

SUBSTANTIVE RECOMMENDATIONS OF THE REPORTS —AN INTERNAL VIEW

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The threat of international communism has raised two contrasting fears in this country. On the one hand is a fear that we are not adequately protected against the communist threat and, on the other hand, there is the fear that in our zeal to provide security in the struggle against the communist conspiracy we may divert from our tradition of constitutional liberty. This problem, essentially, is part of the age-old problem of reconciling individual freedom and the needs of the state. Justice Cardozo has described this as one of the paradoxes of legal science. This paradox is always in the minds of those charged with enforcing the laws of this country.

Before commenting on the reports prepared by the Commission on Government Security and the Special Committee of the Association of the Bar of the City of New York, a short history of events which have led up to the present federal employee security program, and to those studies, should assist in an understanding of the basic issues.

Security measures affecting civilian personnel are not new in Government.¹ There is evidence that President Lincoln's Administration felt obliged to take certain steps to guard against disloyalty during the war between the States. President Wilson in 1917 issued a confidential executive order permitting agency heads to remove summarily an employee whose employment, by reason of his conduct, sympathies or utterances or because of other reasons growing out of the war, was believed to be inimical to public welfare. As is apparent in these instances, these steps were taken at times of national emergency—and this, of course, has been the critical factor in similar and more recent measures.

For the first 123 years after the establishment of the Federal Government, the Executive Branch had almost absolute discretion in the selection of applicants and the removal of civilian officers and employees. An employee could be lawfully dismissed without reason. The Lloyd-LaFollette Act of 1912, which was strongly supported by the proponents of a merit system, provided for a statement of reasons to the employee and an opportunity for reply before discharge could be effected under the standard established by the Act. That standard is simply that such discharge promotes the efficiency of the civil service.² The Lloyd-LaFollette

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¹ For a full discussion of historical developments in this field, see "History," COMMISSION REPORT, 5.

² The Act provides in part, "No persons in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing." 5 U.S.C. §652 (1952), as amended.

Act does not require a hearing nor does it require confrontation of any witnesses by the employee.³ It is still the basic law governing personnel discharges in Government.

The Veterans Preference Act is basically similar to the Lloyd-LaFollette Act except that an appeal to the Civil Service Commission is provided to veterans if the agency decision is adverse.⁴

In 1939 Congress enacted the Hatch Act which in Section 9A prohibited employment in Government of members "of any political party or organization which advocates the overthrow of our Constitutional form of government." In 1940 an act was passed to give the War and Navy Departments and the Coast Guard authority to remove summarily any employee in the interests of national security. The Civil Service Commission in 1940 issued Circular No. 222 advising that the names of members of the Communist Party, the German-American Bund or other communist, nazi or fascist organizations, would not be certified to departments and agencies for federal employment. In 1941 Congress initiated the practice of embodying riders to appropriation acts for the several departments and agencies of Government barring payment of compensation to any person who advocates, or who is a member of an organization that advocates, the overthrow of our Government by force or violence. In 1942 the Civil Service Commission, pursuant to

³ The Lloyd-LaFollette Act provides, in part, "No examination of witnesses nor any trial or hearing shall be required except at the discretion of the officer or employee directing the removal of suspension without pay." Under the Veterans Preference Act, preference eligibles are to answer "personally and in writing" and, upon authorized appeal to the Civil Service Commission, to make a "personal appearance or an appearance through a designated representative." 5 U.S.C. §863 (1952). The right to "appear personally" has been held not to require an adversary hearing with the right to subpoena or confront witnesses. *Deviny v. Campbell*, 194 F 2d 876 (1952), *cert. denied* 344 U.S. 826 (1952). The phrase "personally and in writing" has been construed to mean that the employee "shall personally answer the charges in writing" and that he shall not have a "minimal" hearing at the agency level. *Washington v. Summerfield*, 228 F. 2d 452 (1955). However, the U. S. Court of Claims recently held in an action for back salary by the same plaintiff that the act gives employees the right to appear personally at the agency level. *Washington v. United States*, 147 F. Supp. 284 (1957). Petition for certiorari on this question has been filed in the United States Supreme Court July 31, 1957, 26 Law Week 3055, August 6, 1957. Under civil service regulations veterans appealing to the Civil Service Commission are afforded a formal hearing, in which they may appear personally, by representative, or both, and present witnesses on their behalf. 5 C.F.R. §22 (1949).

⁴ Section 14 of the Veterans Preference Act of 1944 provides in part "No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department . . . shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for appointment except for such cause as will promote the efficiency of the service . . ." See note 3, *supra*.

Executive Order, adopted a regulation authorizing denial of employment whenever there is reasonable doubt as to loyalty. The regulation further stated that the above criteria could be applied in deciding whether removal of an incumbent employee "promotes the efficiency of the civil service," as stated in the Lloyd-LaFollette Act.

In March 1947 a Government loyalty program was instituted by Executive Order 9835 based in part on the Lloyd-LaFollette Act. Originally, the standard for dismissal in this program was "on all the evidence that reasonable grounds exist for the belief that the person involved is disloyal to the Government of the United States." This proved inadequate, however, and four years later, in 1951, the standard which had been used several years earlier during World War II, "reasonable doubt as to loyalty," was adopted.

The loyalty program was a definite improvement over existing practices so far as the rights of the individual employee were concerned. It introduced uniformity and afforded more protection to the employee by providing for more thorough investigation and a hearing under prescribed procedures and standards. However, in practical operation it was found that immediate suspension pending final determination was impossible even though the adverse information was alarming. Secondly, "disloyalty" was often found to be an inadequate test to screen employees in key Government positions. In some instances it was felt that the available information demanded a finding of loyalty even though the same information indicated that his employment would not be in the interests of national security. There was no middle ground between "clearance" and "disloyal." This program did not take into consideration possible negligence on the part of the employee, irresponsibility or the tendency to disclose information to unauthorized individuals as having a bearing upon his fitness for public employment. Finally, the appeals were time-consuming and the findings upon appeal by the Loyalty Review Board were, in effect, binding upon the heads of the departments and agencies.⁵

It was because of such inadequacies in the loyalty program that disturbed Government officials sought legislative relief which resulted in

⁵ While Part II 3 and Part III 1 of Executive Order 9835 stated that the decisions of the Civil Service Commission on appeal were advisory to the heads of departments and agencies, the Loyalty Review Board by directive to departments and agencies dated December 17, 1948 advised, "The President expects that loyalty policies, procedures and standards will be uniformly applied in the adjudication of loyalty cases by the several agencies, and the responsibility for coordinating the program and assuming uniformity has been placed in the Loyalty Review Board. The recommendations of the Civil Service Commission in cases of employees covered by Section 14 of the Veterans Preference Act of 1944 are mandatory, and the loyalty of persons not covered by Section 14 should be judged by the same standards. Therefore, if uniformity is to be attained *it is necessary that the head of an agency follow the recommendation of the Loyalty Review Board in all cases.*" (Emphasis added.)

the passage of the Act of August 26, 1950.⁶ This law authorized the heads of certain departments and agencies to suspend immediately and eventually terminate the employment of any civilian officer or employee when such action was deemed necessary or advisable in the interests of national security. This act differs significantly from the Lloyd-LaFollette Act in that it requires a hearing before termination.

Section 3 of that law provided that its provisions "shall apply to such other departments and agencies of the government as the President may from time to time deem necessary in the best interests of national security." It was under the authority of this law that Executive Order 10450 issued on April 27, 1953, extending the application of that law to the entire Executive Branch.⁷

The present program provides for investigation, written notice of charges to the employee, for suspension and for a hearing. Final and sole authority to discharge was vested in the head of the department or agency. In summary the new program accomplished the following purposes:

- (1) Established criteria to serve as guides to the heads of the departments and agencies in determining what type of information warranted investigation.
- (2) Established a uniform security standard throughout the Executive Branch, thus eliminating the operation of two separate programs, i.e., under Executive Order 9835 and the Act of August 26, 1950, in specified departments and agencies.
- (3) Required a full field investigation of each occupant of a sensitive position.
- (4) Established uniform procedures for all departments and agencies, which did not exist among departments and agencies named in the 1950 Act.
- (5) Provided for suspension pending hearing and prior to termination.
- (6) Placed final responsibility in the head of each department or agency.
- (7) Permitted termination in the interests of national security without requiring proof amounting to disloyalty.
- (8) Made appointment of applicants in the Executive Branch subject to a minimum investigation.

This latter investigation includes a check of available Government investigative sources (known as a National Agency Check) and written

⁶ 5 U.S.C. §22-1 (1952).

⁷ The departments and agencies originally embraced by the Act are the Departments of State, Commerce, Justice, Defense, Army, Navy, Air Force, Treasury and the Atomic Energy Commission, the National Security Resources Board and the National Advisory Committee for Aeronautics.

inquiries concerning the individual to local law enforcement agencies, former employers, supervisors, references, schools and colleges. Finally, the Civil Service Commission was made responsible for a continuing study of the program to assure that adequate programs are maintained by the departments and agencies and that the employees are receiving fair, impartial and equitable treatment.

On June 11, 1956 the Supreme Court, in the *Cole v. Young*⁸ decision, found that it was the intent of the Congress that the Act of August 26, 1950 should apply only to those employees who occupy positions affected with the national security, that is, sensitive positions. Hereafter, when reference is made to the present program, it is intended to mean the program as constituted prior to the *Cole v. Young* decision. Mention will be made, however, of the present status of employees in non-sensitive positions as a result of that decision.

The authority for the head of the department or agency immediately to suspend an employee on whom substantial information of a derogatory nature is developed was first established by the Act of August 26, 1950 to correct a deficiency then existing in the loyalty program. Many of the suspensions in this program occurred as a part of the review required in all cases wherein a full field investigation had previously been conducted under the loyalty program. Because of the backlog created in the review and processing of so many old cases, it is true that some employees incurred financial hardships pending the final determinations of their cases. It was because of the mandatory suspension provisions of the Act of August 26, 1950 and the hardships thus created that the Attorney General recommended to the Congress that the law be amended to authorize suspension at the discretion of the department or agency head.⁹ This proposal is still pending in Congress and unless the amendment is passed, suspension prior to termination will continue to be mandatory under the Act.

The discussion of the reports of the Commission on Government Security and the Special Committee of the Association of the Bar of the City of New York, hereinafter referred to as the Commission report and the Special Committee report, respectively, shall be confined to those recommendations that might be considered basic modifications in the present structure of the federal personnel security program.

It is agreed by the Commission and the Special Committee that (a) there is a need for a civilian personnel screening program of a loyalty-security nature,¹⁰ and (b) that the process of determining an individual's fitness for public employment is administrative in nature and not a criminal prosecution or trial.¹¹ They differ as to the employees to

⁸ 351 U.S. 536 (1956).

⁹ Letter of April 16, 1956 from the Attorney General to the Speaker of the House and the Vice President—reiterated in letters of July 5, 1956 and July 17, 1957. See note 19, *infra*.

be covered by such program and the termination standard to be applied. Under the present employee security program, prior to *Cole v. Young*, the standard "clearly consistent with the interests of national security" had been applicable to all employees. The Commission recommends that the discarded "reasonable doubt as to loyalty" standard be made applicable to all employees. It made further recommendations, however, which would greatly alter the circumstances under which this standard would operate. Even though the Commission recommends a return to the "reasonable doubt as to loyalty" standard for its loyalty program, it also proposes a revision of the Civil Service criteria to permit termination of an employee on loyalty information under Civil Service procedures as well.¹² It is interesting to note that the Commission in its report states that the decision whether to proceed under the proposed new loyalty program or under the Civil Service procedures may be a difficult one and directs that the Civil Service procedures be followed whenever possible.¹³

The Special Committee has recognized the basic inadequacies of a loyalty program and differs with the Commission on the question of scope of the program and termination standards to be applied. The Special Committee recommends that only employees in positions designated as sensitive be subject to a program based upon a standard of "whether or not in the interest of the United States the employment or retention in employment of the individual is advisable."¹⁴ The Special Committee believes that this standard gives "broader protection to the Government than did the test of loyalty"¹⁵ and that "some persons who are loyal may nevertheless be a danger to the interests of the United States in positions of trust because of lack of dependability or subjection to pressure."¹⁶

The Special Committee believes individuals employed in non-sensitive positions should be subjected to some type of loyalty screening.¹⁷

¹⁰ COMMISSION REPORT, 40; SPECIAL COMMITTEE REPORT, 6.

¹¹ COMMISSION REPORT, 659; SPECIAL COMMITTEE REPORT, 173.

¹² The Commission recommends amendment of the Civil Service regulations to include the criteria: (a) "Any behavior, activities or associations which tend to show that the individual is not reliable or trustworthy," (b) "Any facts, other than those tending to establish reasonable doubt as to loyalty, which furnish reason to believe that the individual may be subjected to coercion, influence or pressure which may cause him to act contrary to the best interests of national security." COMMISSION REPORT, 83.

¹³ COMMISSION REPORT, 85.

¹⁴ SPECIAL COMMITTEE REPORT, 149.

¹⁵ SPECIAL COMMITTEE REPORT, 150.

¹⁶ *Id.*

¹⁷ In a recent Personnel Security Advisory Committee survey it was determined that approximately 524,170 employees occupy sensitive positions, which figure represents approximately 21 per cent of the total federal civilian employment. See SPECIAL COMMITTEE REPORT, 147.

The Special Committee makes no recommendations as to the structure of such a program or as to procedures to be followed. The Special Committee has concerned itself primarily with recommending uniform standards and procedures for those occupying sensitive positions. This, I feel, fails to meet the complete problem with which the Government is confronted.

In actual operation at the present time, however, the program which has existed since June 11, 1956 as a result of the *Cole v. Young* decision closely resembles the program proposed by the Special Committee. Only sensitive position employees are subject to a uniform security program and there is no uniform program for processing loyalty cases involving non-sensitive position employees. The heads of departments and agencies, at this writing, act independently in these cases under the Civil Service procedures and the "reasonable doubt as to loyalty" standard found in the Civil Service regulations.¹⁸ Under such procedures employees would not be entitled to a formal hearing at the agency level. Experience since the *Cole v. Young* decision has shown that there is a reluctance among the departments and agencies to commence proceedings under these circumstances. This situation is a principal reason for the Department of Justice endorsement, shortly after the *Cole v. Young* decision, and again this year, of legislation to extend the Act of August 26, 1950 to all employees as an interim measure pending study of the report of the Commission on Government Security.¹⁹

In respect to applicants and probationary employees, the Commission believes that an applicant who is rejected because of reasonable doubt as to loyalty should be given an opportunity to answer charges and explain his position in an informal interview with an officer of the employing agency, as well as supply affidavits or other relevant information. Thereafter, if such reasonable doubt persists, the applicant would be afforded an opportunity to be heard before a hearing examiner of the proposed Central Security Office.²⁰ The Commission further recommends that probationary employees should be processed in substantially the same manner.

The Special Committee would not allow an applicant such a complete hearing but does recommend that any applicant for a position covered by its proposed program, i.e., a sensitive position, should, so far as is consistent with the interests of the national security, be furnished

¹⁸ 5 C.F.R. §§9.101(a) and 2.106(a)(7) (1949). While this test has remained in civil service regulations, it has been inapplicable since the inception of the old loyalty program and Exec. Order No. 10450.

¹⁹ Letters to the Honorable Tom Murray, Chairman, Committee on Post Office and Civil Service, House of Representatives from the Attorney General and the Deputy Attorney General dated July 5, 1956, and July 17, 1957, respectively.

²⁰ COMMISSION REPORT, 51.

with a statement of all adverse security information and permitted to file affidavits to be included in the personnel file and incorporated in any investigative reports on the applicant. The Special Committee further recommends that, where the general counsel of the department or agency recommends, the applicant should be permitted to explain unfavorable information in an informal interview. With respect to probationary employees, the Special Committee feels that the notice and opportunity to reply provided for in the Act of August 26, 1950 are sufficient.²¹ The Special Committee observes that guaranteeing full procedural rights to applicants for Federal employment could burden the Government with proceedings in cases in which prospects for employment are almost non-existent or with cases where an applicant might be interested solely in obtaining a Government clearance rather than ultimate employment.

Some persons, apparently, are under the impression that all employees entering Government service are completely investigated and their cases adjudicated prior to entrance on duty. This is the exception rather than the rule. The Government, just as any other employer, is a competitor in the labor market. For this reason many employees are placed on the rolls subject to investigation although some preliminary checks are made. This means, therefore, that, in the event unfavorable loyalty information is subsequently developed, such persons would be accorded the notice and opportunity to reply provided for employees in the present program.

The two recent studies agree that employee termination proceedings are administrative in nature and are not a criminal prosecution or trial. Under the present program, while every effort is made to produce witnesses at security hearings to testify in behalf of the Government, there is no requirement for such appearance. Both the Commission and the Special Committee feel that employees cannot be granted full confrontation of all witnesses but have made certain administrative recommendations designed to strike a compromise in the matter. The Commission states, in substance, that confrontation of informants regularly engaged and needed in investigative activities should not be required. It feels, however, that information furnished by unidentified casual informants, i.e., those not regularly engaged in investigative activities, such as neighbors and co-workers, should not be considered in determining an individual's employability unless the informant can be cross-examined in hearing or through interrogatory or deposition. The Commission feels that this rule should also apply to identified sources, unless such sources are unavailable due to death, incompetency or "other reason." The Special Committee also believes that confrontation of regular informants should not be required. It concludes that screening and hearing boards should be permitted to require testimony from so-called casual in-

²¹ SPECIAL COMMITTEE REPORT, 185.

formants, but it does not preclude consideration of information furnished by such informants in the event they are not confronted in some manner. Both reports add that in all cases the employee should be fully informed of the substance of the charges. This, of course, is already a requirement under the present program.

It is my personal view that a great deal of the controversy about the present program is due to a lack of understanding of how loyalty investigations are conducted and reported. It has been said, for instance, that an employee is defenseless against malicious gossip, and that only unfavorable information is reported to the employing agency. This is not true. All cases involving loyalty information must be referred to the Federal Bureau of Investigation for a full field investigation. This means that all the plausible sources of information concerning the employee's background are checked, including birth records, education, former employments, personal references, places of residence, and police and credit records. When the entire investigation is completed, the employing agency has a complete picture of the adult life of the individual, including the comments of a representative group of individuals with whom he has had contact during his life. Much of the investigation is aimed at determining the significance and accuracy of the unfavorable information. Favorable comments are as material as unfavorable information and are set forth in the investigative reports forwarded to the interested department or agency.

Those who contend that vicious or malicious gossip plays an important role in these cases have not read many, if any, of these reports. The quality and coverage of these investigations are such that false information probably has been proved to be false or, in the face of the favorable facts developed, shown to be lacking in credibility. In other instances, while unfavorable information such as an individual's attendance at or participation in communist-front activities in the past may be shown to be true, other facts may be developed to corroborate the employee's contention that he was not aware of the communist influence at that time and would not have participated had he been aware of it.

Both the Special Committee and the Commission studied the suggestion that one who furnishes information of an unfavorable nature should be compelled to appear and testify, or the information should be ignored. Basically, employees are investigated to determine their fitness for public service. If the Government is compelled to ignore available unfavorable information which is believed to be reliable, then employment standards will not be maintained and, more important, national interests might be jeopardized. It would seem that the responsibility of the Executive Branch for the management of the day-to-day affairs of Government requires that it be permitted to exercise some judgment and every effort be made to resolve such issues as best it can, rather than compel it to ignore the information. As a practical matter, it is difficult

to visualize any responsible agency head or supervisor being able at first to ignore and later to forget such information in the future handling of the employee involved.

It is also of basic importance that the tremendous confidence which the American public has always demonstrated in cooperating with the Federal Bureau of Investigation in its several areas of investigation be preserved. The personnel security program is only one segment of FBI investigative responsibility. Once our citizens get the impression that information given by them in confidence to the FBI may some day be publicly disclosed without consent of the source, they will on an ever-increasing basis withhold information in their possession that would be of value to their government.

It may not be generally known that whenever the FBI is compelled to withhold the identity of a source of information, descriptive data are furnished concerning the reliability of the source and, where appropriate, the circumstances which permitted the undisclosed source to obtain the information reported. Additional investigation is conducted whenever the employing agency desires it.

The recommendation of the Commission to create an independent agency of Government to supervise and coordinate the several personnel-type loyalty-security programs raises the question of whether such centralization of authority materially improves the implementation of such programs. The creation of an agency, or even a separate office such as the Special Committee has proposed, to supervise, coordinate and resolve these programs within the other departments and agencies without any responsibility for the successful functioning of these departments and agencies may be unrealistic.

Both reports emphasize a need for uniformity and coordination, including central review and supervision, in the several civilian personnel security programs. To accomplish the proposed uniformity and coordination, both reports recommend the establishment of a new and independent agency or office.²² The Special Committee would establish "The Office of Director of Personnel and Information Security" in the Executive Office of the President. The duties of the director of this office would include conducting a continuous review of and supervision over the personnel loyalty-security screening programs and the classification of defense information under Executive Order 10501. The director would make recommendations to the President which, when embodied in regulations and approved by the President, would be binding upon the departments and agencies concerned. The Commission recommends creation of a "Central Security Office" as an independent agency within the Executive Branch. The duties of the director of this agency would

²² COMMISSION REPORT, 89. SPECIAL COMMITTEE REPORT, 137.

be essentially the same as those recommended by the Special Committee. No provision is made for requiring the various departments and agencies to accept his recommendations.

In order to obtain added uniformity the Special Committee would create a central screening board in the Civil Service Commission to determine whether or not security charges should be issued against an individual. Where necessary, the screening board would prepare the charges and thereafter a hearing would be conducted before a separate board.

The Commission would permit initial screening, including the preparation of charges, to take place at the department or agency level. Hearing examiners established within the Central Security Office would conduct the initial hearing and, following a decision by the department or agency after such hearing, the employee would be permitted to appeal to a central review board within the Central Security Office. Of particular interest to me is that both reports have concluded that the heads of the department or agency must have the right to make the final determination, as is the case under the present program.

Recommendations providing new or additional procedures for supervision, coordination and appeal must be considered, not only on their own merits, but in relation to the over-all program and the amount of time such steps may add to the processing of the average case to final decision. Delays in handling of cases under present procedures have led to criticism of the program, yet the present program is much simpler than either of those proposed. It consists basically only of investigation, issuance of charges, a hearing and final determination. The Commission's proposals will require considerably more time for processing these cases and could cause a backlog to develop. The likelihood of such backlog becomes particularly apparent in view of the requirement that all cases in the various security screening programs must channel through the three-man review board.²³ Under these circumstances, a complete breakdown of the several personnel screening programs could occur. Since the Commission's program would be established by legislation, changes could only be accomplished through amendment of the law.

The possibility of added delays exists also in the recommended program of the Special Committee. The proposed screening board is authorized to conduct informal hearings prior to preparing the charges. These proceedings would be followed by a hearing before a separate board and then the final determination by the head of the department or agency. While this procedure obviously requires more elaborate processing of federal employees than the present program, the backlog possible under the Commission program no doubt would not occur since the Special

²³ The Commission recommends that the programs relating to federal, industrial and seaport and waterfront employees, as well as the proposed civil air transport program, be subject to such processing. COMMISSION REPORT, 90.

Committee recommends that the industrial security program be excepted from this central screening and that the port security program be abolished.

The Commission recommends that the statutory right of appeal for veterans to the Civil Service Commission on the merits be repealed.²⁴ This program, in effect, would be depriving employees on whom there is a loyalty question of a right to a hearing by suggesting the utilization of Civil Service procedures. Under the latter there is provision only for notice and an opportunity to reply to charges whereas, under the present program, one occupying a sensitive position is entitled to a hearing, also.

Under the present program employees including veterans do not have the right to appeal from the decision of the head of the agency if their employment has been terminated under the provisions of Executive Order 10450.²⁵ However, this does not deprive the veteran of his right to appeal to the Civil Service Commission in instances where his discharge is based on grounds other than security. Under the Commission proposal the veteran would be deprived of his Civil Service appeal rights not only when his discharge involves security, but also in all other instances. The enlarged Civil Service criteria proposed by the Commission would seem to permit any case that may arise to be processed under those procedures and, consequently, processing under its proposed loyalty program could be a rarity. The numerous safeguards proposed by the Commission in connection with its loyalty program would not be applicable to cases processed under the Civil Service procedures.

I disagree with the Commission's concept²⁶ that termination on loyalty grounds under the Civil Service procedures would avoid "branding" an employee as "disloyal" or as a "security risk" or that the "branding" occurs only at the time of termination. It is quite conceivable that an employee proceeded against under Civil Service procedures may be "branded" solely by the issuance of charges against him.

Early in 1955 the President requested the Internal Security Division of the Department of Justice to review the operation of the employee security program. As a result of that study the Attorney General submitted several recommendations to the President on March 4, 1955 which were approved by him and forwarded to each department and agency. These proposals included a suggestion that a personal interview with the employee prior to suspension would be helpful since he might have information that would help resolve the issues raised. The Attorney General recommended that the statement of charges should be drawn as specifically as possible and the agency's legal officer should be consulted concerning the specificity of the charges and the sufficiency of

²⁴ COMMISSION REPORT, 86.

²⁵ The authority to terminate under the Act of August 26, 1950 is granted "notwithstanding . . . the provisions of any other law." See note 6, *supra*.

²⁶ COMMISSION REPORT, 84.

the information. He indicated the legal officer also should be present at the hearing to act as an adviser to the Board as to procedural matters and to the employee if he is not represented by counsel. The importance of having persons possessing the highest degree of integrity, ability and good judgment as members of hearing boards was stressed. The Attorney General also stated that every effort should be made to produce witnesses at the hearing so that such witnesses may be confronted and cross-examined by the employee so long as their production would not jeopardize the national security.

The present program has not been without uniformity and coordination even though responsibility for the program was placed upon the head of each department and agency who "shall be responsible for establishing and maintaining within his department or agency an effective program." When the program was first instituted the Department of Justice prepared and issued sample regulations which were followed by the departments in the preparation of their own regulations. Section 14(a), as amended, required the head of each department and agency not later than ninety days after receipt of a final investigative report to advise the Commission as to the action taken with respect to the employee. Such information was to be included in reports on the program prepared by the Civil Service Commission for the National Security Council. The Civil Service Commission was also directed by this section to make a continuing study of the manner in which the Order is being implemented by the various departments and agencies of the Government for the purpose of determining deficiencies in the program or tendencies to deny to individual employees fair, impartial and equitable treatment or rights under the Constitution and laws of the United States. This was amended by Executive Order 10550 on August 5, 1954 which required the Civil Service Commission to report to the National Security Council semi-annually the results of such study and to recommend means to correct any such deficiencies or tendencies.

Section 13 of Executive Order 10450 provided for the Attorney General to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee security program.

In an effort to obtain further coordination the Personnel Security Advisory Committee was established in January of 1955. The Chairman was to advise department heads on difficult security cases requiring coordination particularly in those instances in which more than one agency had an interest. I have now assumed the chairmanship of this Committee and on April 9, 1957 I wrote to the head of each department and agency advising them that a representative group of experienced security officials would be invited to participate as permanent members of the Committee. This was done. I also stated that I would be available for consultation with respect to dispositions to be made in individual cases.

CONCLUSION

I would not contend that this or any other Government employee security program is perfect in all respects, but my study of the operation of the program and my experience with it have led me to conclude that most of the shortcomings have not been due to the law or to the Executive Order but rather to the human element—the necessity for the exercise of all sorts of judgment on the part of all types of people of different backgrounds and experience. The administration of the program was greatly strengthened and improved by the letter from the Attorney General of March 4, 1955 which, for the most part, was directed toward protecting the rights of the employee. The President's establishment of a Personnel Security Advisory Committee has supplied the coordination and supervision theretofore lacking and has contributed materially to increased efficiency in the operation of the program. In my opinion meetings of the type the members of this committee have had are much more effective in resolving mutual problems and in securing uniformity and coordination among the various agencies than could possibly be obtained by an independent, supervisory coordinating group.

In appraising any proposed modifications or basic changes in the government employee security program and the need, if any therefor, we must not forget that the job of screening federal employees has been completed. The major concern now is with applicants. I can only conclude that, except perhaps for making provision for employees in non-sensitive positions, there is little or no need for any substantial revision of the government employee security program.