged that Mr. Otepka furnished questions to the subcommittee to be asked of his own superior, of which Senator McClellan asked:[2]

> What would be wrong in that? Here I am called up here. I work for the State Department. I am called up here before a congressional committee which asks me questions. I state a given state of facts. And the counsel or the committee raises some question about it, "Well, now, how do you know that?" and so forth.
>
> I say, "Well, you can get the truth, possibly, if you will ask so and so certain questions."
>
> Now, tell me what is wrong with it? I mean have I stated the premise correctly?

The State Department apparently misunderstood another function of the subcommittee staff. At one point in his statement, the Secretary said that "during the week of August 5, Mr. Sourwine informally scheduled the appearance of 19 Department witnesses." Later on in the hearing, at which all subcommittee members were present, Mr. Sourwine had this to say about calling witnesses:[3]

> Mr. SOURWINE. I do so only as a channel. I have never called a witness without authorization and direction to that effect from the committee, the chairman, or the vice chairman of the committee.

Mr. Sourwine's statement is supported by a memorandum, later ordered into the record, of the intended schedule of hearings for August 1963, as listed by Senator Dodd, subcommittee vice chairman.[4]

It is obvious that the subcommittee staff operated within its delegated authority. Members of the subcommittee have long been on record as believing that Mr. Otepka was correct in furnishing the documents in question. Considerable material which had been supplied to Mr. Sourwine by Mr. Otepka later was ordered by the subcommittee to be printed despite protests by the State Department. It follows that Mr. Sourwine acted properly in receiving them.[5]

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[2] Ibid., pt. 5, p. 279.
[3] Ibid., pt. 5, p. 287.
[4] Ibid., pt. 18, p. 1500.
[5] Ibid., pt. 20, p. VII.

Investigations by Flake and French

Two veterans of State Department and Army service were called into duty after the Internal Security Subcommittee, by hand-delivered letter to Secretary Rusk, had protested action against Otto Otepka in the nature of reprisal for his action in revealing conflicts (lying) in testimony by other Department witnesses.

The two were retired Ambassador Wilson C. Flake[1] and retired Col. George W. French, Jr., a Reserve Army officer with long experience in intelligence and security work. They were teamed up to do a job of investigation and review.

There was, at least at first, some confusion as to the exact objectives of the Flake-French assignments as related to the Otepka case. So far as these assignments were permitted to be outlined to the subcommittee, it appears a narrow distinction was drawn between investigating "the Otepka case", and investigating Mr. Otepka's so-called "charges" against the Department—meaning his testimony about many kinds of shortcuts, waivers, reorganizations, policy shifts and other maneuvers by some Department officials which weakened the security system.[2]

The subcommittee was skeptical about the declared separation of "the Otepka case" from the work of the Flake-French team, as that work was officially described by the Department, since Mr. Otepka's testimony regarding the faults of the system was linked with his assertions that his immediate superior, John F. Reilly, had lied to the subcommittee. Was the work of the Flake-French team intended to buttress the position of the Department against Otepka criticisms? There is no showing on the Internal Security Subcommittee record that the team of Flake and French, or either of them, was so instructed. But doubts linger because of what appears to the committee to be the impossibility of separating the question of "the Otepka case" from Mr. Otepka's revelation of State Department faults. Because of a State Department gag on any publication of reports or findings made by Ambassador Flake or Colonel French, exact details of what findings and recommendations they submitted to Secretary Rusk or his immediate aides was not revealed to the subcommittee though Colonel French and Ambassador Flake both testified on our record.[3]

BROAD AUTHORITY GRANTED TO TEAM

The broad scope of the work and authority assigned to Ambassador Flake and Colonel French is indicated in the language of their "terms of reference" statement dated December 19, 1963, as follows:[4]

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[1] Ambassador Flake's major assignment was a review of the situation in the Bureau of Security and Consular Affairs. State Department Security hearings, pt. 19, pp. 1618–1619.

[2] Mr. Otepka, in his comments regarding testimony by John F. Reilly on May 21, 22, and 23, 1963, gives an extensive outline of his criticisms in testimony taken Aug. 12, 1963, State Department Security hearings, pt. 20, pp. 1699 et seq.

[3] Ibid, pt. 19, p. 1620.

[4] Ibid, pt. 19, p. 1637–1638.

December 19, 1963.

Memorandum for: Wilson C. Flake, George W. French.
From: William J. Crockett.
Subject: Terms of reference for an investigation of certain actions in the Office of Security.

I am transmitting to you copies of terms of reference with a request that you begin work on this project immediately.

In the conduct of your investigation you are authorized to take sworn statements. Should your request for such a statement be refused I want this matter brought to my attention immediately.

I have requested all personnel of the Office of Security to cooperate with you fully. Although I do not wish to set a deadline for the completion of this assignment I am sure you recognize that we are interested in having as thorough a job done as possible.

Attachments: as stated.

Terms of Reference for the Continuation of the Department's Investigation of Certain Actions in the Office of Security

During the last 2 months the Department has been trying to assemble all facts relating to any efforts made in the Office of Security to intercept conversations in the office and on the telephone of Mr. Otto F. Otepka. This investigation needs to be concluded at the earliest possible moment and a report must be prepared for the Secretary of State setting forth all the information obtained.

In the conduct of the final stages of this investigation particular attention should be devoted to the following:

(*a*) A thorough reexamination of all the testimony given to the Senate Internal Security Subcommittee by any present or former member of the Office of Security.

(*b*) A further review of all written material that has been provided by present or former members of the Office of Security.

(*c*) Based on information available under (*a*) and (*b*) above, oral interviews should be conducted with any individual who may have participated in, or have knowledge of, activities mentioned by the Senate Internal Security Subcommittee. Specifically, particular attention should be given to the allegation of other cases of "bugging" or "tapping." This includes also any charges of "tapping" or "bugging" in places other than Mr. Otepka's office. As conclusive an analysis as possible of this allegation should be made.

(*d*) Any organizational or procedural difficulties which may be brought to light by the Department's investigation.

(*e*) Any relevant matters that have been raised either during the Department's inquiry or the investigation of the Senate Internal Security Subcommittee and which have not yet been completely investigated.

Department of State,
Deputy Under Secretary for Administration,
August 26, 1964.

Memorandum for: The personnel panel.
Subject: Terms of reference for the executive secretary to the personnel panel.

I. GENERAL DUTIES

It is the responsibility of the personnel panel to review all unfavorable information received or developed on employees or applicants for employment, to determine the validity of such information, and to insure proper adjudication of each case. The panel will review all applications for marriage to foreign nationals. The executive secretary of the panel will perform the necessary tasks of coordination, dissemination, and followup to insure the proper functioning of the panel and to insure that the decisions of the panel are competently carried out.

II. SPECIFIC DUTIES

More specifically (but not exclusively) the executive secretary will:

1. Establish channels with SY, PER, MED, and the regional bureaus so that he will be given promptly adverse information on employees received or developed by these offices and bureaus.
2. Will prepare agenda for each meeting.

3. Review the files and memoranda on all cases presented to the panel to insure that all pertinent data is included.

4. Insure that decisions and requests for additional information by the panel are carried out or submitted properly and promptly.

5. Will prepare minutes of all meetings.

WILLIAM J. CROCKETT.

The first job of the Flake-French team was to check on allegations in the Judiciary Subcommittee letter to the Secretary of State, dated October 31, 1963.[5]

Mr. FRENCH. We were first given the mission of checking on various points that had been contained in a letter, I believe from Senator Dodd, to the Secretary listing various points.

Mr. SOURWINE. Are you referring to the letter from the Committee on the Judiciary which Senator Dodd delivered to the Secretary in New York?

Mr. FRENCH. Yes, sir.

The subcommittee position in the issue of action against Mr. Otepka was stated in a press release of March 11, 1965, which included the letter to Secretary Rusk under the date of October 31, 1963, as follows:

SUBCOMMITTEE LETTER RELEASED

For Immediate Release March 11, 1965, from the Senate Internal Security Subcommittee

In response to a number of inquiries regarding its stand with respect to the Otepka case, the Internal Security Subcommittee today made public the text of a letter to the Secretary of State signed by all Subcommittee members in October 1963. In releasing the letter, Senator James O. Eastland (D-Miss.) declared: "We all still feel the same way and I see no prospect at all that the Committee will change its position with respect to this matter."

The letter is as follows:

OCTOBER 31, 1963.

The Honorable DEAN RUSK,
The Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: Mr. Otto Otepka, Chief of the Division of Evaluations, Office of Security, Department of State, today faces grave charges apparently growing out of his appearance as a witness before the Senate Internal Security Subcommittee and his honesty in responding to the Subcommittee's questions.

Without attempting to pass upon these charges, we want to express our confidence in Mr. Otepka's integrity, capability, and professional skill.

A committee of the Senate has a right to the testimony of any official or employee of our Government respecting any question of security or possible wrongdoing in any department or agency, if the subject matter of the committee's inquiry falls within its jurisdiction. A Government employee who comes before a Senate committee and testifies truthfully should not thereafter be penalized or disciplined in any way for doing so.

Mr. Otepka's testimony has been a valuable contribution to the Internal Security Subcommittee's current investigation of security in the State Department, and we feel he has performed a substantial service for his country. We would consider it a great tragedy if the services of this exceptionally able and experienced security officer were lost to the United States Government on the

[5] See subcommittee letter below.

65-860—67—pt. 3——6

basis of alleged technical violations growing out of his cooperation with the Senate Internal Security Subcommittee.

Kindest personal regards.

Sincerely,

James O. Eastland,
Chairman, Internal Security Subcommittee.

Thomas J. Dodd, *Vice Chairman*
Olin D. Johnston
John L. McClellan
Sam J. Ervin, Jr.
Roman L. Hruska
Everett McKinley Dirksen
Kenneth B. Keating
Hugh Scott

PROBE FOCUS IS OFFICE OF SECURITY

The task of Mssrs. Flake and French soon grew more specific. Note the following during testimony by William J. Crockett, Deputy Under Secretary of State for Administration, on May 4, 1965: [6]

Can you state if it was true that Flake and French were told to investigate allegations of telephone tapping and other electronic eavesdropping in the Office of Security?

Mr. Crockett. Yes, sir.

Mr. Sourwine. Were they told to reexamine testimony given before the Senate Internal Security Subcommittee? For what purpose? Were they told to review certain State Department records?

Mr. Crockett. Yes, they were told to review testimony that had been given by employees of the State Department. The purpose was to get any comments they could of alleged security deficiencies in the Department of State for which they also were told to review pertinent records and files that would help them evaluate the security operation, and assist them in making an investigation and recommending corrective action.

Mr. Sourwine. What records?

Mr. Crockett. Testimony, Senate Internal Security Subcommittee reports, intraoffice memorandums, all written material that had been provided by past and present members of the Office of Security, studies of various kinds, inspection reports, etc.

Mr. Sourwine. Were they told to conduct interviews?

Mr. Crockett. Yes, sir.

Mr. Sourwine. Of whom?

Mr. Crockett. Of any and all officers of the Office of Security that might have knowledge of deficiencies in security practices and procedures that could be corrected to improve our entire security operation.

Mr. Sourwine. In what area?

Mr. Crockett. In any and all areas of the Department of State.

Mr. Sourwine. For what purpose?

Mr. Crockett. For the purpose of ascertaining whether or not there were deficiencies in security practices, in security operations, in policies, in security inspections within the Department that could be corrected in order to provide the State Department with a sounder security operation.

Mr. Sourwine. When were Flake and French first told to make a general review of security procedures and operations. If in fact they ever did receive such instructions?

Mr. Crockett. Yes, sir.

Mr. Sourwine. How were these instructions given?

Mr. Crockett. In writing.

Mr. Sourwine. By whom?

Mr. Crockett. By me.

The general review, it later developed, was centered on the Office of Security.[7]

Mr. Sourwine. Did your project with Ambassador Flake, the project you helped him on, concern security procedures generally?

[6] State Department Security hearings, pt. 19, p. 1634.
[7] Ibid., pt. 19, p. 1619.

Mr. FRENCH. Yes, security procedures generally in the Department of State. We were asked to look into the matters of electronic surveillance of members of the Department of State, if this had been done, when it was done, how it was done; to look into any matters that we may run across as a throwoff of our investigation or—I should not say investigation, inquiries—on procedures or policies that we may suggest that would improve the security of the Department.

Mr. SOURWINE. Was this throughout the Department or in some particular area of the Department?

Mr. FRENCH. No; this was—well, throughout the Department, but focused, I would say, mainly on the security.

Mr. SOURWINE. On the Office of Security?

Mr. FRENCH. On the Office of Security; yes, sir.

STATE DEPARTMENT IS COY

Colonel French was not concerned with Ambassador Flake's review of the Bureau of Security and Consular Affairs. He said he understood that the Flake study was being completed when he (French) was called into the picture.[8]

The subcommittee made requests for reports or memorandums that flowed from the Flake-French investigation of the Otepka "charges". Colonel French said the Secretary should be consulted. Subsequently Chairman Eastland received a somewhat unrevealing reply November 4, 1964, from Robert E. Lee, Acting Assistant Secretary for Congressional Relations:[9]

Mr. SOURWINE. Mr. Chairman, may the request be made that these reports be furnished, if possible, that if there is a report which contains security information, the State Department furnish the report with the deletion of such information, indicate there was a deletion, and leave open the question of whether we can have that for further discussion?

Senator DODD. Yes.

Mr. SOURWINE. And if there was a disclosure about a particular individual, the State Department delete identification of the individual and indicate there was a deletion and to leave that for further discussion?

Senator DODD. Yes.

Mr. SOURWINE. Does that seem reasonable as a request, Mr. Frank?

Mr. FRANK. Yes, sir.

Mr. SOURWINE. I understand you do not have authority to pass on it.

Mr. FRANK. I do not, sir. The Secretary should be consulted on the subject.

Mr. SOURWINE. Then I shall limit my questions in that area.

(EDITOR'S NOTE.—Robert E. Lee, Acting Assistant Secretary for Congressional Relations, wrote to Chairman Eastland November 4, 1964, saying:)

> In reference to Mr. French's testimony, Ambassador Flake and Mr. French did not prepare a report but did submit numerous memorandums concerning the subject of their investigation. The Department would be pleased to have a Department official discuss with the chairman those memorandums on which the Department has taken action.

"SOME" CONFUSION ADMITTED

The State Department, receiving many mail inquiries about the Otepka case and security matters, prepared and released what appeared to be form letters giving multiple answers. Mr. Crockett agreed, in the following exchange, that there had been some confusion as to what the Flake-French team was investigating. Under examination was a State Department reply to questions raised in letters by a

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8 Ibid., pt. 19, pp. 1618–1619.

9 Ibid., pt. 19, p. 1620.

Mrs. V. Kwasneski of Upper Darby, Pa. One of the Department answers was sent to Representative Milliken.

Some pertinent paragraphs: [10]

Mr. SOURWINE. The third paragraph of Mr. Dutton's letter of June 9 to Congressman Milliken, which is in this file for reasons that will become apparent when you examine it, states that the newspaper article to which a prior question referred was misleading in that the investigations conducted by Ambassador Flake and Colonel French were prinarily directed to the security practices of the Department and not to the *Otepka* case.

Is that your understanding of the situation?

Mr. CROCKETT. Yes, sir. However, it should be distinctly understood that Ambassador Flake's and Colonel French's terms of reference did not include the investigation of the charges brought against Mr. Otepka even though it did include those security practices against which Mr. Otepka had complained, such as the alleged "bugging" of his phone, and so forth. This sometimes has caused confusion when people talk about the *Otepka* case.

Mr. SOURWINE. The letter to Senator Clark from Mr. Dutton under date of May 18, the second paragraph, the next to the last sentence says, "charges were subsequently filed." There are two questions about this. Who made these charges; who ordered that they be made?

Mr. CROCKETT. The Chief of the Personnel Operations Division, in accordance with our regulations to bring charges for misconduct. They were made after the Department's investigation of the case had been made and were ordered by the Deputy Under Secretary for Administration.

Mr. SOURWINE. The last clause of that second paragraph states that "the initial Departmental decision was upheld." And the question is, Who made the decision, who was responsible for that decision?

Mr. CROCKETT. The Chief of the Personnel Operations Division notified Mr. Otepka of the charges and then gave Mr. Otepka an opportunity to answer them. After his answer, the Chief of the Personnel Operations Division determined, in the first instance, that these charges were sustained and notified Mr. Otepka he could appeal that decision.

IT "TOUCHES" ON OTEPKA MATTER

This declaration was included in the Department's answer to Representative Milliken: [11]

Mr. SOURWINE. A question with respect to the next paragraph: the second sentence thereof states:

> On the contrary the Department is assiduously continuing its investigation and as a matter of fact, has recently employed a former ambassador and an experienced investigator to examine thoroughly all aspects of these matters.

Does that refer to Colonel French?

Mr. CROCKETT. Yes sir, this refers to Colonel French and Ambassador Flake but it should be made absolutely clear that there are two facets of this problem, that is, the charges made by the Department against Mr. Otepka and the charges and complaints made by Mr. Otepka against the Department's security operation. It is this latter question, with all of its ramifications, that Ambassador Flake and Colonel French were asked to investigate and review. This, of course, touched upon the whole Otepka matter.

MR. CROCKETT DRAWS LINE

Mr. Crockett continued to insist that the Flake-French team was not investigating the Otepka case. He agreed under one trip to the witness stand that they had been directed to look into "circumstances surrounding the wiretapping episode." [12]

[10] Ibid., pt. 3, pp. 147–149.
[11] Ibid., pt. 3, p. 149.
[12] Ibid., pt. 5, p. 322.

This was on May 4, 1965.

Mr. SOURWINE. Is it true, as Mr. Dutton's letter to Representative Milliken appears intended to indicate, that the investigations conducted by Ambassador Flake and Colonel French were not directed to the Otepka case?

Mr. CROCKETT. Ambassador Flake and Colonel French were asked to look into many aspects of the security operations in the Department of State. They were not asked to look into the merits of the Otepka case, as such. However, they were directed to look into the circumstances surrounding the wiretapping episode.

Mr. SOURWINE. Didn't Flake and French investigate the Otepka case?

Mr. CROCKETT. Not the charges that had been placed against Mr. Otepka by the Department. They did investigate the "Otepka case" to the extent of investigating the charges made by Mr. Otepka that improper investigative methods had been used against him.

Mr. SOURWINE. Did they also make a separate investigation of security practices of the Department?

Mr. CROCKETT. Yes, sir. That was a major thrust of their investigation.

Mr. SOURWINE. Is this aside from the review of SCA made by Ambassador Flake?

Mr. CROCKETT. Yes, sir.

Mr. SOURWINE. Was it true as of June 9, 1964, as stated in Mr. Dutton's letter, that certain aspects of the Department's security department were still being investigated?

Mr. CROCKETT. I would not use the word investigated, Mr. Sourwine, but certainly procedures and practices are subject to constant review.

Mr. SOURWINE. Is this true today?

Mr. CROCKETT. Yes, sir. It will be true as long as we strive to improve our operations.

Mr. SOURWINE. What did this investigation comprehend?

Mr. CROCKETT. The main thrust of their investigation was to carefully review the Department's security policies and procedures and interview all responsible security personnel to uncover any instances of bad security practices which were suggested in the subcommittee's memorandum to the Secretary dated September 30, 1963. Certainly, the subcommittee's concern about our practices as expressed in this memorandum were also our concern and although the subcommittee did not make its concern specific, it was my hope that the Flake-French investigation could answer once and for all whether or not there was any substance to the allegations referred to in the memorandum.

DIFFERENT ANSWER FROM LOUGHTON

A different picture was presented when Mr. Sourwine questioned Mr. Raymond A. Loughton, administrative officer Inter-American Affairs, State Department, about the investigations by the Flake-French team.[13]

This interlude includes the following:

Mr. SOURWINE. Mr. Loughton, did Ambassador Flake discuss Otto Otepka with you?

Mr. LOUGHTON. I think several questions were specifically about him; yes, sir.

Mr. SOURWINE. In what respect?

Mr. LOUGHTON. Well, one was what was my opinion——

Senator DODD. I do not want to interfere, but I do not want him to get into trouble—the witness to get into trouble.

Did he tell us that he was instructed that this was classified?

Mr. SOURWINE. Mr. Chairman, it had been my understanding that the instructions originally given witness with respect to this matter had been modified so that they could discuss it as long as they did not express opinions on the merits of the case.

Am I wrong, Mr. Hoover?[14]

Mr. HOOVER. That is true with respect to the case, but I do not know—he discussed the fact that his first interview with Ambassador Flake had some limitation on it which I am not aware of, personally.

Mr. SOURWINE. I am assuming that he is not now giving us information with respect to that first interview. Certainly the question did not ask about the first interview and the answer, so far as I heard, did not.

[13] Ibid., pt. 17, pp. 1439–1440.

[14] Mr. Lawrence H. Hoover, Jr., was a State Department observer.

Senator DODD. I thought that is what he was talking about.

Mr. HOOVER. I did, too.

Mr. SOURWINE. I am sorry.

Were you answering with regard to your first interview?

Mr. LOUGHTON. Yes, sir; I was only going to answer generally by saying they asked me what my opinion of his supervisory work in evaluations was.

Mr. SOURWINE. Mr. Chairman, I am not attempting to get at the point of what was said, but only to get at the point of Mr. Flake having an interest in the Otepka case. There is some conflict as to whether Ambassador Flake was in any sense investigating the Otepka case. I believe that the answer we have indicates that he was. This is the reason I asked the question.

Senator DODD. All right.

Mr. SOURWINE. Was it made clear to you, Mr. Loughton, that Ambassador Flake was investigating the Otepka case?

Mr. LOUGHTON. Yes, sir.

Mr. SOURWINE. That answer is no violation, is it, Mr. Hoover?

Mr. HOOVER. Not that I am aware of, sir.

Eight Hundred Potential Security Risks Listed

State Department officials voiced a variety of defensive explanations when they learned of the subcommittee's knowledge of a so-called list of 800 employees of the Department categorized in 1957 as definite potential security risks. Even at that time many were in key positions. Almost 10 years later some had died, some had left the Department voluntarily by retirement or resignation to seek other employment. Others, in a substantial number, remained—some rising to positions where they would have a direct influence on the conduct of foreign affairs.

All of the 800 had been given security clearances under the criteria of Executive Order 10450. But in their records there remained derogatory matter—ranging from reported Communist associations to homosexuality and drunkenness—that called for a continuing watch. In 1955, Otto Otepka, security expert, had urged continuing surveillance of this group of potential security risks, which actually numbered 858. Otepka at that time had attempted to introduce into the State Department the concept of the "need for continuing security." [1]

In 1964, Mr. William J. Crockett explained that in the case of a person designated as Presidential appointee (Ambassador), or requiring a special clearance such as a "Q" (Atomic Energy) his security file would be brought up to date. Mr. Crockett's concern for tighter security was evidenced in his statement: "I have just effected a new rule so that every time we appoint a Deputy Chief of Mission his security file should be brought up to date, the same as for an Ambassador * * *" [2] Concerning other employees who were not promoted or assigned a position requiring a special clearance, Mr. Crockett recognized a need for "continuing security" by first investigating all members of the Office of Security—not the employees already designated as potential security risks. As Mr. Crockett stated, he was starting such a program.[3]

Mr. Crockett. This has been an on and off thing over the years, Mr. Sourwine. Certainly, good security would require it, I think. At various times, there have been programs and for various reasons they have been interrupted or stopped. I have insisted, since I have had my present responsibility, that we start this kind of a program. It is now being started, as I understand it, in the Office of Security.

I think it makes sense that after X number of years everybody should be reinvestigated. For instance, I was distressed to learn that the people in the Office of Security, who are supposed to be in charge of all this, haven't had their security clearances brought up to date for perhaps the longest period of time of any group in the whole State Department. So I have ordered that all the investigators, the domestic and oversea evaluators, all the people in the Office of Security, have their security files brought up to date in terms of reinvestigation or reevaluation. This should be first, I think.

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[1] State Department Security hearings, pt. 10, p. 694.
[2] Ibid., pt. 13, p. 992.
[3] Ibid., pt. 13, p. 993.

Mr. Sourwine. What I was trying to get at with the earlier question is whether there is now any policy or order in the State Department under which every employee of the Department, or every employee above some particular rate or rank, is subjected to periodic investigations, reinvestigations, and having his security clearance renewed as a result of that investigation?

Mr. Crockett. Yes, sir; there is. There is an existing order and we have alerted all our people by public notice. We have sent letters to certain people saying, "Your security clearance is in the process of being updated, and this is a routine thing," to allay any fright or uncertainty about the whole thing.

Mr. Sourwine. Is that a new order, sir?

Mr. Crockett. I think we put it out in the last 6 weeks.

Mr. Sourwine. That was your order?

Mr. Crockett. Yes, sir.

Otepka detractors have hastened to say that he approved clearances for many of those involved in the revelation of the 800 derogatory cases and that he had testified that he knew of "no known Communists" on the State Department payroll.[4] Of course he didn't, his answers made clear, for if he had had any proof he would have asked for action by his superiors. Again, it is clear that as to the 800-odd cases with derogatory material in their files—especially those with the more serious data—his repeated recommendation was that a continuing watch be maintained.[1]

The State Department faced a heavy problem when ordered to set up a full-scale personnel security system 20 years ago, under Executive Order 10450—greatly broadening the earlier loyalty system and requiring full field investigations for all sensitive positions.

The Department accomplished much despite the mountainous task of checking out some 11,000 employees. Some of the doubtful or problem cases may have been left, as appears to have been the fact, for review and later updating; or, as Mr. Otepka put it, for continued watchfulness in cases where a cleared employee might go bad and become a security risk, subject to blackmail due to such matters as alcoholism or sex abberation.

In more recent years, unfortunately, there are evidences in our record of these hearings of a tendency by the State Department to use shortcuts—such as waivers of security rules in connection with some appointments[5] and to invoke the safeguards for the individual employee (proper in themselves) in the 1947 Presidential order to shield fundamental data from scrutiny by congressional committees.

BRIEF ACCOUNT ON DEROGATORY CASES

A brief account (presented hereafter) of what happened to that group of 800 cases flagged with derogatory material was taken from the published hearings before the Internal Security Subcommittee.

As a backdrop to this analysis and paraphrasing of the testimony, we find the Department refusing any added data on certain world-known cases of subversives.

William J. Crockett, then Deputy Assistant Secretary for Administration, was testifying May 4, 1965:[6]

Mr. Sourwine. With respect to the material furnished by Otepka in May 1961 to Roger Jones, the Department has declined to furnish to the subcommittee the material included under tab c(4) on the ground that it is covered by the

[4] Ibid., pt. 10, p. 705.
[5] Ibid., pt. 10, p. 590.
[6] Ibid., pt. 2, pp. 70–71.

Presidential directive. This material consisted of a digest of significant cases of treason, espionage, and subversion in the United States and foreign governments. The subcommittee's information is that most of the cases included under this tab were prepared from public records, including published hearings of the Internal Security Subcommittee. To the extent that this is true, of course, these cases are not covered by the Presidential directive. Please furnish from the material included under tab c(4) of the Otepka submission copies of all those cases which do not have a classification stamp. Cases which could have been documented from the public record, and probably were, include those of Carl Marzani, Arthur R. Roddy, Alger Hiss, Judith Coplon, and William Remington (United States); Klaus Fuchs, Guy F. Burgess and Donald MacLean, George Blake, and Henry F. Houghton (Great Britain), and Israel Beer (Israel).

Mr. Crockett. I have reviewed the material under tab c(4) as requested by you and while it is true that a digest was compiled in part from public sources and from information drawn from the Internal Security Subcommittee hearings, a great deal of the information in the digest comes from FBI and other agency sources. The writeups are so integrated that it is impossible to separate the classified from the unclassified and, therefore, I must decline the request to declassify this document so that it can be published.

* * * * * * *

The issue over the latent 800 derogatory cases had deep roots. Mr. Otepka, in his testimony of August 17, 1964, revealed that he had submitted to Administrator Scott McLeod of the Bureau of Security and Consular Affairs, in December 1955, a detailed report on the security problems—and in this he stressed the need for "continuing security." He said: [7]

My study was captioned "The Employee Security Program of the Department of State" and subcaptioned "The Need for Continuing Security." My study discussed the necessity for continuing security in the Department by suggesting certain measures to supplement the Department's personnel security program. Up to this time the Department had cleared all of its incumbent personnel under the standard of Executive Order 10450. I stressed that a current security clearance did not eliminate the potential danger of subversion or defection on the part of the State Department employee. To support this concern, I recited known case histories of employees of U.S. and foreign governments noting that such persons defected to communism or committed treason *after* their employment and clearances. Derogatory information in those cases, I said, was not sufficient in scope and degree to dismiss the employees. The great mistake, I pointed out, was to have permitted the transgressors to progress and to occupy highly sensitive positions which, in the final outcome, contributed to the damage that those persons caused to their respective countries.

Along with my study I also transmitted a list of 858 cases of Department employees who had been processed and cleared under the new employees security program. I explained that in these cases derogatory information in varying degrees of significance had been developed through investigations prescribed by the program. I highlighted the nature of the information revealed in a separate summary for each case. I recommended measures whereby such employees would especially be kept under continuing surveillance. If the information was potentially serious the individual, though retained, would not be assigned to a critically sensitive position. My recommendations were concurred in by Dennis Flinn.

In keeping with the authority and discretion delegated to me, and the limitation of the Department's security principles, I granted clearances to the majority of the 858 individuals. However, a substantial number of these cases, specifically those which had been investigated and adjudicated under the standard prescribed in the previous "loyalty" program (i.e., from 1947 through 1952), were sent to Mr. McLeod for review and final decision as to clearance or nonclearance. Still others were cleared by Mr. Flinn in accordance with the established procedures. It is necessary for me to stress that among the 858 cases there also was a large number of employees who I recommended be dismissed as *security risks*. Except in one or two cases, Mr. Flinn and Mr. McLeod concurred in my recommendations. The final decision to clear the employees in such cases was made by higher authority, in many instances after charges, suspension of the

[7] Ibid., pt. 10, pp. 693–694.

employee, and a hearing before a security hearing board. As in the cases where I had granted the clearances, I was not foreclosed from carrying out my responsibility for taking proper and timely precautions to protect the Department from the still potentially grave risk presented by the retention of these employees. Many could advance to a position other than the one occupied at the time of clearance in which he or she would have information of greater sensitivity.

Asked about this matter, Mr. Otepka testified there were 545 cases evaluated under loyalty provisions of Executive Order 10450 between May 28, 1953, and December 31, 1956. Of these, 254 were cleared but were flagged as part of the 858 cases. Of 1,398 evaluated under section 5 of Executive Order 10450, 958 were favorably resolved.

OTEPKA RÉSUMÉ EXCERPT PRESENTED

The subcommittee included as part of its record of the hearing the full text of a résumé Mr. Otepka had drafted April 29, 1957, for Mr. McLeod. It was entitled "Résumé of Security Determinations Made in the Department of State, Federal Employees Security Program." (Period covered: May 28, 1953, through Dec. 31, 1956.)

An excerpt from that résumé follows: [8]

Total cases processed

There were received for security determination a total of 9,759 cases including (*a*) 545 which had been investigated by the Federal Bureau of Investigation under Executive Order 9835 because of a loyalty question and required reconsideration under section 4 of Executive Order 10450; (*b*) 1,398 cases which also contained some form of derogatory information requiring adjudication under section 5 of the order.

Actions in derogatory cases

Of the 545 cases, 254 resulted in favorable findings while 287 persons left either by resignation, transfer to other agencies, or for some other reason except dismissal, prior to a final determination in their cases; 4 persons in this group were removed for cause as security risks after charges and hearings prescribed by Public Law 733, 81st Congress.

Of the 1,398 cases, 958 resulted in favorable findings while 435 persons left either by resignation, transfer to other agencies, or for some other reason except dismissal, prior to a final security determination in their cases; 5 persons in this group were removed for cause after charges and proceedings under the Department's personnel suitability procedures, but because of information of a security nature in their records. Since these individuals were removed under personnel regulations, the Department has not tabbed them as "security risks."

Actions in nonderogatory cases

In the nonderogatory cases, 8,361 resulted in favorable final security determinations while 76 persons left the Department prior to the completion of final action in their cases.

Some details regarding this 1957 Otepka résumé of the security determinations were given as follows, in testimony August 12, 1963: [9]

Mr. SOURWINE. Now, this report states that of the 545 cases, 254 resulted in favorable findings while 287 persons left either by resignation, transfer to other agencies, or for some other reason except dismissal prior to a final determination of their cases. And four were removed for cause as security risks after charges and hearings.

I find something of a discrepancy in these figures. You had 545 seriously derogatory cases, 254 favorable findings, 287 left and 4—only 4 were removed.

Now, were any of the 287 who left made the subject of removal proceedings?

Mr. OTEPKA. There may have been some, Mr. Sourwine, against whom action was contemplated under the security order but they were separated for various other reasons than removal, before the adverse processing took place.

[8] Ibid., pt. 10, pp. 588–590.
[9] Ibid., pt. 10, p. 592.

Mr. SOURWINE. Now, you had 1,398 derogatory cases of a lesser order?
Mr. OTEPKA. Yes.
Mr. SOURWINE. And your report indicated that 958 of those were resolved by favorable findings, 435 left by resignation, transfer, and so forth, prior to final security determination, and only 5 were removed for cause after charges and proceedings, and those under the personnel suitability procedures—not because of information of a security nature in their records.
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. So, that out of a total of derogatory cases of nearly 1,950—1,943—just 9 individuals were removed?
Mr. OTEPKA. By adverse proceedings.
Mr. SOURWINE. By adverse proceedings.
Mr. OTEPKA. Yes.

Further discussion of the studies of cases with serious derogatory data disclosed that neither of Mr. Otepka's eventual immediate superiors, Mr. Belisle and Mr. Reilly, inquired, as new head of the Office of Security, as to background data on facets of personnel security cases handled in the past. Mr. Otepka said he was prepared to supply them with the data on the basis of the study he had made. They would have had to get the information from him, he added, because he was the one who maintained these records.[10]

Mr. SOURWINE. Did Mr. Reilly or Mr. Belisle or anyone else in Mr. Reilly's office ask you in how many of those cases before the Division of Evaluations there was information respecting Communist connections?
Mr. OTEPKA. No.

HOW MANY STILL EMPLOYED?

How many of those 800 cases with serious derogatory data in their files were still employed by the State Department? Mr. Otepka was asked the question during his testimony on August 16, 1963:[11]

Mr. OTEPKA. I do not know precisely at this time. I would say that a substantial number of that 800 is still on the rolls.
Mr. SOURWINE. A half, a third, a quarter—400, 300, 200? Could you—I don't want to force you—but could you give us an estimate?
Mr. OTEPKA. Yes; I would estimate about 500.
Mr. SOURWINE. About 500 of the 800 are still there?
Mr. OTEPKA. Yes, sir.
Mr. SOURWINE. Have they all been subject to security procedures and have all had favorable determinations?
Mr. OTEPKA. They have had favorable security determinations in keeping with the standards of Executive Order 10450; yes.

Subcommittee counsel then asked if it wasn't true that the standard of Executive Order 10450 was that employment or continued employment in the Department was to be clearly in the interests of the United States. Mr. Otepka agreed with this, but cited difficulties in the Department of State in establishing that an employee is a security risk.[12]

Mr. SOURWINE. * * * It has been determined in the cases of some 800 persons, of whom 500 are still employed in the Department, that the individuals, although there is serious derogatory information in their files of a security nature, are nevertheless employable; that is, their employment is clearly in the interests of the Government of the United States. Is that the purport of your testimony?
Mr. OTEPKA. Well, Mr. Sourwine, you must understand, and I know you do, that it is very difficult to prove, under the standards of Executive Order 10450, that a person is a security risk.

[10] Ibid., pt. 9, p. 495.
[11] Ibid., pt. 10, p. 594.
[12] Ibid., pt. 10, p. 594.

Mr. SOURWINE. Why is this, if the standard is whether the individual's employment is clearly in the interests of the Government?

Mr. OTEPKA. Although we are not required to observe legal rules of evidence, nevertheless it is the policy of the Department to assure that there is substantial evidence indicative that a person is a security risk and that the Department would be successful in pursuing an adverse course of action under Public Law 733.

Mr. SOURWINE. Are you saying, Mr. Otepka, that in order to find that an employee is a security risk it is necessary, firstly, that there be not merely evidence which is convincing or which casts substantial and reasonable doubt, but that there be evidence which may be established by the testimony of witnesses in open court or the production of documents in open court?

Mr. OTEPKA. It would be along those lines; yes, sir.

Mr. Crockett was perhaps a little more explicit in renouncing the Department's application of Public Law 733, which vested the final and unappealable decision in the head of the department or agency.[13]

Mr. CROCKETT. * * * Another thing that we are doing in this regard is fairly basic. Maybe I shouldn't even mention it, perhaps, and take your time, but one of the things I have been concerned about is any equivocation, any rationalization on employment. This is a time to get your cleanest possible guy, when you are employing a person. That is the time to look at everything and not make any compromises.

Now, after you get an employee and he has been on the rolls for a while and he gets into this trouble or that trouble, maybe, then we owe him something and he owes us something. You have to take many things into consideration. But when he is just an applicant, you don't owe him anything.

Mr. SOURWINE. A man has no rights to Government employment.

Mr. CROCKETT. That is right.

Mr. SOURWINE. Once he is on the roll, as you pointed out so well, it is a problem to get rid of him. He then has rights.

Harris H. Huston, a former Acting Administrator of the Bureau of Security and Consular Affairs, also was questioned about the seriously derogatory cases. He, too, said some of those so listed were still on the State Department rolls after 10 years.[14]

Mr. SOURWINE. Do you know anything about a list of 800 cases or any other number, or 200 cases or any other number, which you compiled or had compiled in 1957?

Mr. HUSTON. No, but I do know—and I think maybe this is what your question is aimed toward—that, when I came over in 1957, I did recognize the fact that there were some names still there. Some of the people were still in the Department.

Mr. SOURWINE. People whom you, 10 years earlier, had found to be security risks?

Mr. HUSTON. A few of those that were still on that list; yes.

Mr. SOURWINE. All right. Now, go specifically to the compilation which Mr. Otepka prepared. Did you recognize in that any—that was in 1961, wasn't it?

Mr. HUSTON. That was.

Mr. SOURWINE. Did you recognize in that compilation any of the names of the individuals whom you had in 1947 found to be security risks?

Mr. HUSTON. I cannot answer with certainty, but I would say the probability is fairly great that there were a few. I cannot—I would be at a loss, without looking at such a list, to say so definitely, but I would say in all probability there were.

A special list of some 200 seriously derogatory cases was compiled out of the list of 800—presumably the worst 200 of the lot, testimony indicated. Some State Department officials were under the misconception that Mr. Otepka had compiled this list.[15]

Mr. Otepka assured the subcommittee there was such a list, that he had seen it, coming to him through official channels, but that he had not prepared it. He said it had been compiled—not in the Office of Security—but in the Bureau of Security and Consular Affairs—in

[13] Ibid., pt. 13, p. 1022.
[14] Ibid., pt. 10, p. 617.
[15] Ibid., pt. 10, pp. 639, 695.

other words—"at a higher level" than in his own shop. He said it was prepared in 1957.

In a refinement of the appraisal of the potential security risks, we find this colloquy: [16]

Mr. SOURWINE. Would you be able to give us an estimate of how many of those 200 are still working for the State Department?

Mr. OTEPKA. I am going to give you a conservative estimate. I would say at least 75 percent.

Mr. SOURWINE. At least 75 percent. At least 150.

Mr. OTEPKA. It may be more.

The subcommittee, by letter dated January 2, 1964, asked the Department to supply the lists of the 800 and the 200 seriously derogatory cases of employees. The requests were denied. Frederick G. Dutton, Assistant Secretary of State for Congressional Relations, quoted from the Presidential directive of March 13, 1948, regarding reports and records relating to the loyalty of employees and prospective employees in support of the refusal.[17]

Mr. Crockett, the Deputy Under Secretary for Administration, on the stand January 28, 1964, was asked about the refusal of the data. He said he had learned of the lists for the first time only a few days earlier and that he had obtained them only during the previous week. A protest by subcommittee counsel over refusal of the requested data resulted in this colloquy:[17]

Mr. CROCKETT. Yes. I was aware of the letter and the correspondence and the action. The thing——

Mr. SOURWINE. Excuse me. The problem arises, sir, when a committee such as this is attempting to determine what security risks there are in a Department, if it cannot get information like this, how is it going to achieve its objective?

Mr. CROCKETT. Well, first let me say that I appreciate the committee calling these numbers to my attention because although Mr. Otepka testified in August, he neglected to advise me of any such lists, or that there were in fact any lists. I did not know nor did the Secretary know of the existence of these lists until we got your letter.

Mr. SOURWINE. You didn't have a transcript of Mr. Otepka's testimony furnished to the Department?

Mr. CROCKETT. No, sir. Nor had it been called to my attention. But the lists we found turned out to be lists that were developed in, I believe, about 1956. The people in question were cleared by those in authority at that time. So that they had been cleared. Regardless of the information found in the file, they had been cleared.

Now, it is our task, I think, to go through what we have and take a look at them. The question is if the employees were cleared at the time the lists were made up, how much work should be done now in terms of a reevaluation of an evaluation that was made in 1956 and 1957. Or should we, on the basis of the information that was available on them then, take close scrutiny of the activities since that date and reevaluate the employees on the basis of this?

So it is a matter of our taking some action internally, I think, to find out where we are with regard to these cases.

Mr. SOURWINE. You said there has been no determination with respect to that yet?

Mr. CROCKETT. No. * * *.

MR. CROCKETT PROMISES A REVIEW

Later in the hearing, Mr. Crockett agreed that 200 cases with serious derogatory data in the files constituted a serious matter, that the reevaluation program should be carried out. He promised to reconsider the requests.[18]

[16] Ibid., pt. 10, p. 596.
[17] Ibid., pt. 10, pp. 593, 599
[18] See p. 83 of this chapter.

Mr. CROCKETT. * * *. I will take this again and see to what extent we can develop information that would be helpful to you and to the committee in coming to a judgement of our own procedures.

Mr. SOURWINE. Do you imply, sir, that perhaps Mr. Dutton's letter is not the last word on the subject and there may be an area in which the committee can get information?

Mr. CROCKETT. I not only imply, I am saying that we will certainly review it to see if there isn't some way that we can come to an understanding on it so that the committee's interest can be satisfied.[19]

In still another breakdown of the 800-odd derogatory cases, Mr. Crockett revealed in testimony of September 16, 1964, that out of a list of 285 derogatory cases compiled at an earlier date, 166 were then still employed by the Department and that of this 166 total, 71 had been reinvestigated. He agreed that the residue—95—in this classification were still to be checked out again. But he added that they would top the list after an updating reinvestigation had been made of all employees in the Office of Security itself.[20]

Mr. SOURWINE. Now do you know of anybody in the Office of Security that had serious derogatory information in his file?

Mr. CROCKETT. No, sir; I am not trying to impugn the Office. As a general rule, the officers of the Office of Security have the longest period of nonupdated security. They were cleared first in the whole process, so many of them have not been updated for as long as 10 years.

Mr. SOURWINE. I see.

Mr. CROCKETT. Just for the whole image of the thing, we felt it would be better if the Office of Security led the way in this business of being updated, reinvestigated, reevaluated.

Committee Counsel then brought out that this meant the deferral of the 95 cases in the seriously derogatory list of 166 that had been left over after the first 71 were recleared. Mr. Crockett argued a bit with the word deferral, saying that there might be some mixture of the two sets of cases. Further testimony by Mr. Crockett developed the fact that the 71 recleared were all cases which for some one of a variety of possible reasons had involved recent investigations; the clearances he was referring to, Mr. Crockett indicated, were in fact only reaffirmations (apparently without further study or investigation) of clearances granted in the case of these "recent" investigations.

Here's this colloquy:[21]

Mr. SOURWINE. Sir, the memorandum with your letter offers no explanation as to why the Department reinvestigated and recleared 71 employees but didn't do so with another 95. What was the reason for that?

Mr. CROCKETT. On the 71, these were recleared for several reasons: Whenever an employee receives a Presidential nomination, there is a full field done on him. Some of them were recleared, because there may have been recent allegations, and we do a reinvestigation.

Some of them had requests for special security clearances for another agency, let us say, and they were cleared under another agency's clearance, but reinvestigation was done. So there was a combination of reasons for it.

Mr. SOURWINE. It appears that all these cases, as you described them, had one thing in common; that is, there had been a recent reinvestigation?

Mr. CROCKETT. That is right.

Mr. SOURWINE. So all you had to do was reaffirm that clearance?

Mr. CROCKETT. That is right.

Mr. SOURWINE. And that is what you did?

Mr. CROCKETT. Yes, sir.

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[19] Ibid., pt. 10, pp. 601, 602.
[20] Ibid., pt. 10, p. 676.
[21] Ibid., pt. 10, p. 677,

Mr. SOURWINE. And you have told us some of the reasons why there was that recent reinvestigation?
Mr. CROCKETT. That is right.

William O. Boswell, testifying February 17, 1964, said that when he was at the Office of Security as Director, he heard about the derogatory list of 800 but never found it although he inquired about it. That, he said, was in 1959 and 1960.[22]

Mr. BOSWELL. I never found such a list. The closest I came was a series of cards, the totality of which I don't know, which apparently dated back several years before I came which were identified as people on whom there had been some derogatory information.
Mr. SOURWINE. You eventually dropped your efforts to locate the list because they were unsuccessful?
Mr. BOSWELL. I never did find the list.
Mr. SOURWINE. Didn't Mr. Otepka inform you in a memorandum early in 1961 about this list?
Mr. BOSWELL. Early in 1961?
Mr. SOURWINE. Within the first half of 1961.
Mr. BOSWELL. I have no recollection of it. If he did, I don't say it is not impossible but I simply don't recall.
Mr. SOURWINE. You don't remember forwarding a memorandum from Mr. Otepka on this subject to the then Deputy Under Secretary for Administration, Mr. Roger Jones?
Mr. BOSWELL. I would need something to jog my memory. Apparently there was something but I don't remember.
Mr. SOURWINE. All right.
Mr. BOSWELL. Anything you can jog my memory with, sir?
Mr. SOURWINE. Well, if you don't remember, you don't remember. * * *

Mr. Boswell, however, under interrogation, did recall that he had directed Mr. Otepka to undertake a review of the security files on several thousand State Department employees, with special attention to the list of 800 derogatory cases. He said it was a "big job of work" which he regarded as highly important.[23]

ARGUMENT, BUT NO DEROGATORY LISTS

Keeping his promise to reconsider subcommittee requests for data on the seriously derogatory cases, Mr. Crockett submitted a long reply on March 10, 1964—but it did not contain the requested lists of names.[24]

It included some outline of what steps the Department had taken, statements in defense of its position, references to the assignment of former Ambassador Wilson Flake and retired Col. George W. French, Jr. to investigate charges of inadequacies in security made by Mr. Otepka; and was topped with a plea for subcommittee support.

The cover letter included this paragraph:

I hope the committee will give its support to our efforts to address ourselves to our present and future security programs. As I have expressed before, the Department's concern and objectives are the same as the committee's—we both want to insure that the best interests of the Nation are being served by the finest security program that we can develop. We need your continued support. We welcome your continued interest.

Mr. Crockett emphasized that all of the 800 cases in debate had been given security clearances. He presented numerous arguments that were challenged in whole or part by Mr. Otepka.[25]

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[22] Ibid., pt. 10, pp. 602–603.
[23] Ibid., pt. 10, p. 604,
[24] State Department Security hearings, pt. 10, pp. 693–700.
[25] Ibid., pt. 10, pp. 693–700.

In some cases there was broad agreement between the two witnesses. One instance was that promulgation of Executive Order 10450 (Apr. 27, 1963) greatly broadened the scope of the security program and thereby had created a large job in the requirement that any and all in sensitive positions (virtually all in State Department service) must have "full field investigations."

OTEPKA CHALLENGES CROCKETT STATEMENTS

The omission by Mr. Crockett of a key paragraph in a quotation from a 1955 Otepka memorandum stirred a protest by the latter.

Mr. Crockett quoted a paragraph saying that "The present security program of the Department of State, procedurally, is considered as effective as imperfect man can make it," and saying also that it had been called a "creditable record" by counsel for a congressional investigating committee.

But Mr. Crockett omitted from the material he quoted the next paragraph, in which Mr. Otepka warned: [26]

> The completion of the procedural requirements of Executive Order 10450 for employees, ought not to result in a relaxation of vigilance. The problem of security is a real and unending one.

Some of the Crockett statements challenged by Mr. Otepka in his rebuttal memorandum to the subcommittee were:

> That in some cases "an honorable and loyal employee" had been caught up "in a tangle of mistaken identity";
>
> That in some other cases allegations by an unidentified informant "of unknown reliability" were "conclusively" proved to be groundless;
>
> That some were cases in which the employee in question had at one time been a member of an organization which, unknown to him, had been infiltrated by Communists or Communist sympathizers, or had associated with persons later identified as Communists or who were only "suspected" of adhering to Communist ideology.

Mr. Crockett concluded in this section of his explanation that these were clearly cases that did not involve the "risks of security" but did involve suitability—fitness to hold a State Department position.

Mr. Otepka, in rebuttal, said: [27]

> Such statements apparently attempt to negate the fact that there appeared in the 858 cases the following allegations and evidence, that I had sent to Mr. McLeod, which to me as the Department's chief security evaluator and professional security officer with extensive background knowledge and experience, were vitally significant in the terms of the future precautions that I deemed necessary:
>
> (*a*) Actual membership in the Communist Party.
>
> (*b*) Actual membership in adjuncts of the Communist Party such as the Young Communist League.
>
> (*c*) Actual membership in Communist-front organizations, designated as such by the Attorney General (not organizations merely *infiltrated* by Communists or Communist sympathizers).
>
> (*d*) Knowingly associating with espionage agents.
>
> (*e*) Actual membership in the Fascist Party or Fascist organizations in foreign countries.

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[26] Ibid., pt. 10, p. 631.
[27] Ibid., pt. 10, p. 695,

(*f*) Sexual perversion.
(*g*) Immoral conduct.
(*h*) Notoriously disgraceful conduct.
(*i*) False statements concerning Communist affiliations.
(*j*) Other false statements of material facts.

Under questioning by subcommittee counsel, Mr. Crockett agreed there was a need for what Mr. Otepka had called "continuing security." He claimed it was a standard procedure.[28]

Mr. SOURWINE. According to our information, this study by Otepka in 1955 stressed the fact that clearances theretofore issued, presumably under the standard of Executive Order 10450, had not operated to eliminate the potential danger of subversion or defection on the part of State Department employee or employees.

Mr. CROCKETT. Mr. Sourwine, I don't think they ever do. It wasn't only then, it would be now, it would be always. You can't guarantee at any one time this kind of thing. So I don't think that is a new concept at all.

* * * * * * *

Mr. SOURWINE. Did you know that Mr. Otepka's study recommended measures whereby State Department employees with derogatory personal histories would be kept under constant and proper surveillance, and under which, if the information was serious, the individual would not be assigned to a critically sensitive position?

Mr. CROCKETT. No; but this is standard, even now, with us.

A QUICK REVIEW OF 175 FLAGGED CASES

Additional light was shed on the State Department maneuvering with respect to clearance of "derogatory" cases by testimony from Raymond A. Loughton, a security evaluation supervisor, when he was questioned on August 12, 1964.[29]

Mr. SOURWINE. We were discussing, I believe, at the time we discontinued your testimony when you were last here, the 175 cases which were under review or which were involved in a project of some sort with which Mr. Belisle was connected. Do you remember this?

Mr. LOUGHTON. Yes, sir.

Mr. SOURWINE. I believe you had indicated that Mr. Belisle was in charge of this project?

Mr. LOUGHTON. I don't know, Mr. Sourwine, this to be true. The report came downstains that he was. But only through corridor gossip.

Mr. SOURWINE. It came downstairs from where?

Mr. LOUGHTON. From the Department.

Mr. SOURWINE. From Mr. Crockett's office?

Mr. LOUGHTON. Yes, sir.

Mr. SOURWINE. Are these 175 cases, purportedly, the remaining employees still in the Department out of the some 250 cases which were identified as potential security risks by Scott McLeod in 1956?

Mr. LOUGHTON. That was my understanding.

* * * * * * *

Mr. SOURWINE. Is it your understanding, Mr. Loughton, that the project now with which Mr. Belisle is connected is a continuation of what Mr. Otepka was doing, or do you understand that there is some different purpose involved in the present project?

Mr. LOUGHTON. Well, as I understand now, Mr. Belisle is no longer on this project. But this, again, is just gossip. But the project he was on was a different project.

Mr. SOURWINE. How was it different?

Mr. LOUGHTON. So far as I know, it was a higher level, a special board that was looking into just these cases, had no other assignment so far as I know.

Mr. SOURWINE. And was it reviewing these cases to make some kind of a security decision, or was it simply updating the material as Mr. Otepka had been doing, or just what was this higher level board doing, if you know?

[28] Ibid., pt. 10, pp. 638–639.
[29] Ibid., pt. 11, pp. 789–790.

Mr. LOUGHTON. I don't know. I have no official knowledge of the board's function at all.

Mr. SOURWINE. How do you know that the project was any different from what Otepka was engaged in?

Mr. LOUGHTON. I say this only because I know Mr. Otepka had many other responsibilities at that time in supervising the Evaluations Division.

Mr. SOURWINE. I meant with respect to these 175 cases only, when I asked that question.

Mr. LOUGHTON. I cannot give you an informative answer to that question.

Mr. SOURWINE. In other words, you don't know just what was being done by this special board with which Mr. Belisle was connected?

Mr. LOUGHTON. No, sir; I heard only rumors.

Mr. SOURWINE. With respect to these 175 cases?

Mr. LOUGHTON. I heard only rumors.

Mr. SOURWINE. Did you have any reports that the board was examining these cases from the standpoint of determining how bad they were or what explanation might be given with respect to them if the Department was called upon?

Mr. LOUGHTON. No, sir; I really don't. I only understood that their action was reactionary, from the criticism that had been made of these cases laying dormant so long.

Mr. SOURWINE. In other words, the matter had been pulled out into the light again because of the activities of this committee and some newspaper comment?

Mr. LOUGHTON. Yes, sir.

Weakness in the Office of Security

The subcommittee's 1962 report on State Department Security traced the abolition of the position of Deputy Director of the Office of Security, which was held by Otto F. Otepka until January 1962. The subcommittee reported its hope that—

> as a minimum, Mr. Otepka (would) be restored to his former position of Deputy Director of the Office of Security, where his expertise, born of many years of highly responsible experience as a security officer will be of inestimable value to the Department of State and, not less importantly, to the security of this country." [1]

Two of the conclusions of the 1962 report were necessities for the Department of State to: "1. Assure continuity under professionals in State Department security operations, particularly in the Evaluation Division which appraises security files and reports" and "2. Assure a high standard of professional competence, particularly in evaluation * * *." [2]

Grave concern must be voiced over the Department's continuing disregard of these recommendations. The subcommittee cannot, of course, tell the Secretary of State how to run his Department. But certainly it is not amiss for the subcommittee to insist on the best possible security of personnel in Government employment.

The Department's action in reinstituting the position of Deputy Director in the Office of Security under other pseudonyms has not gone without notice. The present pseudonym is the title of Assistant Director for Personnel Security. The incumbent is Henri G. Grignon.[3] Mr. Grignon is directly responsible for staff supervision of the Division of Investigations and the Division of Evaluations in the Office of Security.

OFFICE CALLED A SECURITY SIEVE

In testimony on January 28, 1964, the Deputy Under Secretary of State for Administration, William J. Crockett, complained the Office of Security "belies its name of security. It is the most insecure sieve in the Department." [4] Mr. Crockett was relating these comments to certain stories which had appeared in the press. However, Mr. Crockett's statements appear valid in a general sense now, after a study of Mr. Grignon's testimony before the subcommittee.

Concern was well stated by the subcommittee's Chief Counsel during Mr. Grignon's testimony concerning his implementation of the basic Government security program, Executive Order 10450:

> Mr. Sourwine. Do you feel your testimony on this point is clear now? Are you satisfied with it?
>
> Mr. Grignon. I believe so.

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[1] SISS 1962 report, p. 17.
[2] Ibid., p. 193.
[3] State Department Security hearings, pt. 18, p. 1526; pt. 19, p. 1642 (organizational chart).
[4] Ibid., pt. 12, p. 944.

Mr. SOURWINE. What you have described, if the record reads as I heard your testimony, is contrary to every conception of good security and contrary to the protected rights of the employees of the Department of State.[5]

LACK OF ADMINISTRATIVE CONTINUITY IN EVALUATIONS

On June 27, 1963, Frederick W. Traband, Jr., became acting chief of the Division of Evaluations. He had been assigned as an evaluator only since June 1962. Before then, Mr. Traband performed investigative duties. As acting chief, Mr. Traband reported to David I. Belisle who was performing the duties of Deputy Director under the title of Special Assistant for Personnel Security and who "took over as Chief of the Division of Evaluations." [6]

Mr. Belisle was detailed out of the Office of Security on December 9, 1963, which was after his veracity under oath had been challenged by the SISS.[7] It was not until May 4, 1964, that Mr. Belisle's responsibilities for the operations of the Division of Evaluations were assumed by Henri G. Grignon upon his transfer from the Central Intelligence Agency. Mr. Traband described Mr. Grignon as a "deputy" to the Deputy Assistant Secretary of State for Security.[6] [8] [9]

MR. GRIGNON'S ABSENCE OF EXPERIENCE AS AN EVALUATOR

Mr. Grignon conceded that his only experience as an evaluator was for a period of about 4 months in 1952 when he was assigned the duties of an investigative supervisor. He did not write any evaluations. He does agree, however, that it takes "substantial experience and training to make a good evaluator, a competent evaluator":

Mr. SOURWINE. You have, yourself, had experience in evaluation work?

Mr. GRIGNON. Some; yes, sir.

Mr. SOURWINE. And what was your background in that?

Mr. GRIGNON. I was, before my appointment with the Department of State, of course, with the Central Intelligence Agency and I was with them for 13 years in the Office of Security.

Mr. SOURWINE. How much of that time did you spend doing evaluation, in the sense of personnel evaluation rather than evaluation of intelligence?

Mr. GRIGNON. The only period that I could state that would fall in that category would be a period when I was a desk supervisor handling applicant investigations. However, I did not actually write up the evaluations themselves.

Mr. SOURWINE. You didn't do the work yourself?

Mr. GRIGNON. No; I did not.

Mr. SOURWINE. For how long a period were you in that evaluation supervisor's desk?

Mr. GRIGNON. This was approximately May of 1952 to September of 1952.[10]

MR. GRIGNON'S UTILIZATION OF INVESTIGATORS AS EVALUATORS

Mr. Grignon did not know from his own personal knowledge if two investigators performing evaluations of personnel investigations were competent to do so, nor was he aware how many members of the investigative staff of the Office of Security were competent evaluators. These were his words of testimony on August 6, 1964, at the time when

[5] Ibid., pt. 11, p. 811.
[6] State Department Security hearings, pt. 17, pp. 1431–1433.
[7] Senate Internal Security Subcommittee.
[8] State Department Security hearings, p. 1526; pt. 11, p. 788;
[9] Ibid., pt. 12, p. 948; pt. 19, p. 1641.
[10] Ibid., pt. 11, pp. 787, 788.

those evaluators associated with Otto Otepka were isolated and not performing any useful functions:

Mr. SOURWINE. Do you have any men on detail to supplement the positions authorized for the Office?

Mr. GRIGNON. Not from outside of the Office of Security. Just recently, I did detail two men from the field to come into headquarters to assist on the workload at headquarters.

Mr. SOURWINE. Mr. Grignon, were these men assigned to do evaluation work?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. Were these men, in your judgment, competent evaluators?

Mr. GRIGNON. One of the gentlemen that was brought in was an experienced evaluator and he had worked in that particular position before. The other man showed qualifications in that direction, and actually he is in a training period right now.

Mr. SOURWINE. Who are those two men?

Mr. GRIGNON. John and Dick Clemmons.

Senator DODD. Both of the same name?

Mr. GRIGNON. They are twins.

Mr. SOURWINE. Which is the qualified security evaluator, John or Richard?

Mr. GRIGNON. Richard.

Mr. SOURWINE. What was John's experience? Was he an investigator?

Mr. GRIGNON. He was an investigator in the Miami field office.[11]

* * * * * * *

Mr. SOURWINE. Sir, do you consider investigators competent to perform security evaluations?

Mr. GRIGNON. Well, my understanding on that, sir, is that according to Civil Service Commission regulations, it is possible to assign an investigator to an evaluator's position. The converse, however, is not true. Regardless, though, if any investigator were to be assigned to the position of evaluator, his background and experience would have to be looked into to make sure that although he has performed as an investigator, he would be suitable to perform the duties of an evaluator.

Mr. SOURWINE. Does it take substantial training and experience to make a good evaluator, a competent evaluator?

Mr. GRIGNON. I would say so; yes, sir.[12]

* * * * * * *

Mr. SOURWINE. * * *

Would you be able to tell us how many or approximately how many investigators in the Division of Investigations today are competent evaluators?

Mr. GRIGNON. No; I would not.

Mr. SOURWINE. Do you know of any?

Mr. GRIGNON. I'm familiar with Mr. Clemmons' situation.

Mr. SOURWINE. He is not in the Division of Evaluations today; is he?

Mr. GRIGNON. He is the one we brought in on temporary duty.

Mr. SOURWINE. He is now in Evaluations?

Mr. GRIGNON. Yes, on temporary duty.

Mr. SOURWINE. Do you consider him a competent evaluator?

Mr. GRIGNON. According to the record and the word I have received from his former supervisor, I would.

Mr. SOURWINE. Has he had any experience in evaluations before you detailed him into Evaluations?

Mr. GRIGNON. Yes, sir; that is the story that was given to me by the Deputy Chief.[13]

MR. GRIGNON AND EXECUTIVE ORDER 9835

Mr. Grignon's short experience claimed as an evaluator occurred in 1952 when Executive Order 9835 comprised the basic Government security program.[14] (It was supplanted by Executive Order 10450 on

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[11] Ibid., pt. 11, pp. 785, 786.
[12] Ibid., p. 787.
[13] Ibid., p. 788.
[14] Ibid., p. 797.

May 28, 1953.) Executive Order 9835 was directly and solely concerned with the "loyalty" of Government employees. From its effective date of March 21, 1947, until its amendment on April 28, 1951, nonacceptability under its standards was limited to actual proof of disloyalty. The amendment, still relating only to loyalty, established the standard that refusal or termination of employment must be made on a finding of reasonable doubt as to the loyalty of the person in question.

Public Law 733 (Act of Aug. 26, 1950) was also in effect during Mr. Grignon's 4-month duty as an evaluator. This law authorized the head of certain departments or agencies to suspend summarily without pay and subsequently terminate the employment of an individual when deemed necessary in the interest of national security. The agency head's determination was conclusive and final. Public Law 733 also required certain procedures to be followed, to safeguard the rights of an employee in question, and these procedures had to be followed between suspension and termination. The procedures leading to termination of employment are specifically incorporated into Executive Order 10450.

Mr. Grignon related his experience in administering Executive Order 9835 and Public Law 733:[15]

Mr. SOURWINE. You are the top official in the Department directly concerned with the administration of 10450?

Mr. GRIGNON. Yes, sir.

Mr. SOURWINE. Do you know when Executive Order 10450 was promulgated?

Mr. GRIGNON. In 1953.

Mr. SOURWINE. And all the time since 1953 have you been engaged in security work which involved the administration of this order or the execution of duties based on this Executive order?

Mr. GRIGNON. In that context I could not say "Yes."

Mr. SOURWINE. How much of that time have you been dealing with matters which involved the administration of this Executive order?

Mr. GRIGNON. I have been closely allied to it through my security work during that period, but I never had the responsibility for discharging the responsibilities under the Executive order.

Mr. SOURWINE. Were you ever a security evaluator?

Mr. GRIGNON. In my previous testimony I indicated that as a desk supervisor, I did handle applicant cases. However, I did not write the evaluations themselves.

Mr. SOURWINE. No. But didn't you, in that position, have to know and understand the contents of Executive Order 10450?

Mr. GRIGNON. Yes, sir. But more—this was in 1952. This was before 10450.

MR. GRIGNON V. EXECUTIVE ORDER 10450

Executive Order 10450 became effective May 28, 1953. Mr. Grignon admitted no experience in its implementation until assuming his present position and duties in the Department of State's Office of Security. Perhaps this may account for, though it does not excuse, his statements evidencing a lack of knowledge of the import, extent and application of Executive Order 10450 during his testimony on August 14, 1964.[16]

In order for someone who is not a professional security officer to understand the complete incredibility of these statements made by Mr. Grignon, a few background facts concerning the Executive order are necessary.

Executive Order 10450 extended the provisions of Public Law 733 to all departments and agencies within the Executive branch. It

[15] Ibid., pt. 11, p. 797.
[16] Ibid., pt. 6, pp. 405 et seq.; pt. 11, pp. 796 et seq.

made the head of each agency and department responsible for establishing and maintaining an effective program to insure that the employment or retention in employment of any civilian officer or employee "is clearly consistent with the interests of the national security." [17]

Section 8 of Executive Order 10450 sets forth specific criteria to measure from a security viewpoint the risk involved in employment of an individual, with respect to loyalty, reliability, and suitability. The so-called "suitability" or pressure risk factors include but are not limited to: unreliability or untrustworthiness; deliberate misrepresentations, falsifications or omission of material facts; criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; habitual use of intoxicants to excess, drug addiction or sexual perversion; any illness including a mental condition, which in the opinion of a competent medical authority may cause a significant defect in judgment or reliability; or any facts which furnish reason to believe an individual may be subjected to coercion, influence, or pressure which would cause him to act contrary to the best interests of national security. These suitability and/or character defects are required to be evaluated as security factors under the Executive order.

The remainder of Section 8 of Executive Order 10450 sets forth six specific loyalty considerations and a final standard concerning a refusal to testify before a congressional committee, regarding charges of alleged disloyalty or misconduct, upon the ground of constitutional privilege against self-incrimination.

There can be no doubt that suitability factors are security factors even though no question of loyalty is involved.

The Department of State's personnel security regulations conform to the provisions of Executive Order 10450 and are based on it.[18] Its personnel security regulations state "* * * all positions shall be considered 'sensitive' ", and specify a sensitive position as one in which the occupant would have access to classified security information or any other information or material having a direct bearing on national security. They further include the description of a sensitive position in Section 3(b) of Executive Order 10450 as one in which by its nature, the occupant thereof could bring about a material adverse effect on national security.

Thus suitability, reliability and loyalty factors in Executive Order 10450 and the State Department's own regulations must be evaluated from a security attitude based upon the relationship of a position to national security. The standard for removal from or refusal of employment—

> in the Department of State * * * shall be that, based on all the available information, the employment or continued employment of the person concerned is not clearly consistent with the interests of national security.[17]

The Civil Service Commission's (CSC) suitability rating handbook was designed to evaluate the employment of persons only in nonsensitive positions. Using homosexuality as an example, this form of sexual perversion could be either a security factor under Executive Order 10450 or a suitability factor under CSC regulations "depending on position sensitivity and the circumstances in each individual case." [19]

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[17] Sections 1 and 2 of Executive Order 10450.
[18] Pages 579 et seq., of appendix to hearings of the SISS, 88th Congress on Personnel Security Practices.
[19] State Department Security hearings, pt. 13, p. 1025.

Neither Executive Order 10450 nor the personnel security regulations of the Department of State mentions the word "suitability." The reason is obvious since disqualifying suitability and reliability factors were specified in the Executive Order as security factors. There is, of course, an important difference between a man who is a security risk because of subversive associations and the man who must be considered a risk because of certain weaknesses of character that go to his stability. But where all positions are sensitive, the line between suitability factors and security factors is nonexistent and the causes for separation under the Executive Order are not "gray" as Mr. Grignon claimed. We cannot agree with Mr. Grignon that loyalty could be a suitability factor under any circumstances. He testified, in part, as follows:

Mr. SOURWINE. I see. So you have not, until you became assistant to Mr. Gentile, had a position which required you to know the contents and the interpretation of Executive Order 10450.

Mr. GRIGNON. Not in all of its applications; no, sir.

Mr. SOURWINE. I see. And I presume that your testimony would indicate, and I will ask you if you mean to indicate, that some of the aspects which you have not been required to know and administer are the aspects of suitability and criteria for suitability under the order.

Mr. GRIGNON. On the criteria of suitability, I have become more involved with that since my appointment to the Department. Prior to that time I was not too involved.

Mr. SOURWINE. Are you assured 10450 says anything about suitability?

Mr. GRIGNON. I do not know whether the term itself is used; no, sir.

Mr. SOURWINE. What does the order say about suitability if it says anything?

Mr. GRIGNON. I am not sure, sir.

Mr. SOURWINE. How does that Executive order affect suitability if it affects it at all?

Mr. GRIGNON. Well, I would think that the suitability factors developed in the course of an investigation would have to be assessed against the character of the individual. In addition to that, some of the suitability factors may be of interest to the Medical Division.

Mr. SOURWINE. Under Executive Order 10450?

Mr. GRIGNON. Yes, sir. I would think so, yes.

Mr. SOURWINE. 10450?

Mr. GRIGNON. 10450.

Mr. SOURWINE. Now, when you speak of suitability, do you consider that as a factor, under one of the two causes for separation which you told us comprise Executive Order 10450; that is, disloyalty or bad character?

Mr. GRIGNON. This is where the area is gray.

Mr. SOURWINE. I see.

Mr. GRIGNON. On the application of standards for suitability.

Mr. SOURWINE. Are you meaning to say that a suitability factor might go to the question of disloyalty or might go to the question of bad character, either one?

Mr. GRIGNON. It depends on the facts developed in connection with the suitability. It could not happen.*

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*(EDITOR'S NOTE.—The following letter was received by the subcommittee:)

SEPTEMBER 18, 1964.

Mr. HENRI G. GRIGNON,
Assistant Director for Personnel Security,
Department of State, Washington, D.C.

DEAR MR. GRIGNON: All of the changes in your testimony requested by your letter of Aug. 31, 1964, have been made with the exception of your request for deleting the word "not" in the third line on p. 4154. Since the context of the transcript indicates that you probably did say "not", and since the next question of committee counsel indicates that counsel heard you say "not", and since leaving this word in the record where it now appears cannot possibly be misleading because your answer was corrected immediately there after, the particular deletion you have requested will not be made.

The information concerning who will occupy certain space to be vacated by the Office of Security, provided in the third paragraph of your letter, has been ordered included in the record at the proper place.

Thank you for your cooperation.

Sincerely,

THOMAS J. DODD,
Vice Chairman, Internal Security Subcommittee.

cc: Hon. Robert E. Lee, Acting Assistant Secretary for Congressional Relations.

Mr. SOURWINE. What could not happen?
Mr. GRIGNON. I say it could happen.
Mr. SOURWINE. Either way?
Mr. GRIGNON. I would think so; yes, sir.
Mr. SOURWINE. Are the suitability factors to be considered different when you are considering them in connection with determining a question of loyalty or disloyalty from what they are when you are considering a question of bad character?
Mr. GRIGNON. Well, loyalty, of course, is most important in the security evaluation.
Mr. SOURWINE. Yes, sir.
Mr. GRIGNON. And if there are suitability factors that would have an effect upon loyalty, that is of grave importance.
Mr. SOURWINE. I see.
Mr. GRIGNON. But I believe that the suitability factors involved in moral character would also have great weight.[20]

CSC regulations, restated in its suitability rating handbook, require that at the time of appointment persons coming within the jurisdiction of the Commission be—

reliable, trustworthy, of good conduct and character, loyal to the United States, and capable of physically performing efficiently the duties of the position without hazard to themselves, fellow employees or others.

The CSC's suitability rating handbook specifies the following items in evaluating an applicant's basic standard of fitness for a nonsensitive position: dismissal from employment for delinquency or misconduct; physical or mental unfitness for the position; criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; intentional false statements or deception or fraud in examination or appointment; refusal to furnish testimony as required; habitual use of intoxicating beverages to excess; reasonable doubt as to loyalty to the United States; or any legal or other disqualification which makes the applicant unfit for the service.

Mr. Grignon knew of no fixed standards on suitability and found "suitability" very difficult to define:

Mr. SOURWINE. Sir, because this will be useful to the committee in connection with its consideration of standards in the security field, and since you have qualified yourself on the basis of your former testimony as a man with many years of experience in this field, I would like to ask a few questions about Executive Order 10450 and its application.
You are familiar with that order, are you not?
Mr. GRIGNON. Yes, sir.
Mr. SOURWINE. This is the order which was issued by President Truman, or is this Mr. Eisenhower's order?
Mr. GRIGNON. That was President Eisenhower's order.
Mr. SOURWINE. And, under that order, what are the grounds for separation of an employee in the Department of State?
Mr. GRIGNON. That would be an employee who was found to be disloyal, of poor character.
Mr. SOURWINE. Are you through?
Mr. GRIGNON. Well, there are other provisions in there that have to be assessed in connection with the information that is received from investigation.
Mr. SOURWINE. But the two grounds for dismissal under 10450 are, if I understand you correctly, disloyalty and poor character?
Mr. GRIGNON. And then we have to give consideration to morals aspects.
Mr. SOURWINE. Would that go to the question of poor character?
Mr. GRIGNON. It is involved with that, sir.
Mr. SOURWINE. Would that go to the question of disloyalty?
Mr. GRIGNON. Not necessarily. It would depend on whether or not the man had compromised himself and made himself subject to coercion.
Mr. SOURWINE. Are there other points you are required to consider under Executive Order 10450?

[20] State Department Security hearings, pt. 11, pp. 797–799.

Mr. GRIGNON. We would consider suitability as it applies to the man's loyalty. There are certain suitability factors that also have to be considered from a personnel standpoint.

Mr. SOURWINE. I am a little bit lost there because you may have used the word "suitability" in two different ways. Would you explain what you mean by saying that you have to consider suitability as regards loyalty?

Mr. GRIGNON. Well, suitability I believe I consider to be very difficult to define. In fact, I also feel that there is a lot of clarification that should take place in the field of suitability.

Mr. SOURWINE. Do you think Executive Order 10450 is unclear on this point?

Mr. GRIGNON. Well, it leaves a lot to interpretation. There are also the medical aspects of the individual.

Mr. SOURWINE. You say "a lot to interpretation." You don't mean it leaves a lot to be evaluated under known standards? You mean, first there has got to be an interpretation of what the standards are before you can do any evaluating under them? That is, the problem, as I understand you are saying, is interpreting 10450 with regard to what is suitability.

Mr. GRIGNON. I don't know that there have ever been any fixed standards established on suitability.

Mr. SOURWINE. I see. What are the suitability factors named under 10450, if you know?

Mr. GRIGNON. I am sorry. I do not know.

Mr. SOURWINE. You administer this Executive order, don't you?

Mr. GRIGNON. Yes, sir.

Mr. SOURWINE. As Acting Director in the Office of Security and Acting Deputy Assistant Secretary for Security, which you are?

Mr. GRIGNON. Acting Deputy Assistant Secretary for Security; yes, sir.[21]

On February 11, 1957, the CSC, responsible for overseeing the manner by which Executive Order 10450 is implemented by various agencies and departments,[22] issued Departmental Circular No. 901 to Heads of Departments and Independent Establishments. The circular was titled "Suitability vs. Security as Grounds for Separation and Other Adverse Actions." The circular stated in its second paragraph:

> Public Law 733 and its legislative history as well as Executive Order 10450, make it clear that the security program was designed to provide a separate authority and program for adverse actions against those persons whose employment is not clearly consistent with national security. Civil Service regulations have long been utilized to separate employees on the basis of general unfitness, such as drunkenness, drug addiction, immoral or criminal conduct * * * Agencies have complete discretion and final authority in selecting the appropriate procedure for the separation of employees. However, it must be kept in mind that where persons are to be separated because their employment is not clearly consistent with national security, such separation should be instituted under Public Law 733 and Executive Order 10450. There should be no intermingling of the two procedures.

Mr. Grignon felt the question of dismissal for character defects through the procedures of Executive Order 10450 was academic in the State Department. He relied on the statement of a subordinate who had been assigned to the Evaluations Division only since June 1962. Mr. Grignon made no reference to the Department of State's own standard in compliance with Executive Order 10450: whether, based on all the available information, the employment or continued employment of an individual was clearly consistent with the interests of national security.

To say the interest of national security within the meaning and intent of a valid Executive order and a public law is academic to the Office of Security is incomprehensible. It should certainly be

[21] State Department Security hearings, pt. 11, pp. 796-797.
[22] Section 14. Executive Order 10450.

expected that "suitability factors involving moral character" would first be evaluated by Mr. Grignon and his subordinates in the Division of Evaluations to determine if they are security factors. Mr. Grignon testified:

Mr. SOURWINE. Yes, sir. What is the basic question to be determined in deciding whether a man is to be dismissed under Executive Order 10450 because of bad character? Where do you draw the line?

Mr. GRIGNON. I think this question is academic in a case of the State Department because——

Mr. SOURWINE. You mean you do not have any bad character cases there?

Mr. GRIGNON. If I may continue, because of this reason. As I have found—at least I have been told—that there has never been an applicant discharged under Executive Order 10450 in the last 5 or 6 years, at least, in the Department.

Mr. SOURWINE. That may be true. It is interesting to have your information on that point. Who told you this?

Mr. GRIGNON. This was given to me by Mr. Traband, Deputy Chief of the Division of Evaluations.

Mr. SOURWINE. That is Fred Traband?

Mr. GRIGNON. That is right.

Mr. SOURWINE. T-r-a-b-a-n-d?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. Never been discharged because of bad character, you say, or never been discharged under 10450?

Mr. GRIGNON. Discharged under 10450? May have been discharged but not under 10450.[23]

Mr. Grignon persisted that Executive Order 10450 did not mention any suitability factors which might affect a security determination. He also felt a question of loyalty could be a suitability matter to be decided by the Office of Personnel without any prior determination by the Office of Security even though the information was acquired by "security investigations."

Here is his testimony:

Mr. SOURWINE. Can you tell us, sir, what are the specific suitability factors under Executive Order 10450?

Mr. GRIGNON. I cannot, sir.

Mr. SOURWINE. Can you tell us what—would you read my last question back?

(The question requested was read by the reporter.)

Mr. SOURWINE. That is what I thought I said. I misspoke myself. I am sorry. And I made you reiterate what you had already testified to. I apologize.

Mr. GRIGNON. That is all right, sir.

Mr. SOURWINE. I meant to ask whether you can tell us what are the security factors under Executive Order 10450.

Mr. GRIGNON. Well, we are talking about loyalty.

Mr. SOURWINE. Yes, sir.

Mr. GRIGNON. Character.

Mr. SOURWINE. Yes, sir.

Mr. GRIGNON. Many compromising situations which would lead to coercion on the part of an individual.

Mr. SOURWINE. Which one of these two facets would that come under, the loyalty-disloyalty decision or the good character-bad character decision?

Mr. GRIGNON. That could possibly be influenced by the facts in the case.

Mr. SOURWINE. I see. It might be under one; it might be under another?

Mr. GRIGNON. Possibly.[24]

* * * * * * *

Mr. SOURWINE. No, no. I am asking you how Security handles it. Do you mean to imply that the Office of Security is not interested in the bad character discharges?

Mr. GRIGNON. Oh, yes. And this——

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[23] State Department Security hearings, pt. 11, p. 799.

[24] Ibid., pt. 11, p. 801.

Mr. SOURWINE. Or that the Office of Security is not interested in suitability discharges?

Mr. GRIGNON. Yes. This information which is accumulated ordinarily from our security investigations is passed over to the Office of Personnel, and the case is referred to them for disposition.

Mr. SOURWINE. In what kind of a case?

Mr. GRIGNON. In the suitability cases that we are discussing.

Mr. SOURWINE. Do you mean suitability cases which are not bad character cases?

Mr. GRIGNON. I am talking about suitability cases.

Mr. SOURWINE. Yes, sir.

Mr. GRIGNON. That pertains principally to conduct, but even in other types of cases of which I have been apprised, where there could be poor character on the part of the individual. Those have also been referred to the Office of Personnel for disposition.[25]

MR. GRIGNON AND INVESTIGATIONS

Chapter I–2 of the Federal Personnel Manual of the CSC is titled "Investigations—Security Requirements for Government Employees." It specifically states the requirements are based on Executive Order 10450. One of the provisions set forth in chapter I–2 is—

> No reinvestigation is required for appointments of employees of another agency, or for reappointments when there has been no break in service in excess of one year since the last employment in government, unless the new position is sensitive and a full field investigation has not been conducted in connection with the previous employment.

Mr. Grignon was not knowledgeable of this:

Mr. SOURWINE. Now, if he were to have been named a consultant directly upon the effective date of his resignation as Legal Adviser, would that have required any separate security work?

Mr. GRIGNON. It would have required a review of the security file.

Mr. SOURWINE. It would? Even when a man changes positions you review his security file?

Mr. GRIGNON. If it is a different type of appointment.

Mr. SOURWINE. Oh, is that so?

Mr. GRIGNON. That is my understanding.

Mr. SOURWINE. I didn't know that. I thought if a man had held a top job and top clearance in the Department, he probably could move to a lesser job, or a job which required no greater clearance, without any additional review of his security file. That is not so?

Mr. GRIGNON. My understanding is if the employment is terminated and there is a new consideration for a different type of appointment, at a subsequent time——

Mr. SOURWINE. Well, that would have been different. I am talking now on the supposition that it might have been possible that he simply switched over from being legal counsel to being a consultant, that he became a consultant concurrently with giving up his position as Legal Adviser.

Mr. GRIGNON. I see.

Mr. SOURWINE. Can you say that is not the situation?

Mr. GRIGNON. I am sorry. I am not knowledgeable on that particular circumstance. I would have to determine whether or not we do, at that particular time, review the file under those conditions.[26]

Section 3(a) of Executive Order 10450 requires the appointment of each civilian officer or employee be made subject to investigation, the extent of which depends on whether the position is sensitive requiring a full background investigation or nonsensitive calling for written inquiries. Section 3(a) specifies the minimum investigation which

[25] Ibid., pt. 11, pp. 799, 800.
[26] Ibid., pt. 6, pp. 406–409.

must be conducted but also provides that upon the request of the head of a department or agency, the CSC may authorize such less investigation as may meet the requirements of national security with respect to per-diem, intermittent, temporary or seasonal employees.

Section 8(c) of Executive Order 10450 states:

> The investigation of persons (including consultants, however employed) entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency * * *.

Mr. Grignon was not knowledgeable of the investigative requirements for these classes of employees:

> Mr. SOURWINE. Well, I think there was some statement by Mr. Chayes publicly or for the press at the time of his resignation about the fact that he had to accept the position with the law firm because of the financial considerations and the duty he owed his family or something to that effect, and the committee did have a report that he was presently employed with the Department as a consultant.
>
> I don't use the word "employ" wrongly there, do I? Consultants are employed, aren't they?
>
> Mr. GRIGNON. They are ordinarily paid. The understanding you have of the word "employed": normally paid for their services.
>
> Mr. SOURWINE. Well, if a man is paid a fixed stipend per time period for work done for the Department, isn't he an employee of the Department, if it is not under contract?
>
> Mr. GRIGNON. I am not too sure I understand your point, sir.
>
> Mr. SOURWINE. Well, what is the dividing line between employees and nonemployees? What would you call a man who doesn't have a contract with the Department but who does do work for the Department and who gets paid a fixed amount per month or every half month for his services, if you don't call him an employee?
>
> Mr. GRIGNON. Well, we are in a field that deals in personnel activities and as such I am not as knowledgeable as what the Department would explain——
>
> Mr. SOURWINE. I am not trying to make an expert out of you but I understand you didn't accept the idea that Mr. Chayes was or might be an employee of the Department and said rather he was a consultant, and I am trying to find out what you had in mind as the difference. Aren't consultants employees?
>
> Mr. GRIGNON. Well, in my own mind——
>
> Mr. SOURWINE. Except in the case of contract consultants?
>
> Mr. GRIGNON. In my own mind, an employee is employed full time at the general schedule or the Foreign Service schedule rate of pay.
>
> Mr. SOURWINE. You mean he has to be a civil service or Foreign Service FSR, FSO, FSS?
>
> Mr. GRIGNON. That is correct. That is my interpretation of the word "employee" as opposed to a "consultant" who works on a part-time basis on an agreed basis with the Department.
>
> Mr. SOURWINE. Well, a lot of people are, of course, employed by the Department on a part-time basis. They don't give 40 hours a week or in some cases even 35 hours a week.
>
> Mr. GRIGNON. That may be so.
>
> Mr. SOURWINE. You don't know whether that is true?
>
> Mr. GRIGNON. I don't know.[27]

Though he had previously indicated his impression that a separated employee could not be employed as a consultant or contractual employee without a security check, Mr. Grignon apparently was unconcerned about whether such a person had been properly processed under the State Department's security regulations:

> Mr. SOURWINE. Subsequent to his resignation you heard he had been recalled to do some work for the Department.
>
> Mr. GRIGNON. Yes, sir.
>
> Mr. SOURWINE. And that is all you know about it?
>
> Mr. GRIGNON. That is correct, sir.

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[27] Ibid., pt. 6, p. 407.

Mr. SOURWINE. You don't know the nature of the work.
Mr. GRIGNON. No, sir.
Mr. SOURWINE. You don't know whether he is a consultant or a contract employee or a man performing services under a contract of another nature.
Mr. GRIGNON. No, sir; I do not.[27]

* * * * * * *

Mr. SOURWINE. Did the thought enter your mind at the time: How can this be? Proper regulations require security action in such a case and there hasn't been any? And I had better find out about it?
Mr. GRIGNON. Well, we hear of many personnel actions that go on day to day and we presume that the proper requests are funneled to our office.
Mr. SOURWINE. You can't presume that in a case where the proper request calls for security work and where you have no knowledge of any such request having been received, can you?
Mr. GRIGNON. Well, I took this to be in the nature of hallway information as opposed to official information.[27]

* * * * * * *

Mr. SOURWINE. My only question is: Did the thought strike you at that time—perhaps not in these words—"this is funny because he can't be reemployed as a consultant without security work and I haven't seen anything on this matter and maybe I had better check up and find out if it came in and what is being done about it?"
Mr. GRIGNON. The thought did not occur to me, sir.[28]

Section 8(d) of Executive Order 10450 instructs the prompt referral—

> to the Federal Bureau of Investigation [of] all investigations being conducted by any other agencies which develop information indicating that an individual may have been subject to coercion, influence, or pressure to act contrary to the interests of national security, or information relating to any of the matters described in subdivisions (2) through (8) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

The State Department's own personnel security regulations adopt the language of Executive Order 10450 and identify subdivisions (2) through (8) as:

"b. Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

"c. Establishing or continuing a sympthetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

"d. Advocacy of use of force or violence to overthrow the Government of the United States, or the alteration of the form of government of the United States by unconstitutional means.

"e. Membership in or affiliation or sympathetic association with, 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.

"f. Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

"g. Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

[27] Ibid., pt. 6, p. 407.
[28] Ibid., pt. 6, p. 409.

"h. Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct."

Contrary to Mr. Grignon's testimony, when an investigation develops an indication of activities specified by the Executive order, it should be referred to the Federal Bureau of Investigation. An indication of this type of derogatory information is immediately evident and the referral should be without delay. Mr. Grignon is responsible to see that the spirit and letter of Executive Order 10450 are complied with by the Office of Security.

There is no absolute right to Government employment. When a substantial amount of evidence indicates or proves an applicant has engaged in subversive activities, he is not entitled to a security clearance even for a nonsensitive job. If an initial investigator cannot recognize an indication of subversive activity and make an immediate recommendation for referral of the investigation to the Federal Bureau of Investigation, he is grossly deficient in the performance of his duties and culpably negligent in his responsibilities. But examine Mr. Grignon's testimony.

Mr. SOURWINE. I see. How far do you go in investigating, in the case of an applicant for employment in the State Department, concerning whom there is information involving subversive activity by the employee?

Mr. GRIGNON. I would say that that has to be checked out to the infinite degree.

Mr. SOURWINE. Your standard is to carry that investigation to the ultimate?

Mr. GRIGNON. Yes, sir.

Mr. SOURWINE. You do not quit when you have a substantial amount of evidence or enough to prove that he has engaged in subversion? You go all the way and try to find out just what he has done and just how far he has gone along that line? Is that what you are testifying?

Mr. GRIGNON. Again, it depends on the individual facts in the case. It is difficult to give a broad statement.

Mr. SOURWINE. Well, I am just trying to understand your statement. I am not complaining that it is broad or narrow. I had understood you to say that you went all the way to the ultimate degree in an investigation in one of these cases which involved an applicant for employment, who did have in his file initially a record—again at or near the beginning of the investigation—of information indicating he had engaged in subversive activity.

Mr. GRIGNON. I see.

Mr. SOURWINE. And I am trying to find out what you mean by "going all the way" or "ultimate degree." What is "all the way"? What is the "ultimate degree"?

Mr. GRIGNON. Well, apparently the question is raised in connection with an applicant.

Mr. SOURWINE. Yes, it was.

Mr. GRIGNON. And in that particular instance, once the first indications are shown that there have been subversive activities on the part of the applicant, then that case would have to be referred to the Federal Bureau of Investigation under their loyalty responsibilities.

Mr. SOURWINE. I see. Just as soon as there is any indication in the file of possible subversive activity, you make it an FBI case under your regulations?

Mr. GRIGNON. As soon as a determination can be made that there is an indication of subversive activities; yes, we would have to refer——

Mr. SOURWINE. Who would make the determination that there is an indication of subversive activity?

Mr. GRIGNON. Well, I have not had a case come up in this category since I have been with the Department.

Mr. SOURWINE. You mean you have never seen an employee applicant case which involved allegations of subversive activity or possible subversive activity by the employee?

Mr. GRIGNON. I know of such cases. However, since I have been in the Department, I have not seen a case where this has happened where we have referred it to the Federal Bureau of Investigation.

Mr. SOURWINE. Well, that is different from saying you have never seen such a case since you have been in the office, isn't it?

Mr. GRIGNON. I—[pauses].

Mr. SOURWINE. Which is the fact, that since you have been in your position as assistant to Mr. Gentile, you have never seen an applicant case which involved allegations of possible subversive activity; or that you have never seen such a case which you referred to the FBI?

Mr. GRIGNON. I have never seen such a case that has been referred to the FBI by the State Department, and I have seen—I am knowledgeable of two cases where as a result of the national agency name checks that were conducted, that the FBI did take over the case.

Mr. SOURWINE. Well, I am not concerned with whether they took it over but with whether, since you have been in your position as Assistant Director of the Office of Security, or Acting Director, or as assistant to Mr. Gentile, you have seen any employee applicant case which involved allegations of possible subversive activity by the employee. Since you have already said you did not see such a case which was referred to the FBI, what is left of the question is: Did you see such a case which you did not refer to the FBI?

Mr. GRIGNON. I actually see very few applicant cases, and I cannot recall seeing one in which subversive activities were noted.

Mr. SOURWINE. I thought that was probably the case in view of your earlier answer, but you had made the distinction, and I wanted to get the record clear on it.

Mr. GRIGNON. This is since I have been in the Department.

Mr. SOURWINE. Yes. Why did you make the distinction? Do you know, or was it just something that came out without intending to make a distinction?

Mr. GRIGNON. No. Over the period of my career in security, I, of course, am knowledgeable of certain cases where subversive activities were involved.

Mr. SOURWINE. Certainly.

Mr. GRIGNON. And this was what I was referring to, not to the specific period I was in the Department of State.

Mr. SOURWINE. The distinction seemed to be turning on whether you had referred the case to the FBI. That is not what you intended?

Mr. GRIGNON. I am not too clear that I understand your point.

Mr. SOURWINE. You did not intend to make a distinction between employee applicant cases which involved subversive activity allegations which had been referred to the Bureau and such cases which had not been referred to the Bureau?

Mr. GRIGNON. If I understand your question correctly, the answer would be no, sir.

Mr. SOURWINE. You did not intend to do so. All right * * * [21]

Executive Order 10450 does not distinguish between applicants for employment and those persons already employed when specifying what matters must be investigated by the Federal Bureau of Investigation. Mr. Grignon makes such a distinction. At best Mr. Grignon assumed cases involving subversive activities on the part of applicants were properly being referred to the Federal Bureau of Investigation.

Those matters involving employees described by Mr. Grignon as "* * * particularly cases of a counterintelligence nature * * *" clearly are within the category of those matters which must be referred to the Federal Bureau of Investigation. In the language of Executive Order 10450 these are matters which developed "information indicating that a person may be subject to coercion, influence, or pressure to act contrary to the interests of national security * * *." Mr. Grignon related these particular matters were investigated by a special unit in the Office of Security:

Mr. GRIGNON. The special assignment staff was established to review particularly cases of a counterintelligence nature, cases where there might be compromising of employee—of State Department employees.

Mr. SOURWINE. But these are all employee security cases.

Mr. GRIGNON. These are employee security cases, that is correct.

Mr. SOURWINE. All right.

Where is this organization that you are speaking of? Is it in the Office of Security?

Mr. GRIGNON. This is in the Office of Security.
Mr. SOURWINE. Under you?
Mr. GRIGNON. It answers directly to the Deputy Assistant Secretary for Security.

* * * * * * *

Mr. SOURWINE. In other words, he does not have a chance, at the time he sees that case, to say, "I am going to clear the man." He can only say, "Send it to the Board," or "I do not think it is ready to go to the Board yet," is that correct?
Mr. GRIGNON. Depending on the facts again in the case, there might be a different approach taken by either Mr. Gentile or myself where we might feel that this additional investigation is necessary or further——
Mr. SOURWINE. But would you send it down to the Investigations Division, or would you send it back to this special branch and let them do the investigation?
Mr. GRIGNON. The special assignment staff can send out leads for investigations directly overseas, and most of these cases involve overseas.[29]

There is no limit prescribed by law or Executive order with respect to the length of time a security investigation may go back into a person's life. Section 3(a) of Executive Order 10450 covers this in language which provides:

* * * Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of national security.

Particularly abroad, many agencies of the Government, notably the State Department itself, employ foreign nationals who have no intention of becoming American citizens. Section 3(a) of Executive Order 10450 specifically refers to investigation of aliens.

A person employed in the competitive civil service must be an American citizen. The Foreign Service Act of 1946, as amended, requires that officers and staff employees be American citizens.[30] Verification of birth and citizenship is therefore a basic initial investigative necessity.

But listen to Mr. Grignon:

Mr. SOURWINE: . . . Is there any limit prescribed by law or Executive order with respect to the length that the Security Office may go in a security investigation?
Mr. GRIGNON. Well, normally we go back 15 years in a man's life.
Mr. SOURWINE. That is a long way back.
Mr. GRIGNON. Or at least back to age 18. And the normal investigation verifies citizenship, education, employment.
Mr. SOURWINE. Does a man have to be a citizen to work for the State Department?
Mr. GRIGNON. Under Civil Service Commission rules the man has to be a citizen of the United States to work for the U.S. Government.
Mr. SOURWINE. I see. Does he have to be a citizen to be employed as an officer in the Foreign Service or as FSR or FSS?
Mr. GRIGNON. I never actually read the law on that, but I would presume that that would also be applicable.
Mr. SOURWINE. I see. Go ahead.
Mr. GRIGNON. We also would interview references, neighborhood checks would be conducted, credit checks would be conducted, police checks, national agency name checks would be appropriate.[31]

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[29] Ibid., pt. 11, pp. 809–810.
[30] Public Law 724, 79th Congress, Section 515 requires FSO's to have held citizenship for at least 10 years prior to appointment; Section 522 requires FSR's to have held citizenship for 5 years prior to appointment; Section 534 requires that FSS's be citizens at time of appointment.
[31] State Department Security hearings, pt. 11, p. 803.

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Executive Order 10450 and Public Law 733 make the head of each agency or department responsible to determine that the employment of each person is clearly consistent with the interests of national security. This responsibility cannot be transferred or assumed by any other agency or department. The Federal Bureau of Investigation, a factfinding organization, is required only to conduct certain investigations. It does not evaluate them and the decision of employability rests with the agency which requested the investigation. Executive Order 10450 is not, nor was it intended to be, judicial. It does not seek to establish innocence or guilt but merely to insure fitness for employment from a security point of view. The only resolution to be made is whether the employment of an individual is clearly consistent with the interests of national security

Mr. Grignon's misconceptions of the roles of the Federal Bureau of Investigation and the Department of Justice lead one to wonder if any security determination as to employability is made in the more serious cases referred to and investigated by the Federal Bureau of Investigation:

Mr. Sourwine. What I am trying to get at is merely a question of how far you pursued this matter of possible or alleged subversive activity where there is an original allegation in one of these cases of possible subversive activity. How far do you pursue that matter in your investigation before you make some disposition of the case?

Mr. Grignon. Well, once the case would indicate subversive activities on the part of the applicant, at that point the decision would have to be reached to transfer the case to the Federal Bureau of Investigation.

Mr. Sourwine. I see. And it would not come back to you? You do no more investigating with regard to it.

Mr. Grignon. My understanding is that it becomes a loyalty case for the FBI to handle.

Mr. Sourwine. Well, they do not make decisions with respect to loyalty cases, do they?

Mr. Grignon. Well, from there it would probably be taken up by the Attorney General for prosecution, if necessary.

Mr. Sourwine. I see. It would not come back to the State Department for you to handle to make a decision with regard to the loyalty matter?

Mr. Grignon. Well, there again it depends upon the facts that are developed. I would imagine in the course of the FBI investigation, if the allegations or the indications were not substantiated by their investigation, they might, I would presume, refer it back to the Department.

Mr. Sourwine. Well——

Mr. Grignon. On the other hand——

Mr. Sourwine. And they might not, in other words. They would have a discretion?

Mr. Grignon. On the other hand, if they do obtain facts that would indicate prosecution, I would presume that it then would be turned over to the proper components of the Department of Justice for prosecution.

Mr. Sourwine. I see. Let me be sure I understand this now. I think I do. Have you said that, in the case of an employee applicant concerning whom there are allegations or information of possible subversive activity, it would go to the FBI which would then determine, on the basis of its investigation, whether the charges were substantiated and if they were not, would refer the matter back to you, or might, in their discretion, not do so; and that, if the FBI investigation establishes disloyalty, it would then be referred to the Attorney General for prosecution?

Mr. Grignon. I do not know whether or not the FBI actually makes a decision in the matter, but the two cases which give me an indication in that direction which I referred to previously where they picked up the case as a result of a national agency name check, those cases were referred back to us for evaluation following the completion of their investigation.

Mr. Sourwine. I see.

Mr. GRIGNON. Based apparently on the fact that they did not feel that there was information developed that would require referral for prosecution.

Mr. SOURWINE. You say apparently they did not feel that. You mean the Bureau indicated, in referring the matter back to you, that it did not feel there had been anything developed to justify prosecution?

Mr. GRIGNON. All they do as I understand it is just to send us—just to return—just to send us their investigative reports.

Mr. SOURWINE. Well, how do you know what their conclusion was then as to whether there should be prosecution?

Mr. GRIGNON. The fact that they return the investigative reports to us would indicate that the matter is returned to us for adjudication and evaluation.

Mr. SOURWINE. And from that you would conclude that the Bureau had decided there was not enough there to support prosecution?

Mr. GRIGNON. I would presume so; yes.

Mr. SOURWINE. I see.

Had these two cases you mentioned, which you say the Bureau got through a name check, been referred to the Bureau by your office initially?

Mr. GRIGNON. No, sir; this is where I made the distinction.

Mr. SOURWINE. I see.

Mr. GRIGNON. It is that when we conduct a name check, the FBI depending upon whatever information they may have in their files, has the opportunity to pick up the case as a loyalty case on their own.

Mr. SOURWINE. I see; take it away from you?

Mr. GRIGNON. Take it away from us.

Mr. SOURWINE. I see. And in two cases they did do this?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. And then subsequently returned the cases to you?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. I see.

Mr. GRIGNON. On the other hand, if we in our normal investigation do obtain information which indicates that there is loyalty aspects to the case of an applicant, then we also have, of course, the responsibility to refer the case to the FBI. This is the type of case——

Mr. SOURWINE. For the determination as to whether it should be prosecuted?

Mr. GRIGNON. For their investigation. How they handle it internally within the Department of Justice, I do not know.

Mr. SOURWINE. That would depend on the results of the FBI investigation?

Mr. GRIGNON. I would presume so.

Mr. SOURWINE. If they deem there is enough there for prosecution, they could turn it over to another branch of the Department for prosecution, or if not, they could return it to you?

Mr. GRIGNON. I would presume so; yes.[32]

Mr. Grignon's years of experience in the Central Intelligence Agency certainly suggest he should be excellently qualified in some areas of intelligence and security work. He is not, however, a personnel security specialist nor a knowledgeable evaluator. While the lack of these specialized talents on the part of a higher official may be overlooked, there is nothing more important to effective personnel security administration than having a skilled technician immediately supervise the day-to-day security clearance operations.

A subordinate evaluator with proper guidance will be at least as good as his boss. But if his supervision is weak this will be reflected in the overall work of the security system and the consequences of such ignorance can be disastrous.

[32] Ibid., pt. 11, pp. 803-805.

Abdication of Responsibility by the Office of Security

When Executive Order 10450 was promulgated, the President advised the heads of all departments and agencies in an attachment:

> * * * I have arranged that the Attorney General supply to the head of each department and agency sample regulations designed to establish minimum standards for the implementation of the security program under this order.[1]

Portions of the Attorney General's guidelines to the same Executive order required:

> Investigation reports * * * shall be evaluated by the Personnel Security Offices of the (department or agency) * * *. Upon receipt of an investigative report containing derogatory information * * * (regarding loyalty) * * * the Personnel Security Officer * * * shall immediately evaluate the report from the standpoint of security of the (department or agency) and shall forward the report, together with the evaluation, to the (officer or officers having authority to suspend). Upon receipt of the investigative report and evaluation of the Personnel Security Officer, the (officer having authority to suspend) shall make an immediate determination as to the necessity for suspension in the interests of national security. If he deems such suspension necessary, the employee shall be suspended immediately. If he does not deem such suspension necessary, a written determination to that effect shall be made a part of the investigation file of the person concerned.[2]

The State Department's own personnel security regulations [3] require any derogatory information indicating the continued employment of the person concerned is not clearly consistent with the interests of the national security be forwarded to a level of an Assistant Secretary of State. The reports and the entire file must be forwarded by the Office of Security.

Upon receipt of the investigative record, these regulations call for an immediate evaluation to determine the necessity for suspension of the employee in the interests of national security. If suspension is not deemed necessary, the regulations require that a written statement to that effect, by the officer making such a determination, is to be made a part of the investigative file of the person concerned.

After the Supreme Court decision in the case of *Cole* v. *Young*,[4] the Civil Service Commission issued instructions that unless an aspect of loyalty was involved in a suspension, or termination of employment, separation proceedings should be for reasons of suitability under Civil Service Commission regulations rather than upon security grounds. The *Cole* v. *Young* decision was based upon the appellant's occupation of a nonsensitive position.

All positions in the Department of State are sensitive unless specifically and individually excepted.[3] Therefore proceedings leading to dismissal could be handled on a security basis pursuant to Public Law 733 and Executive Order 10450, or under Civil Service Commission regulations when no aspect of security is involved. This is a determination which, in the interests of national security, should first be made and recommended by professional security officers.

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[1] Appendix to hearings on personnel security practices, SISS, 88th Congress, p. 1123.
[2] Ibid., p. 1124, et seq.
[3] Ibid., p. 579 et seq.
[4] 351 U.S. 536 (1956).

In the Department of State, these decisions are being made by others and the Office of Security is evading its responsibilities:[5]

Mr. SOURWINE. Does the Office of Personnel make decisions with respect to whether an employee should be separated on grounds of bad character under Executive Order 10450?

Mr. GRIGNON. I think what we have to point out here is that there is a close working relationship between the Office of Security and Personnel.

Mr. SOURWINE. Oh, I am sure that is true, but the responsibility for decisions must rest somewhere.

Mr. GRIGNON. And in addition to this, there is also a personnel panel which is composed at a high level within the Department who is also involved in these cases for a decision on disposition.

Mr. SOURWINE. You mean a panel under and reporting to the Personnel Office?

Mr. GRIGNON. No, sir. This is a panel reporting to the Deputy Under Secretary of State for Administration.

Mr. SOURWINE. Not a panel reporting to the Deputy Assistant Secretary for Security?

Mr. GRIGNON. No, sir.

Mr. SOURWINE. And such a panel, or panels of this nature, make, do they, decisions with respect to whether an employee should be separated on grounds of bad character under Executive Order 10450?

Mr. GRIGNON. Yes, sir.

Mr. SOURWINE. They do. Are you involved in making recommendations to them for their decision or do they make it themselves?

Mr. GRIGNON. There are several components that are involved in making, presenting cases to this panel. The Office of Security is one. The Office of Personnel is another.

Mr. SOURWINE. I would think, sir, that if bad character is a ground for separation under Executive Order 10450, as you have told us, certainly the Office of Security would then have to waive its jurisdiction with respect to the kind of bad character which constituted a security factor before anybody else could make a decision about separation on a kind of bad character which does not involve, or is not, a security decision. Am I wrong about this?

Mr. GRIGNON. Well, it is not a case of waiving. I think it is more of a case of having a joint understanding as to how the case will be disposed of.

Mr. SOURWINE. You mean that you and the personnel people, or your office and the Personnel Office people, will get together and decide who has the proper jurisdiction in this thing?

Mr. GRIGNON. I think it is more the decision as to the proper and most expeditious way of handling the case.

Mr. SOURWINE. You handle the separation case in whichever way is the most expeditious under the circumstances?

Mr. GRIGNON. Yes, sir.

[5] State Department Security hearings, pt. 11, pp. 800, 801.

Erosion of Security Procedures

Here are some of the items of information given to the subcommittee by the Deputy Assistant Secretary of State for Security which show erosion of security procedures in the Department.

A "personnel panel" (with members who are not security officers),[1] reviews cases for a security determination.

There are no written guidelines, instructions or criteria as to what type of case, either derogatory or favorable, must be referred to the panel. The executive officer of the panel is in a position to exercise a substantial measure of control over this.[2]

Mr. Grignon testified the panel system was a change in the procedure of handling security cases. It appears that by this change the Office of Security is consciously avoiding its responsibilities under its own regulations based upon sections 5 and 6 of Executive Order 10450.

Cases in which the Chief of the Division of Evaluations already may have issued a security clearance also may be referred to the panel for review. This smacks of double jeopardy for the employee involved in any such case.

Rather than making a security finding and recommendation (concurring or overruling), the Office of Security can refer the case to a panel instead, thus escaping its own responsibilities.

The panel for review, evaluation, and determination can be bypassed.

A good portion of cases involving employees are referred to the panel by an investigative unit without a security evaluation by the Division of Evaluations.

Even applicant cases, where there is no right to employment, may be decided by the panel.

All this, of course, is on the basis of Mr. Grignon's testimony. There is a quality of uncertainty and vacillation about this testimony which tends to induce doubt as to its accuracy and reliability. This committee is not sure how much Mr. Grignon knows about security standards and prescribed procedures; but he certainly should know what is going on in the Office of Security, at least so far as he participates in it. Here is his testimony respecting the points stressed in this section:

Mr. Sourwine.[3]

Do you know the work Mr. Belisle is performing at the present time in Mr. Crockett's office?

Mr. Grignon. He is the Executive Director, I believe is the title that has been given to him.

Mr. Sourwine. The question only calls for a yes or no. Not meaning to limit you, but all I am asking now is do you know what work he is performing?

Mr. Grignon. Yes.

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[1] State Department Security hearings, pt. 13, pp. 1012–1016.
[2] Ibid., pt. 14, pp. 1060–1062.
[3] Ibid., pt. 11, pp. 805–810.

Mr. SOURWINE. Can you tell us if he is performing security functions?
Mr. GRIGNON. In a way, since he is the Executive Director of the Personnel Panel.
Mr. SOURWINE. As a matter of fact, he is in charge of a project for reviewing some 175 security cases of top level Department employees, isn't he?
Mr. GRIGNON. I am not familiar with that.
Mr. SOURWINE. You do not know that he is reviewing security cases?
Mr. GRIGNON. My understanding is that it is in connection with his work with the Personnel Panel.
Mr. SOURWINE. Well, this Panel is charged with reviewing a group of security cases of top level people, isn't it?
Mr. GRIGNON. The Panel is charged with the review of any case that may be brought to its attention.
Mr. SOURWINE. All right.
Mr. GRIGNON. Either by the Office of Security, Office of Personnel——
Mr. SOURWINE. Can you bring cases to this board's attention?
Mr. GRIGNON. Yes, sir.
Mr. SOURWINE. On your own discretion?
Mr. GRIGNON. Yes, sir.
Mr. SOURWINE. Have you been given any guidelines as to what kind of cases you may bring to this Panel or send to this Panel or should bring or send to this Panel?
Mr. GRIGNON. No written guidelines.
Mr. SOURWINE. Have you been told orally about this?
Mr. GRIGNON. It is more of an understanding.
Mr. SOURWINE. All right. What is your understanding?
Mr. GRIGNON. Any case which requires resolution at a higher level should be brought to this Panel's attention.
Mr. SOURWINE. You mean the Office of Security is abdicating its function of making decisions and recommendations in the security field?
Mr. GRIGNON. No. It is not a case of abdication. It is a case of close coordination with the other components of the Department that are involved with personnel as well as with our superiors.
Mr. SOURWINE. You have been told, if I understand your testimony correctly, that any security case involving resolution at a higher level, meaning higher than you, should go to this Panel.
Mr. GRIGNON. That is correct.
Mr. SOURWINE. Is this Panel then put in the line of command for determination of security cases immediately above you and between you and the Secretary?
Mr. GRIGNON. It could be said that it is between the Office of Security and the Secretary but—
Mr. SOURWINE. It is above you?
Mr. GRIGNON. In this sense, that Mr. Crockett is the Chairman of this Panel.
Mr. SOURWINE. All right. What I am trying to get at is whether this involves a change in the procedure in the handling of security cases. Does it?
Mr. GRIGNON. I would say so.
Mr. SOURWINE. You have not always had such a Panel?
Mr. GRIGNON. No. This is a recent innovation.
Mr. SOURWINE. Now, ordinarily isn't it true that a security case only goes upward from you—when it has come to you—if you decide adversely to the employee, because, if you decide favorably to the employee, you have authority to clear him?
Mr. GRIGNON. That is correct.
Mr. SOURWINE. So you are then under instructions, are you, to send to this Panel of which Mr. Belisle is the Executive Secretary every security case that you do not clear, every case which comes to you that you do not clear?
Mr. GRIGNON. Not specifically in that sense.
Mr. SOURWINE. I think that what I have said is accurate, and I will point out to you why, but I am trying to force you to agree with me. You have said that you were to send up every security case which required determination at a higher level than you. The only security cases which do require such determination are cases where you make a finding adverse to the employee and which have been decided adversely to the employee all the way down to the level of the Chief of the Division of Evaluations. Isn't that right?
Mr. GRIGNON. I think the term that should be used is security resolution. What happens——
Mr. SOURWINE. It is a determination of the case, isn't it?
Mr. GRIGNON. Well, what happens is that a case will come up for decision as to which course of action the Department of State should take, and at these

Panel hearings, Panel meetings, an agreement is reached as to which course of action will be taken to dispose of the case.

Mr. SOURWINE. You mean the Panel decides?

Mr. GRIGNON. Sometimes they will require further investigation. Other leads could be followed through. It may be indicated that the individual should be discharged by the preferment of charges or may be discharged through the personnel channel.

Mr. SOURWINE. Well, the Panel then has a wide discretion in this area?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. It can make a decision along any one of these lines you have indicated?

Mr. GRIGNON. Correct.

Mr. SOURWINE. And it might or might not come back to you depending on the——

Mr. GRIGNON. Right.

Mr. SOURWINE. Are cases ever sent forward to this Panel from a level below you?

Mr. GRIGNON. No. They are prepared——

Mr. SOURWINE. Can someone below you make a decision to send a case to the Panel?

Mr. GRIGNON. He can make a recommendation to that effect.

Mr. SOURWINE. Without you seeing it?

Mr. GRIGNON. No. The recommendation to the Deputy Assistant Secretary for Security who then would indicate "Yes; this is a type of case that should go to the Panel."

Mr. SOURWINE. In other words, you, in the position you are now occupying, would make that decision?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. The Chief of the Division of Evaluations cannot make it?

Mr. GRIGNON. No, sir.

Mr. SOURWINE. And no one else below you can make the decision and send the case to the Panel without consulting you?

Mr. GRIGNON. That is right, sir, from the Office of Security.

Mr. SOURWINE. Now, no security case can come to you unless all the decisions below you, down to the level of the Chief of the Division of Evaluations, have been adverse to the employee, isn't that correct?

Mr. GRIGNON. Oh, not necessarily.

Mr. SOURWINE. You mean that there is somebody below you who can make an adverse decision stick without giving you a chance to review it?

Mr. GRIGNON. No. Any time that someone below the level of the Deputy Assistant Secretary for Security makes an adverse decision, then that case, of course, has to come to the Deputy Assistant Secretary for Security.

Mr. SOURWINE. All right. And if somebody below you makes a decision favorable to the employee, if that man is at or above the level of the Chief of the Division of Evaluations, he can clear him.

Mr. GRIGNON. That is correct.

Mr. SOURWINE. In which case it would not come to you?

Mr. GRIGNON. However, in such cases it would be incumbent upon the Division of Evaluations to bring the matter to our attention.

Mr. SOURWINE. Would it? When was that put into effect?

Mr. GRIGNON. If I were in position of the Division of Evaluations and there were certain factors in the case which were borderline and on which I felt I needed some help, that avenue for the utilization of the Personnel Panel would be available.

Mr. SOURWINE. That is a different thing. A subordinate can always ask his superior for advice or guidance, but I am talking about a determination. If the man who is Chief of the Division of Evaluations at any particular time, or acting in that capacity, finds favorably on the case, he does not recommend approval and send it to you. He clears the man, doesn't he?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. So that all you ever get referred to you for determination or action are cases which have been decided adversely below?

Mr. GRIGNON. That is correct, except—

Mr. SOURWINE. And you have told us that every case which comes to you which requires determination at a higher level has to go to the Board, is that not right? If it has come to you and you have the case, and if you know the case has to be determined or resolved at a higher level, you are required to send it to the Board. Is that not what you told us?

Mr. GRIGNON. We make the decision based on the individual facts in the case.
Mr. SOURWINE. I understand. But, if your decision is that the case has to have determination at a higher level, then you have to send it to the Board, am I right about that?
Mr. GRIGNON. Not necessarily. We can use that access or we can go directly to Mr. Crockett and on in to the Secretary.
Mr. SOURWINE. It is discretionary with you whether you use the Board?
Mr. GRIGNON. Depending on the facts.
Mr. SOURWINE. You have not been told by anybody to send all cases to the Board where they had to have resolution or determination at a higher level?
Mr. GRIGNON. No. I think that the answer to that is that, depending upon the individual facts, a determination is made as to whether or not the case should go to the Panel.
Mr. SOURWINE. That is made by you? With respect to cases which have come to you, the decision whether to send them to the Panel is made by you?
Mr. GRIGNON. Yes, sir.
Mr. SOURWINE. And what are the criteria you have been told to use in making that decision?
Mr. GRIGNON. We have no written criteria.
Mr. SOURWINE. You have not, then, been told to refer to the Board or the Panel every case which comes to you and which you decide, or know, has to have a determination at a higher level than yours?
Mr. GRIGNON. I believe one thing that should be pointed out here is the fact that the Personnel Panel normally reviews the cases of actual employees in the Department.
Mr. SOURWINE. Yes.
Mr. GRIGNON. In the case of applicants, it would be an unusual type of case that would go through the Panel.
Mr. SOURWINE. I am talking only about employee cases. I understood that was all you were talking about with regard to the Panel. That was all you were talking about, wasn't it? You never refer an applicant case to the Panel?
Mr. GRIGNON. There have been cases where policy decisions have had to be referred to the Panel.
Mr. SOURWINE. In an applicant case?
Mr. GRIGNON. In connection with applicant cases.
Mr. SOURWINE. All right. All my questions were intended to comprehend employee cases.
Mr. GRIGNON. I would like to explain this. In the case of an employee, the case necessarily does not have to come out of the Division of Evaluations to go to the Panel.
Mr. SOURWINE. I understand that. You have already testified to that.
Mr. GRIGNON. It would come out of the Special Assistance Staff,[4] where a good portion of the cases that the Security Office has referred to the Panel came from.
Mr. SOURWINE. You mean that the case will go to the Panel without an evaluation report?
Mr. GRIGNON. I do not know whether or not you understand the activities——
Mr. SOURWINE. I do not understand what you just said.
Mr. GRIGNON (continuing). Of the special assignment staff.
Mr. SOURWINE. No, sir. Would you tell us, please?

* * * * * * *

Mr. SOURWINE. Where does it get its cases, when it gets them before they have been to the Division of Evaluations?
Mr. GRIGNON. Well, it could come from a number of sources. Information that is developed during investigation, interrogations of employees.
Mr. SOURWINE. You mean this Board can just open up a security case on its own discretion on the basis of information that comes to its——
Mr. GRIGNON. That it has to look into; yes, sir.
Mr. SOURWINE. It can?
Mr. GRIGNON. Yes, sir.
Mr. SOURWINE. And then it can send that case directly to the Panel of which Mr. Belisle is the executive secretary?
Mr. GRIGNON. Through the Deputy Assistant Secretary for Security.
Mr. SOURWINE. Without ever letting it go to the Division of Evaluations and without referring it to you. Is that right?

[4] Perhaps Mr. Grignon meant to say "Special Assignments Staff."

Mr. GRIGNON. No. It has to be referred to the Deputy Assistant Secretary for Security.

Mr. SOURWINE. To you as acting or to Mr. Gentile?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. But that is the only clearance?

Mr. GRIGNON. That is correct.

Mr. SOURWINE. And it is referred to him, not for his clearance, but only for his permission to send it over to the Panel of which Mr. Belisle is secretary?

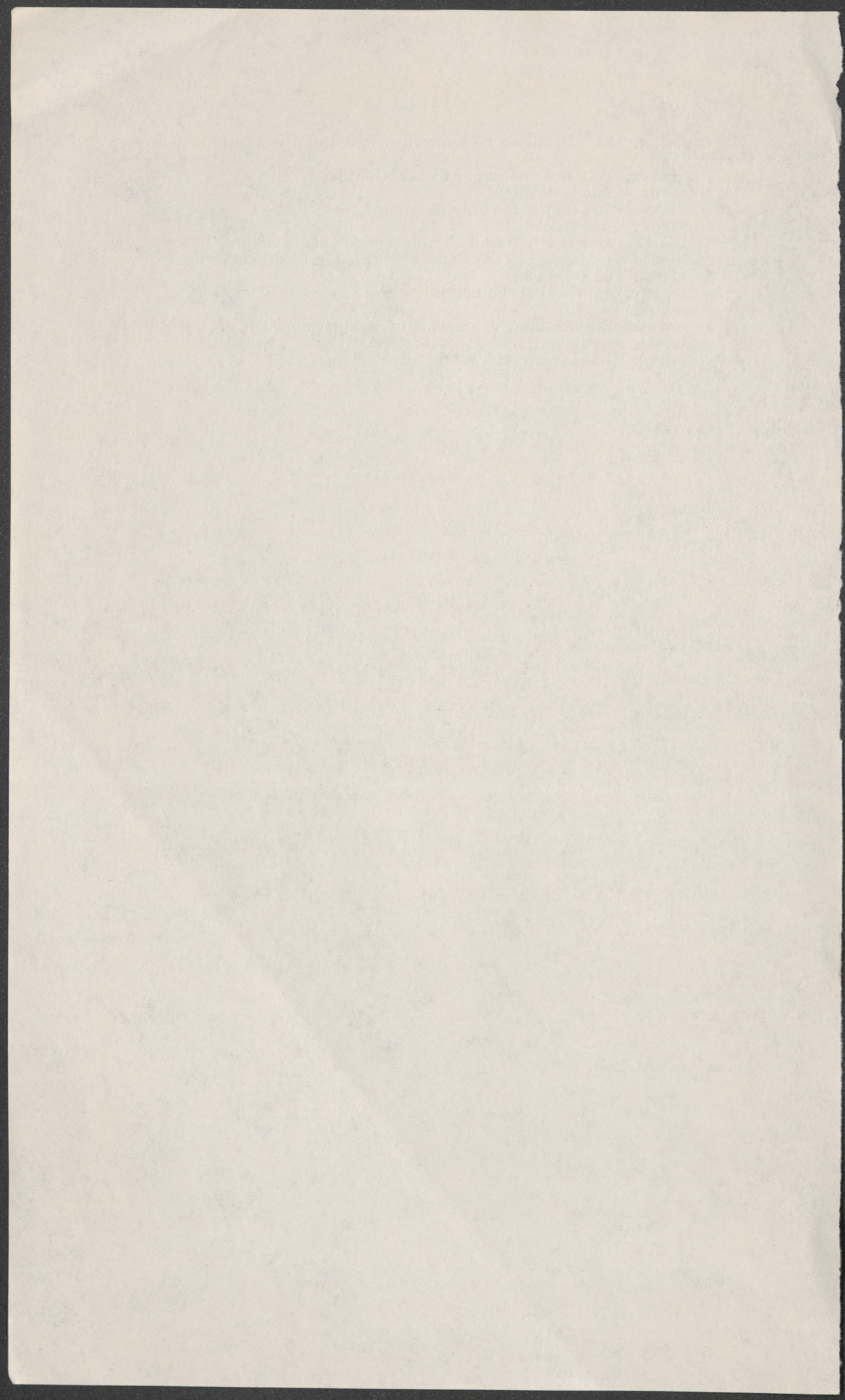
Mr. GRIGNON. For approval.

Mr. SOURWINE. Approval of sending it

Mr. GRIGNON. Yes, sir.

Mr. SOURWINE. Rather than expression of a determination of the case or resolution of the case by him?

Mr. GRIGNON. That is correct.



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