THE
REPORT OF
THE PRESIDENT'S TEMPORARY COMMISSION
ON
EMPLOYEE LOYALTY.
INDEX

I. Introduction .............................................. 1
II. Organization of Commission .......................... 2
III. Historical Background ................................. 3
IV. Scope and Method of Inquiry ......................... 12
   A. Scope of Inquiry ...................................... 12
   B. Method of Inquiry ..................................... 12
   C. Analysis of Information Received by Inquiry .... 14
      (1) From Intelligence Services ..................... 14
      (2) From Other Government Agencies ............... 15
      (3) From Witnesses .................................... 18
      (4) Statistical Data .................................. 20
V. Commentary and Conclusions of the Commission ... 25
   A. General Conclusions .................................. 27
   B. Specific Conclusions ................................ 29
VI. Recommendations ....................................... 37
The President's Temporary Commission on Employee Loyalty respectfully submits this report pursuant to Executive Order No. 9066, dated November 25, 1946.

I. INTRODUCTION

The President's Temporary Commission on Employee Loyalty, hereinafter referred to as the Commission, was created to inquire into (a) the standards, procedures, and organizational provisions for the investigation of persons who are employed by the United States Government, or who are applicants for such employment, (b) the removal or disqualification from employment of any disloyal or subversive person, and to prepare a report incorporating any recommendations deemed appropriate in order to improve existing legislative and administrative arrangements in connection with loyalty investigations, administrative responsibility in loyalty cases, standards of loyalty, loyalty adjudications and related matters, so as to protect the government against the employment or continuance in employment of disloyal, or subversive persons, and assure fair hearings to persons against whom such charges are brought.

The Commission was organized following the issuance of

1/ Annexed as Exhibit 1.
Executive Order No. 9886, and held its first meeting on December 5, 1946. It has given continuous study to the matters within its jurisdiction since that date.

II. ORGANIZATION OF COMMISSION

The following officers were designated to serve on the Commission as representatives of their respective agencies:

- A. Devitt Vanecoh, Special Assistant to the Attorney General, Department of Justice (Chairman)
- John E. Peurifoy, Acting Assistant Secretary of State for Administration, Department of State
- Edward H. Foley, Jr., Assistant Secretary of the Treasury, Department of the Treasury
- Kenneth C. Royall, Under Secretary of War, Department of War
- John L. Sullivan, Under Secretary of the Navy, Department of the Navy
- Harry B. Mitchell, President, Civil Service Commission

In order to facilitate the work of the Commission, a sub-committee was appointed to prepare and draft memoranda and agenda for the consideration of the Commission at its meetings.

2/ State Department was originally represented by Donald S. Russell, Assistant Secretary of State, who resigned on January 26, 1947 and he was succeeded by Anthony J. Panush who resigned on January 23, 1947.
This subcommittee was composed of the following members:
L. V. Meloy, Civil Service Commission (Chairman); Harold L.
Baynton, Department of Justice; Stanley R. Goodrich, Depart-
ment of State; Stephen J. Spingarn, Treasury Department;
Kenneth D. Johnson, War Department; and Marvin J. Ottile,
Navy Department. Lt. Colonel Innes Randolph of the War
Department served as Military Advisor, and Rear Admiral
P. B. Nibecher served as Naval Advisor. Calvin W. Derrenger
of the Department of Justice served both the Commission and
subcommittee as Executive Secretary and Recorder.

David N. Edelstein and Joseph C. Duggan of the Department
of Justice assisted the Commission and its chairman in the
preparation of this report.

III. HISTORICAL BACKGROUND

The qualifications for employment by our federal government
prior to 1939 were assayed independently of the attribute of
loyalty to the Government of the United States. Such loyalty
was generally assumed.

The question of employee loyalty as an element of suitability
for government service is of comparatively recent application.
Before 1939, the various agencies and departments of the federal
government resolved employability on the basis of qualification
and character. Inquiries to determine employee loyalty were
not generally made and were considered by the Civil Service
Commission to be prohibited pursuant to the provision of
Civil Service Rule I, promulgated in 1884, which stated:

"No question in any form or application
in any examination shall be so framed as
to elicit information concerning the
political or religious opinions or affili-
ations of any applicant, nor shall any
inquiry be made concerning such opinions,
or affiliations, and all disclosures thereof
shall be discountenanced."

The foregoing provision was intended to prohibit inquiry
into an individual's partisan political affiliation and beliefs
and to place federal employment on a non-partisan plane.
However, it was not contemplated that it would have the effect
of excluding all questions designed to uncover adherence to
ideologies inimical to our form of government, such as
communism, fascism, totalitarianism and others.

On August 2, 1939, the Congress passed the original Hatch
Act "to prevent pernicious political activity." Section 9A of
this Act (55 Stat. 1148; 18 U.S.C. 611) was designed to prevent
any person employed in any capacity in any agency of the
federal government from holding membership in any political
party or organization advocating the overthrow of our con-
stitutional form of government. This enactment represented
an explicit recognition by the Congress of the necessity for
barring from government employment those whose interests
were directed to the destruction of the traditional American way of life.

A further recognition of the problem by the Congress was evidenced when, on July 1, 1941, there was added to all appropriation acts a mandate which provided that no part of any appropriation shall be used to pay the salary or wages of any person who advocates, or who is a member of an organisation that advocates, the overthrow of the Government of the United States by force or violence. This mandate is still in effect.

With the passage of these laws the element of employee loyalty was placed directly in issue and, accordingly, investigatory procedures designed to obtain information regarding employee loyalty became proper and pertinent. These laws served successfully to proscribè persons whose loyalties adhered to our recognized enemies in time of war, but in their practical application failed to encompass other subverters.

Congress further implemented its intention to safeguard the government from the destructive influence of disloyal persons by the grant of specific powers to the more sensitive agencies, the War and Navy Departments (Public Law 671, 76th Congress, 3rd session, approved June 25, 1940, as amended;
Section 3 of Public Law 808, 77th Congress, 2nd session; 54 Stat. 1053; 5 U.S.C. 652, Note). By these statutes, Congress authorized the indicated Secretaries to remove summarily any employee in the interest of national security without regard to any provisions of laws, rules, or regulations governing the removal of employees. Another sensitive agency, the State Department, was accorded substantially the same authority in the so-called McCarran Rider (Public Law 490, 79th Congress, approved July 5, 1946; 60 Stat. 458), which granted to the Secretary of State the power of summary removal during the fiscal year ending June 30, 1947.

In order to provide a firm legal basis for barring disloyal persons, President Roosevelt, acting through the Civil Service Commission in March, 1942, issued War Service Regulations specifying that one of the grounds on which a person could and would be disqualified for employment in the federal service was the existence of a reasonable doubt as to his loyalty to the Government of the United States.

In October, 1942, the Attorney General of the United States directed the Federal Bureau of Investigation to investigate complaints made against federal employees alleged to be disloyal.
The necessary investigations were conducted and the information developed was reported to the various employing agencies. Any action upon these reports was entirely within the discretion of the employing agency or department. Some of the departments which received these reports expressed a desire for the establishment of a central source to issue advice on the handling of such cases. In response to this, the Attorney General in April 1943, created a special Interdepartmental Committee on Investigations.\(^3\) This Committee distributed information to the departments and agencies regarding the investigative procedures followed by the Federal Bureau of Investigation, the nature and purpose of their reports and the necessity of establishing sound procedures within each department and agency. This Committee also indicated that upon request it would review the records in individual cases and render an advisory opinion. Such opinions were requested and rendered in a small number of cases.

On February 5, 1943, President Roosevelt issued Executive Order No. 9309, replacing the Attorney General's Inter-

\(^3\) The Committee was composed of officials representing the Interior Department, Treasury Department, Commerce Department, Justice Department and the Federal Deposit Insurance Corporation.

\(^4\) Annexed as Exhibit 2.
departmental Committee with a new "Interdepartmental Committee on Employee Investigations". This Executive Order is still in effect and provides one of the legal means for processing loyalty cases. The Interdepartmental Committee is concerned only with permanent employees, that is, those who have passed their probational period. It confines itself to the statutory provisions of the applicable Congressional Acts dealing with the problem and, thus, deems an employee removable on loyalty grounds only if it is established that the employee is (1) a member of an organization advocating the overthrow of our constitutional form of government, or, (2) a personal advocate of the use of force or violence as a means of changing our political institutions. The Interdepartmental Committee is an advisory body and has no authority to enforce its findings on any agency or department. The authority to remove or retain an employee rests solely with the head of the employing department or agency (Myers v. U.S., 272 U.S. (1926) 52, 161; Burnap v. U.S., 252 U.S. (1919) 512; 39 Op. Attorney General 79, 83).

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5/ This Committee was composed of officials representing the Treasury Department, the Interior Department, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Civil Service Commission.
Although these efforts to prevent disloyal persons from either obtaining or retaining government employment were well intended, they were ineffective in dealing with subversive activities which employ subterfuge, propaganda, infiltration, and deception.

The House Civil Service Committee was authorized by H. RES. 66 (79th Congress, 1st session) to conduct studies and investigations of the policies and practices pertaining to employment in the departments and agencies of the government. Pursuant to its authority, the Committee on Civil Service created a Subcommittee "to make such investigation as it may deem proper with respect to employee loyalty and employment policies and practices in the Government of the United States, and to make a report to this Committee of its investigation prior to the recess or adjournment, together with such recommendations as it deems advisable." The Subcommittee limited the scope of its investigations to an inquiry into the practices, procedures and standards employed by the various federal departments in screening and investigating the loyalty of employees of the government.
The Subcommittee's report submitted to the full House Civil Service Committee stated that "it is of vital importance to our country that those employed in all departments of federal service be of high integrity and unquestioned loyalty to our government. Employment in the Government of the United States is and should be regarded as a high privilege."

It went on to say that "there are many conditions called to the Committee's attention that cannot be remedied by mere changes in techniques or by issuances of directives. Adequate protective measures must be adopted to see that persons of questioned loyalty are not permitted to enter into the federal service. These protective measures should, of course, be absolutely fair and impartial, but doubts must, in the nature of things, be resolved in favor of the Government." The majority of the Subcommittee specifically recommended that an Interdepartmental Commission be created to study existing laws and the adequacy of existing legislation; to review existing internal security measures; to analyze prevailing standards, procedures, techniques, personnel and financial requirements necessary to protect the government from disloyal employees or prospective employees and to prepare a program designated

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6/ Annexed as Exhibit 3.
democratically to afford maximum protection to our government against individuals whose loyalty is to governments other than our own. The minority submitted a supplemental report containing the following recommendations: "That a full and complete investigation be conducted and further hearings be held under the direction of the House Civil Service Committee, (1) to study the standards, the directives and the methods, and the policies of the Civil Service Commission and other agencies with respect to the question of loyalty in government and to recommend uniform policies and standards with regard thereto; (2) to study more fully the problem of loyalty among the employees now on the federal payroll; (3) to devise by legislation or otherwise, ways and means of eliminating without delay employees in every department or agency of government where there is reasonable doubt concerning their loyalty."

On November 25, 1946, the President issued the Executive Order establishing this Commission.
IV. SCOPE AND METHOD OF THE COMMISSION’S INQUIRY

A. Scope of the Inquiry

Paragraph 2 of the Executive Order authorizes and directs the Commission

"* * * to inquire into the standards, procedures, and organizational provisions for (a) the investigation of persons who are now employed by the United States Government or are applicants for such employment, and (b) the removal or disqualification from employment of any disloyal or subversive person. During the progress of its study the Commission shall give consideration to the findings and recommendations of the Subcommittee of the Civil Service Committee of the House of Representatives contained in the Subcommittee’s Report rendered on July 20, 1946 (Cong. Rec., July 20, 1946, p. 9728)."

The Commission began its study by giving consideration to the findings and recommendations of the Subcommittee of the Civil Service Committee of the House of Representatives as contained in its Report to the House of Representatives on July 20, 1946. Information was solicited and obtained from various departments, commissions and agencies and from the testimony of selected government officials.

B. Method of Inquiry

The Commission initiated its inquiry by directing identical
letters to the Federal Bureau of Investigation of the Department of Justice, the Office of Naval Intelligence of the Navy Department, and the Military Intelligence Division of the War Department. These letters of inquiry requested information concerning:

(1) the extent to which the subversive or disloyal employee constitutes a problem in, or threat to, the federal service;
(2) the techniques by which subversive or disloyal persons operate;
(3) the difficulty of proving the connections and activity of subversive or disloyal persons.

In addition, individual letters were sent to fifty (50) executive departments, agencies, boards and commissions (including the District of Columbia government) requesting advice and information on the following matters:

(1) Statutory authority bearing upon the employment or dismissal of personnel with respect to whom there are allegations of disloyalty.
(2) Criteria established for judging employees' loyalty.

1/ A sample of the letter of inquiry is annexed hereto as Exhibit 4.
2/ A sample of the letter is annexed hereto as Exhibit 5.
(3) Procedure for the investigation of personnel with respect to loyalty prior to employment.

(4) Procedure for dismissing personnel for reasons of disloyalty.

(5) Recommendations regarding procedures to be established in the employment and dismissal of personnel with respect to disloyalty.

The following witnesses appeared before the Commission:

Attorney General Tom C. Clark; Mr. D. Milton Ladd, Assistant Director of the Federal Bureau of Investigation; and Mr. Herbert E. Gaston, Chairman of the Interdepartmental Committee on Employee Investigations.

Representative Edward R. Rees of Kansas, Chairman, House Civil Service Committee, and Representative J. M. Combs of Texas, former chairman, House Civil Service Subcommittee, also appeared and favored the Commission with expressions of their views.

C. Analysis of the Information Received by Inquiry

(1) From the Intelligence Services

The information received from the reports of the

9/ The reports are annexed hereto as Exhibits 6, 7, and 8.
Federal Bureau of Investigation, the Military Intelligence Division and the Office of Naval Intelligence indicates that these three intelligence services recognize the existence of a threat within the government service to the internal security of the United States by reason of the employment of subversive persons.

(2) From Government Agencies

With reference to the replies to the general letters of inquiry directed to the 50 selected agencies, the most significant disclosures were (1) a wide disparity in standards established for judgment of employee loyalty; (2) absence of, or lack of uniformity in, procedures designed to determine loyalty prior to employment; (3) lack of uniformity in procedures designed to effect removal from service, and (4) wide divergence of opinion as to the character and scope of administrative or legislative remedial steps deemed desirable.

Except for the War, Navy, and State Departments, which have special emergency legislation of a summary character, most of the agencies rely primarily on the statutory criterion in Section 9A of the Hatch Act, which in amended form has been incorporated into the various
appropriation acts. This criterion posits advocacy of the overthrow of the Government of the United States as the norm determinative of the question of loyalty.

These replies further indicate that, with a few exceptions, the agencies normally rely upon the investigative facilities of the Civil Service Commission in order to ascertain the loyalty of a prospective employee. Since the Civil Service Commission has been unable to investigate a large percentage of applicants, the agencies have relied almost exclusively on the veracity attributed to the Oath of Office and Affidavit executed by the new appointee, and signature to these two instruments is taken as prima facie evidence of loyalty.\footnote{In general, this does not apply to selected positions in agencies having investigative facilities.}

These replies further indicate that the procedures for removing employees for reasons of disloyalty varied widely and may be summarized as follows: (1) investigation of the allegations by the agency and, if sufficient evidence is obtained, removal by the head of the agency; (2) reference of the allegations to the Civil Service Commission for investigation and for advice as to procedure
on removal; (3) hearing of the charges before an agency board or committee on employee investigations, and compliance with the procedures set forth in General Memorandum No. 51, dated September 1, 1943, issued by the Interdepartmental Committee on Employee Investigations; (4) reference of the complaint to the Federal Bureau of Investigation either under the Hatch Act or the prohibition contained in the agency appropriation; (5) adoption of the removal procedure recommended by the Civil Service Commission and in accordance with the requirements as set forth in the Federal Personnel Manual; (6) several agencies in their replies stated that they had no established procedure designed to substantiate allegations of disloyalty.

RECOMMENDATIONS FROM OTHER GOVERNMENT AGENCIES

While the recommendations of the agencies varied, there was general agreement on the following: (1) that there be a pre-employment investigation or check; (2) that the investigative responsibility and function be

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11/ Annexed hereto as Exhibit 9.
centralized; (3) that the pre-employment investigation or check, with certain exceptions, be the function of the Civil Service Commission; (4) that the post-employment investigation or check be the function of either the Federal Bureau of Investigation or the Civil Service Commission; and (5) that the employing agency be responsible for the removal of its own employees.

In addition to these recommendations, a substantial number of the replies indicate (1) that there should be established an independent overall centralized authority acting solely for and on behalf of the President in the matter of the removal of disloyal employees; or (2) that the original hearing in loyalty cases should be within the employing agency, subject to a right of appeal to a centralized agency established with a power to review de novo; or (3) that the overall agency be established with advisory powers only.

(3) From Witnesses

Attorney General Tom C. Clark; Mr. D. Milton Ladd.

This generally would not apply to agencies having adequate investigative facilities of their own.
Assistant Director of the Federal Bureau of Investigation; and Mr. Herbert E. Gaston, Chairman of the Interdepartmental Committee on Employee Investigations, appeared before this Commission at its request to express their views on the problem of subversive activities within the government.

The Attorney General's observations are contained substantially in his memorandum to the Chairman of the Commission.

Mr. D. Milton Ladd's observations are contained substantially in the memorandum from the Federal Bureau of Investigation to the Chairman of the Commission.

Mr. Herbert E. Gaston's observations are contained substantially in his statement submitted to the Commission.

The views expressed by Congressmen Combs and Rees are set forth substantially in the majority and minority reports, respectively, in the report of the Subcommittee of the House Civil Service Committee.

13/ Annexed hereto as Exhibit 10.
14/ Annexed hereto as Exhibit 6.
15/ Annexed hereto as Exhibit 11.
16/ Annexed hereto as Exhibit 3.
(4) Statistical data on number of "loyalty" cases

a. Statistics furnished by the Federal Bureau of Investigation

The Federal Bureau of Investigation files show that under the Hatch Act and the prohibitions contained in the Appropriation Acts for the years 1942 - 1945, 6,193 cases were referred to it for investigation.

At the time of the investigations by the Federal Bureau of Investigation, 1,906 of the persons involved were no longer employed by the Federal Government.

In 1,114 cases, the investigative reports disclosed that the original complaints were totally unfounded.

In all cases, the Federal Bureau of Investigation reported the results of its investigations without recommendation or expression of opinion as to the action to be taken, leaving to the employing agency or department the determination as to whether the employee should be retained or removed.
101 individuals were discharged as a result of
the information developed during the course of
the investigations.

21 persons resigned while the investigations
were in progress.

In 75 cases, administrative action, other than
dismissal, was taken.

122 cases are still under consideration by the
employing agencies and the investigations of 69
cases have not been completed by the Federal
Bureau of Investigation. In the remaining 2,785
cases the employing agencies did not consider
that the facts developed required any action.

b. Statistics furnished by the Civil Service Commission

According to information furnished by the Civil
Service Commission, it was disclosed that for the
period beginning with the fiscal year 1941 and ending
on December 31, 1946, a total of 392,889 investigated
cases covering qualifications, character and loyalty
of applicants were closed out.

Of this number, 43,537 persons were rated in-
eligible, of which 1,307 were cases in which disloyalty
was the major disqualification. Some of the 43,537 cases also presented loyalty questions, even though the final rating of ineligibility was predicated on other grounds.

Of the 1,307 cases which were rated ineligible on loyalty grounds, 694 cases involved persons who were either Communists or followers of the "party line".

Although the total number of investigations conducted by the Civil Service Commission is impressive, it should also be noted that the number of such investigations is relatively small in comparison with the number of placements which totaled 9,604,935 during the same period. Fiscal limitations and lack of sufficient investigative personnel were responsible for the inability of the Civil Service Commission to investigate all appointees. The statistics furnished by the Civil Service Commission are as follows:
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1941</td>
<td>561,789</td>
<td>13,921</td>
<td>3,059</td>
<td>21%</td>
<td>105</td>
<td>3.4%</td>
</tr>
<tr>
<td>1942</td>
<td>1,549,678</td>
<td>55,636</td>
<td>11,658</td>
<td>20%</td>
<td>278</td>
<td>2.4%</td>
</tr>
<tr>
<td>1943</td>
<td>2,697,124</td>
<td>85,751</td>
<td>12,024</td>
<td>14%</td>
<td>334</td>
<td>2.7%</td>
</tr>
<tr>
<td>1944</td>
<td>1,982,118</td>
<td>70,775</td>
<td>5,913</td>
<td>8.3%</td>
<td>355</td>
<td>6.0%**</td>
</tr>
<tr>
<td>1945</td>
<td>1,826,159</td>
<td>118,036</td>
<td>7,229</td>
<td>6.0%</td>
<td>144</td>
<td>2.0%</td>
</tr>
<tr>
<td>1946</td>
<td>868,443</td>
<td>42,650</td>
<td>3,131</td>
<td>7.3%</td>
<td>81</td>
<td>2.5%</td>
</tr>
<tr>
<td>1947*</td>
<td>119,624</td>
<td>6,120</td>
<td>523</td>
<td>8.5%</td>
<td>10</td>
<td>1.9%</td>
</tr>
<tr>
<td>Totals:</td>
<td>9,604,935</td>
<td>392,889</td>
<td>43,537</td>
<td>12.2%</td>
<td>1,307</td>
<td>3.3%</td>
</tr>
</tbody>
</table>

* Figures for this fiscal year cover the period July 1, 1946 through December 31, 1946.

** These percentages are high because of the fact that when the Loyalty Rating Board was created in May, 1944, it inherited a backlog of borderline cases which were already pending.

** A major contributing factor to the high percentages of ineligibles for the years 1941, 1942 and 1943 was the rigorous standards imposed, e.g., exclusion of foreign born persons for civilian employment at Pearl Harbor.
c. Statistics furnished by the Interdepartmental Committee on Employee Investigations

Statistical data received from the Interdepartmental Committee on Employee Investigations indicated that although that Committee's functions are primarily advisory, it has handled a total of 729 cases in the period beginning February 5, 1944 and ending December 2, 1946.

The Committee's statistics are as follows:

<table>
<thead>
<tr>
<th>A. Final Action</th>
<th>Figures for Feb 5, 1944</th>
<th>Figures for Sept. 21, 1945 (Cumulative)</th>
<th>Figures for Dec. 2, 1946 (Cumulative)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exoneration</td>
<td>141</td>
<td>394</td>
<td>453</td>
</tr>
<tr>
<td>Discharged as subversive</td>
<td>5</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>Other disciplinary action</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Action suspended because of resignation or separation for reasons not within the purview of the Order</td>
<td>16</td>
<td>143</td>
<td>174</td>
</tr>
<tr>
<td>Totals</td>
<td>165</td>
<td>564</td>
<td>654</td>
</tr>
</tbody>
</table>

| B. Cases receiving attention in the agencies | 86 | 104 | 75 |

| C. Cases pending before the Committee; |
| Requests for advisory opinions | 9 | 1 | 0 |
| Agency reports of dispositions in process of review | 41 | 2 | 0 |

| D. Grand Totals | 301 | 671 | 729 |

Incidences of cases:
- February 1943 to February 1944: 25 per month
- September 1945 to December 1946: 4 per month
V. COMMENTARY AND CONCLUSIONS OF THE COMMISSION

While the Commission believes that the employment of disloyal or subversive persons presents more than a speculative threat to our system of government, it is unable, based on the facts presented to it, to state with any degree of certainty how far reaching that threat is. Certainly, the recent Canadian Espionage expose, the Communist Party Line activities of some of the leaders and some of the members of a government employee organization, and current disclosures of disloyal employees provide sufficient evidence to convince a fair minded person that a threat exists.

The question of providing security procedures to furnish adequate protection for the internal security of the government, directs attention to two mutually dependent means of solving the problem. Unless both of them are adequately provided for and made operative, there can be no achievement of the basic objective.

The first of these means may be referred to as the counter-espionage phase of counter-intelligence, a weapon which is designed to protect our Government from all types of espionage infiltration by the penetration of enemy and subversive networks. The second is the means employed to prevent disloyal persons from working for the government and represents counter-
intelligence in its defensive rather than offensive aspect.

The first means must be constantly improved and expanded in order to fully protect our government. In handling employee loyalty, there has been a tendency to treat it as a personnel matter apart from its relationship to counter-intelligence. Disloyal employees jeopardize the security of the interests and secrets of the government, but the fact that other types of employees also jeopardize these same interests and secrets must not be lost sight of by a disproportionate preoccupation with the question of employee loyalty alone. Counter-espionage will reveal the venal employee selling secrets to foreign agents as well as the disloyal employee whose motives are ideological rather than mercenary. Unless this entire problem is considered with proper emphasis on the counter-espionage aspect of its solution, the Commission is convinced that the achievement of the basic objective may well fail.

However, because the Executive Order did not include a study and determination of this first means, the Commission has directed its emphasis towards the second means, namely, the study and determination of loyalty procedures which will
provide for investigative and adjudicative processes designed
to eliminate from the public payroll, both before and after em-
ployment, all disloyal and subversive persons.

The Commission is convinced that the combination of these
two means provides our best protection from a danger which
can develop into a real threat to our national security.

A. GENERAL CONCLUSIONS

As a result of the inquiry made and the information received,
the Commission draws the following general conclusions. In
arriving at these conclusions, the Commission realized that em-
ployee loyalty is a subject in which hysteria, emotion and ir-
responsible thinking can easily play havoc with what must be an
intelligent, realistic and factual approach.

1. Although the vast majority of federal employees are loyal, some are subversive or disloyal. Be-
cause of the secretive manner and method of
their operation, it is difficult to assess the
numerical strength of the disloyal group. What-
ever their number, the internal security of the
government demands continuous screening,
scrutiny and surveillance of present and pro-
spective employees.

2. The presence within the government of any
disloyal or subversive persons, or the attempt
by any such persons to obtain government em-
ployment, presents a problem of such impor-
tance that it must be dealt with vigorously and
effectively.
3. In addition to the emphasis properly placed on Communist and Communist front organization activities, attention should be directed to the resurgence of native fascist movements.

4. Even if all the specific recommendations contained in this report are adopted and effectuated, there is still a distinct need for aggressive and uninterrupted counterintelligence, particularly in its counterespionage phases. A clear example of that need is presented in the recent widely publicized Canadian experience with Communist espionage activities. It would be unrealistic to assume that foreign powers are not maintaining intelligence networks in this country.

5. A guarantee of full and complete protection to the government is a commendable objective, but is rendered difficult of achievement by the fact that public funds are not unlimited and must be made available for many other necessary and vital purposes.

6. There are compelling reasons for authorizing the Secretaries of the State, War and Navy Departments and the Atomic Energy Commission to remove summarily any employee in the interest of national security. These more sensitive agencies require this specific authorization to safeguard the government from the destructive influence of disloyal or subversive persons.
B. SPECIFIC CONCLUSIONS AND COMMENTARY THEREON

The questions raised by Paragraph 3 of the Executive Order lead the Commission to draw specific conclusions, which together with the general conclusions stated above, serve as the basis for the Commission's recommendations.

The questions will be stated and answered in order, followed by a brief discussion leading to the conclusions. The Commission has considered security of the interests and secrets of the United States Government to be the basic objective. Disloyal or subversive employees jeopardize that security and it is imperative, therefore, that our government take diligent measures to protect itself against such persons, both prior to and after, their employment.

Paragraph 3a of the Executive Order poses two questions:

(1) Do the existing security procedures in the Executive Branch of the government furnish adequate protection against the employment or continuance in employment of disloyal or subversive persons?

(2) What agency or agencies should be charged with prescribing or supervising security procedures?

The Commission resolved the first question in the negative.

In answer to the second question, the Commission concluded

- 29 -
that, in the case of an applicant seeking employment in the competitive service \(^{17}/\), the agency so charged shall be the Civil Service Commission; and in the case of a person already employed or an applicant for employment outside the competitive service, the employing department or agency shall be so charged.

The inadequacy of existing loyalty procedures is demonstrated, it is believed, by reports from the agencies in the executive branch which indicate a lack of uniform procedural means and methods either to bar or banish the subversive or disloyal person from the federal payroll. There can be no doubt that prevailing techniques and procedures have been ineffective.

It is believed that the various departments and agencies of the federal government will move more aggressively toward the solution of loyalty problems if the responsibility for conducting necessary investigations of their own employees remains solely in the heads of such departments and agencies, and if they are provided with adequate standards and procedures. Limitations on funds and personnel and the shifting and unique patterns of security requirements within the individual depart-

\(^{17}/\) The term "competitive service" now includes all persons subject to the jurisdiction of the United States Civil Service Commission by virtue of the Civil Service Act of 1883, as amended.
ments make it imperative that the head of each department or agency be solely responsible for his own loyalty program.

A central master card index available to all agencies designed to serve as a central source of information will facilitate the work of the agency in each case. Resort to the central master card index will enable departments and agencies, in many cases, to obtain pertinent information.

The designation of the Civil Service Commission as the advisory agency in connection with loyalty problems will repose in the present central personnel servicing agency duties similar to those of a clearing house.

At the present time one of the major difficulties confronting the heads of federal agencies in making determinations in loyalty cases is the fragmentary character and inconclusiveness of the information in some investigative reports. The evidence necessary to support reasonable belief that an employee is disloyal must be of such a nature as will permit a fair minded official to make such a determination in good conscience and with proper regard for the rights of the individual. In view of the problem existing in respect to the protection of confidential sources of information developed
by investigative agencies, the departments and agencies must employ personnel who have been specially trained in security matters and who understand fully the requirements and the detailed operational techniques necessary for the protection of confidential sources of information. Establishment of an effective security control system for protecting confidential sources of information must be a condition precedent to the receipt by any federal department or agency of full and complete reports from investigative agencies. Upon the establishment of such effective controls, there must then be a full disclosure to the requesting department or agency of evidence obtained by investigative agencies in loyalty cases.

Paragraph 3b of the Executive Order poses two questions:

1. Should the responsibility for acting upon investigative reports dealing with disloyal or subversive persons be left to the respective departments and agencies where such persons are employed?

2. Should the responsibility for acting upon such reports be centralized in a single agency?
The Commission concluded that the first of these questions should be resolved in the affirmative.

With regard to the second of these questions, it concluded that the responsibility for acting upon such reports should not be centralized in a single agency, but that a central review board should be created with definite advisory responsibilities in connection with the loyalty program.

Existing law imposes the responsibility for the conduct of the internal affairs of each department or agency in the head thereof and principles of sound administrative management and executive accountability require that the present arrangement be left undisturbed.

However, so that the loyalty procedures operative in each of the departments and agencies may be properly coordinated, the Commission believes that a centralized advisory body should be established within the Civil Service Commission. Such advisory body shall advise departments and agencies on loyalty problems, disseminate to the departments and agencies information pertinent to loyalty matters, coordinate employee loyalty policies and procedures, conduct such studies and surveys and make such rules and regulations as it deems appropriate to the proper effectuation of the loyalty program, and from
time to time, make such recommendations to the President as it deems necessary to the maintenance of employee loyalty.

Paragraph 3c of the Executive Order poses two questions:

(1) What procedure should be established for notifying allegedly disloyal or subversive employees or applicants for employment of the charges made against them?

(2) What procedures should be established to guarantee a fair hearing on such charges?

Because of the confidential nature of the information, it is impossible in the notice served on an employee to specify all the sources of the information on which such charges are based. However, it is possible to be as specific and complete in stating the charges as security considerations permit. The usual objection raised by the employee in many loyalty cases is that since he has not been fully informed of the allegations against him, he is unable to prepare his defense. It is believed that stating the charges as specifically and as completely as security considerations permit, will offset this criticism and at the same time protect the confidential sources. Although the position of the employee must be considered, it is imperative that the identity of the source of confidential information be protected.
Fair administrative process will provide an employee with the right to a hearing with counsel and witnesses, and even though he will not have the right of confrontation, he will have an opportunity to present his side of the case prior to adjudication.

The action taken by a federal department or agency to remove an employee is administrative in character and a hearing conducted for such a purpose is an administrative hearing and not a judicial proceeding. The responsibility of the head of the department or agency is so to administer the affairs within his department or agency as to protect the best interests of the government, and to protect the individual employee from unfounded accusations.

One must recognize that in dealing with subversive organizations the departments and agencies of the government are dealing with organizations which resist a candid revelation of the facts in their possession, and which are committed to a policy of deception and falsification, which advocate a disregard for the sacredness of an oath, and which while seeking to destroy all the traditional safeguards erected for the protection of individual rights are determined to take unfair advantage of those selfsame safeguards.
Paragraph 3d of the Executive Order poses the following question:

What standards are desirable for judging the loyalty of employees of the Government and applicants for such employment?

The answer to this question is found in the criteria recommended under Paragraph 3d in the final part of this report.

It is the conviction of the Commission that the narrow limitations of the present statutory standards generally used for determining disloyalty, render it prudent to provide additional and more flexible criteria. At the same time, the Commission is well aware that flexibility must not be gained at too great a loss of definitiveness. The standards must be specific enough to assure that innocent employees will not fall within the purview of the disloyalty criteria. Every mature consideration was invoked by the Commission to afford maximum protection to the government from disloyal employees while safeguarding the individual employee with a maximum protection from ill-advised accusations of disloyalty.
Paragraph 3e of the Executive Order poses the following question:

Is further legislation necessary for the adequate protection of the government against the employment or continuance in employment of disloyal or subversive persons?

The Commission concluded that, except for the necessity of permanently extending existing temporary legislation to protect certain sensitive agencies, no further legislation is required and specific recommendations are set forth under Paragraph 3e in the final part of this report.

VI. RECOMMENDATIONS

Based on the foregoing general and specific conclusions of the Commission, the following recommendations are respectfully submitted:

Under Paragraph 3a of Executive Order No. 9806, it is recommended as follows:

a. Each department and agency shall be responsible for prescribing and supervising its own loyalty procedures, in accordance with generally applicable minimum requirements hereinafter recommended.

b. A central master card index shall be maintained in the Civil Service Commission covering all persons on whom loyalty investigations have been made by any department or agency since September 1, 1939. The master file shall contain
the name, adequate identifying information and an indication that a report can be found in the appropriate department or agency. The investigative report in each case shall remain in the investigating agency.

c. (1) At the request of the head of any department or agency an investigative agency shall make available to such head, personally, all investigative material and information collected by the investigative agency on any employee or prospective employee of the requesting department or agency, or shall make such material and information available to any officer or officers designated by such head and approved by the investigating agency.

(2) Notwithstanding the foregoing requirement, however, the investigative agency may refuse to disclose the names of confidential informants, provided it furnishes sufficient information about such informants on the basis of which the requesting department or agency can make an adequate evaluation of the information furnished by them, and provided it advises the requesting department or agency in writing that it is essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed. It is not intended that investigative agencies should use this discretion to decline to reveal sources of information where such action is not essential.

d. The Attorney General shall currently furnish information to the Civil Service Commission on all organizations designated by him in accordance with the criterion established in subparagraph vi of the recommendations under Paragraph 3d of Executive Order 9866. The Civil Service Commission shall disseminate this information to all departments and
agencies together with any other current information on related loyalty problems. It shall be the responsibility of the Loyalty Review Board, hereinafter provided, upon request, to advise any department or agency on loyalty matters.

e. The Loyalty Boards of the various departments and agencies, hereinafter provided, may be called upon by the Civil Service Commission or the Loyalty Review Board for reports to indicate the number of loyalty cases on which a determination has been made during a given period.

f. Each department or agency shall be responsible for the loyalty investigation of any of its employees whenever it is deemed necessary. Those departments and agencies not having investigative organizations will use the investigative facilities of the Civil Service Commission.

g. (1) There shall be a loyalty investigation of all persons entering the employ of any department or agency. All investigations of persons entering the competitive service shall be conducted by the Civil Service Commission, except in such cases as are covered by a special agreement between the Commission and any given department or agency. The investigation of all persons entering the employ of any department or agency, other than those entering the competitive service, shall be the responsibility of the employing department or agency.

(2) The investigation shall be conducted either before or after a person goes on the payroll. In the case of a person entering
the competitive service, if the investigation continues after the date he goes on the payroll and is not completed within 18 months from that date, the condition that his employment is subject to investigation shall expire except in a case where the Civil Service Commission has made an adjudication of disloyalty and the case continues to be active by reason of an appeal.

(3) A full field investigation shall be conducted of those applicants designated by the head of the employing department or agency, such designation to be based on what he considers to be in the best interest of national security.

(4) An investigation short of a full field investigation shall be made on all other applicants at all available pertinent sources of information, such as:

i. Federal Bureau of Investigation files;

ii. Civil Service Commission files;

iii. Military and naval intelligence files and the files of any other pertinent intelligence or governmental investigative agency not previously referred to;

iv. House Committee on Un-American Activities files;

v. Local law enforcement files at the place of residence or employment, such as municipal, county and state;

vi. School and college;
vii. Former employer or employers;

viii. References;

ix. Any other similar checks as may be appropriate.

If any of these sources reveal derogatory information, there shall then be a full field investigation.

h. Each department and agency to the extent that it has not already done so, or the Civil Service Commission, shall submit lists of the names of all of its incumbent employees (and such other necessary identifying material as the Federal Bureau of Investigation may require) to the Federal Bureau of Investigation of the Department of Justice, which shall check such lists against its records of persons concerning whom there is substantial evidence of being within the purview of paragraphs (i) to (vi) of the recommendations herein made under paragraph 3d of Executive Order 9806. After such check is made each department and agency shall make, or cause to be made by the Civil Service Commission, such other investigation of its employees as the head of the department or agency shall deem advisable, as indicated by the aforesaid check.

i. That the President direct the Security Advisory Board of the State-War-Navy Coordinating Committee to draft uniform minimum rules applicable to the handling or transmission of all confidential documents, or other documents or information which should not be publicly disclosed, and upon approval by the President, such rules shall apply to all departments and agencies of the Executive Branch of the Government.
Under Paragraph 3b of Executive Order No. 9806, it is recommended as follows:

a. The responsibility for acting upon investigative reports shall be left to the respective departments and agencies and not to a central agency or committee.

b. The head of each department and agency shall appoint a Loyalty Board or Boards of not less than three members each for the purpose of hearing loyalty cases.

c. There shall be established in the Civil Service Commission a Loyalty Review Board with power:

i. to advise all departments and agencies on all problems related to employee loyalty;

ii. to disseminate all information pertinent thereto;

iii. to coordinate the employee loyalty policies and procedures of the various departments and agencies;

iv. to make any rules and regulations deemed necessary to implement applicable statutes and Executive Orders;

v. to make reports and submit recommendations to the President from time to time whenever such actions are deemed necessary to the maintenance of the employee loyalty program.

vi. Except in cases arising in a department or agency which is authorized to remove an employee summarily for security reasons (as now provided for in Public Law No. 868 and under the McCarran Rider), the Loyalty
Review Board shall have power to review cases involving subversive or disloyal persons and to make advisory recommendations thereon to the head of the employing department or agency. Cases which are subject to review may be referred to this Board for advisory recommendations either by an employing agency or department or by an employee in the Executive Branch of the Government who has been adjudged to be disloyal or subversive.

Under Paragraph 3 c of Executive Order No. 9806, it is recommended as follows:

a. An employee who is charged with being disloyal shall have a right to an administrative hearing before a Loyalty Board in the employing department or agency. He may appear personally, accompanied by counsel or representative of his own choice, with witnesses, and present any evidence, including affidavits, in his behalf. Each department or agency shall prescribe regulations for the conduct of these hearings.

b. The employee shall have the right to reply in writing to the charges so made and each agency shall serve a written notice on such employee containing:

i. a statement of the charges preferred against him, the specification of such charges to be as complete as security considerations permit;

ii. a statement that he has a right to reply to the charges in writing within a reasonable period of time, to be specified;
iii. A statement as to his right of hearing, if he so desires, at which he may personally appear with counsel or representative of his own choice, and witnesses, and present evidence, including affidavits, in his own behalf.

c. When a Loyalty Board recommends removal there shall be, prior to removal, a right of appeal under provisions prescribed by the head of each department or agency.

d. The rights of hearing, notice and appeal shall be accorded to all employees, irrespective of tenure or manner, method or nature of appointment.

Under Paragraph 3d of Executive Order No. 9806, it is recommended as follows:

The underlying standard for either the refusal of employment or removal from employment in loyalty cases shall be that, on all the evidence, reasonable grounds exist for believing that the person involved is disloyal to the Government of the United States. Individual employee activities and associations which may be considered in this connection include one or more of the following:

i. Sabotage, espionage, or attempts or preparations therefore, or knowingly associating with spies or saboteurs;

ii. Treason or sedition or advocacy thereof;

iii. Advocacy of revolution or force or violence to alter our constitutional form of government;
iv. Intentional, unauthorized disclosure to any person of documents or information of a confidential or non-public character obtained by the person making the disclosure as a result of his employment by the Government of the United States;

v. 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;

vi. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their constitutional rights, or as one which seeks to alter our form of government by unconstitutional means.

Under Paragraph 3e of Executive Order No. 9806, it is recommended as follows:

a. That the temporary legislation by which the Secretaries of the War, Navy and State Departments can presently remove any employee summarily for security reasons, be made permanent because of the sensitive nature of the operations of these three departments, and that permanent legislation of the same character be enacted to grant similar power to the Atomic Energy Commission.
That all of the recommendations contained in this report be effectuated by the promulgation of an Executive Order which will simultaneously provide for the abrogation of Executive Order No. 9300, dated February 5, 1943.

In conclusion, the Commission recommends that this report, together with any Executive Order which the President may issue, be submitted to Congress for consideration.

A. Davitt Larrabee
Chairman

John E. Peurifoy

Edward H. Foley, Jr.

Kenneth C. Royall

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