[redacted]

EYES ONLY

APR 19 1957

Read

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : An Analysis of Agency Methods for Handling Personnel Security Cases

1. This memorandum contains recommendations for your approval in paragraph 5.

2. You will recall that in April 1956 you authorized a review of our loyalty review procedures to determine whether Agency activities in this regard are correct, humane, and within the spirit and intent of the law and Executive Orders. In the following paper we have attempted to analyze our procedures, weighing carefully the review procedures, methods of employee appeal, length of time consumed, and particularly the Agency's position should any case be carried to the courts. In preparing this study, we have used all pertinent material inside the Agency, consulted the Office of Security and the General Counsel. Four pertinent documents are attached: I. A statistical compilation on Executive Order 10450 cases; II. Cases for Special Employment Review Boards; EO 9835 cases; Security Termination Cases, 1 December 1954 - 31 December 1956; III. Applicant Information Sheets; IV. Procedural Due Process in Removals from the Federal Service (prepared by [redacted] V.S.C.S.C.). For security and sensitivity reasons, only an original and one copy of this report have been prepared and the latter will be kept in my files.

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3. Present Agency Methods.

a. Regulations.

At the present time, there are three Agency regulations specifically referring to loyalty cases.

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(1) Regulation [redacted] paragraph 1.g. This regulation reads as follows: "Employee Loyalty--Employee shall be protected from unfounded accusations of disloyalty through an established Loyalty Review Board." Incorrect. Rescinded 11 March 1957.

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(2) Regulation [redacted] This is a long regulation which provides for a manner of handling cases under Executive Order No. 10-450. It states the obligation of the Director of Personnel, the Director of Security, the General Counsel, and the Director of the Agency. It provides for review of derogatory information, possible suspension, written statement to employee for reasons of consideration of the case under this Executive Order, right of employee to submit statements in refutation and the action which the Director may ultimately take, including termination of the employee. In addition to the provisions for protection of the employee noted above, certain additional protection is granted to staff employees who are citizens of the United States and who have a permanent or indefinite appointment and who have completed their probationary or trial period. Such additional protection includes

written charges signed by the Director of Personnel within 30 days after suspension; an opportunity to answer such charges, submit affidavits and supporting documents; a hearing before a Security Hearing Board; recommendations of the Board to be in writing, one copy of which shall be available to the employee at his request. In the event a determination is made not to make a copy of the recommendation available to the employee, the Hearing Board shall include its reasons therefore as a part of its recommendation. The entire case shall be reviewed by the Director of Central Intelligence before a decision to terminate is made final, and the employee shall be furnished a written statement of the Director's decision. However, all of the above regulation [is, in effect] nullified by its last section entitled "Special Security Situations" which provides that in such situations the above regulation will not take effect and that the DCI will act in accordance with procedures established under the authority of Section 102c of the National Security Act of 1947, quoted hereafter.

could, in any particular case, be

"Notwithstanding the provisions of section 6 of the Act of August 24, 1912

(37 Stat. 555), or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission."

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(3) Regulation [redacted] entitled "Separations--Employment Review Board." This regulation refers to the Director's statutory authority under Section 102c of the National Security Act and reaffirms his right to terminate the employment of any individual whenever he deems it necessary or advisable in the interest of the United States; that this is within his sole discretion and no appeal is provided for by law. This regulation also provides that the Director may appoint an Employment Review Board to advise him concerning any particular case. Any criticism?

b. Procedures.

(1) Limitation and Investigation. As a matter of actual practice, the procedures in loyalty cases may be described

briefly as follows. When the Office of Security develops adverse information concerning an individual, it immediately commences checking all pertinent files and following all possible leads. Depending upon the seriousness of the information, the individual may be advised at that time of the investigation, and may be removed from regular Agency work and placed under the jurisdiction of the Office of Security. Whenever the Office of Security believes it has developed sufficient information, the employee may be called in for questioning, both on and off the polygraph. This questioning may develop additional leads that should be investigated and this frequently adds to the length of time required for the investigatory phase of the case. It should also be understood that under Executive Order 10-450 an FBI investigation is required where there is any indication of communist affiliation (and of course all suspected espionage cases are within the jurisdiction of the FBI). It should also be noted that when an investigation by the FBI is required, this will be in addition to any investigation already done by the CIA, and this will prolong a case considerably.

(2) Determination on a Board. Following the completion of the investigations and security interrogation of the

employee, a decision is made as to whether the case should go to a Board or can be concluded by administrative action. In many instances, the Office of Security may be satisfied as to the security and loyalty of the individual on the basis of the investigation and questioning and this will close the case, at least for the moment. In others, where there is question in this regard, the Security Office may consult with the General Counsel as to whether a Board should be established, and so recommend to the Director. It is interesting to note that in only one loyalty case was the information considered so conclusive that termination was recommended and implemented.

(3) Board Proceedings. The Boards are established by order of the DCI and are generally composed of Deputy Assistant Directors or above who are considered impartial. At an early time after the establishment of the Board the employee is advised of the nature of the charges. Generally speaking sources of information or allegations are not identified. The individual is advised that he may obtain legal advice from the General Counsel's Office, but on at least one occasion has procured service of counsel from outside (whom the Agency checked and cleared) at his own expense, after obtaining Agency permission. (Houston)

The General Counsel or his Deputy and the Director of Security or his Deputy serve respectively as legal and security advisors to the Boards. In both instances, these representatives attempt to avoid the role of prosecutors and attempt to be judicious and fair in their advice to the Board and the employee, although both obviously place protection of the Agency foremost. While this may be true, it might be more clean-cut if the employee were assigned another lawyer from the General Counsel's Staff who would be clearly identified as Defense Counsel much as is the system used in military courts martial. (not automatically because this no trial but a board hearing)

The Boards always endeavor to read all pertinent documents--including the full security file--before commencing hearings. The Boards then endeavor to hear all available witnesses and to allow the employee to be heard and to introduce evidence and witnesses to his full satisfaction. This naturally is time consuming as all the Board members and the legal and security representatives continue in their regular jobs and consequently must fit Board meetings into the schedules of five persons.

(4) Final Action. When the Boards have completed their hearings, a summary of the findings and conclusions is prepared to go to the DCI with the recommendations.

On occasion, the General Counsel and the Security Advisor have seen fit to file differing or dissenting opinions. [This is a questionable practice, which if permitted should be in the nature of a minority opinion fully discussed and considered by the Board. It could be argued that to permit the General Counsel and the Security Advisor to file separate reports to the DCI to be considered simultaneously with the Board report might invalidate the philosophy for having an impartial Board of these senior officials.] In fairness, it should be noted that the General Counsel and the Security Advisor may on occasion side with the employee against the Board.

Disagree
cfc

c. Cases.

From the time Executive Order No. 10-450 was promulgated to 9 November 1956, 60 new cases have been considered by the Director of Security to come thereunder. At the time of the promulgation, there were pending eight cases which were in the process of being handled under the old "Loyalty Board Regulation" [redacted] paragraph 1.g.). The above figures include the [redacted] case but do not include the [redacted] case. The above figures, furthermore, do not include seven cases presented to the Special Employment Review Boards by offices or divisions other than the Office of Security, nor the 214 cases during the period from 1 December 1954 to 31 December 1956, wherein

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termination resulted from action by the Office of Security. (These 214 cases arose almost totally from disclosures during the polygraph examination and the large majority, 195, involved perversion. The rest involved poor credit; blackmail possibilities; crime, such as embezzlement, thievery, and other illegal or unethical activities; disclosure of classified information or association with communist personalities. Of these 214, 1/6 were employees and 5/6 were persons about to enter on duty.)

25X1A9a (1) Ever since the [redacted] case, security cases may have been said to be considered under Regulation [redacted] Of the total of 60 cases, an Employee Review Board has been named in only 17 cases. Three have been disposed of by the Director of Security and 38 have been disposed of by recommendations from the Office of the General Counsel directly to the DCI. (Variations on a few cases occur herein, such as appeals to the Inspector General's Office or the DD/S.) Of the 60 cases reported, 18 were sent to the FBI through some source other

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25X1A9a than this Agency [redacted] Task Force). A multitude of allegations are noted as factors in the 60 cases. These included association or intellectual sympathy with the communists, admitted membership or support of Communist Parties or organizations, relatives who were either sympathetic or associated with communist causes, allegations of past pro-communist statements or viewpoints, positions or actions

apparently adverse to the United States' cause and presumably pro-communist, as well as possible identity of subjects with persons who were the subject of adverse reports. In only six cases out of the 60 was resignation or termination the final result and, in each case, the DCI had called for an Employment Review Board. (The only known case in which termination on loyalty grounds has taken place without a Review Board

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is the [redacted] case.)

(2) Although there is a wide variation among the 60 cases, the time element averages as follows:

(a) FBI investigation--approximately five months.

(b) Security Office action--approximately three months.

(c) General Counsel Office--approximately two months.

(d) Employment Review Board--approximately one to seven and one-half months.

(e) DCI action--approximately one day to five and one-half months.

(3) Although no entirely consistent action is taken during the Employment Review Board hearings, usually the subject of the inquiry is called; permitted to know in

general, but not in writing, the nature of the allegation; is heard and given an opportunity to refute or deny the charges and may have counsel, although the latter is usually someone from the Agency.

4. Possible Deficiencies in Procedures.

a. From the point of view of the employee:

(1) No Loyalty Board as provided for in Regulation

25X1A [redacted] Paragraph 1.g. is necessarily guaranteed although it is in practice

(2) No consistent procedure [in accordance with loyalty hearings of other agencies] is necessarily followed.

(3) The time involved from the start of the investigation of the allegation to final decision may be a year or more.

(4) The employee does not necessarily know what he is attempting to refute.

b. From the Agency point of view:

25X1A9a (1) In all cases except the [redacted] case, a Board of some sort was provided (Employment Review Board) where termination or resignation was the final outcome.

(2) [A consistent procedure by which the Agency would be bound might provide the legal foothold for a court of law to review the case, at least to the extent of determining whether Agency procedures had been followed,] not desirable etc

but in fact procedures customarily in use provide the subject of the inquiry with an impartial Board and an opportunity to be heard.

(3) The greatest expenditure of time takes place in the investigation carried on by the FBI rather than in any Agency office (with only a few notable exceptions).

(4) The Agency cannot afford to provide the employee with written or specific accusations for obvious reasons.

c. General.

In certain cases involving persons coming on duty in the Agency the fact that the polygraph is not given until after they have given up other employment creates a hardship and may prevent them from either reassuming their past employment or obtaining other employment. This has been partially rectified by the relatively new application information sheets Nos. 1 and 2 which puts the potential employee on notice with respect to further specific considerations involving his past life. Insofar as possible, consideration should be given to employing the polygraph examination prior to actual entrance on duty with the Agency in any form.

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5. Recommendations. (already rescinded.)

a. Recission of Regulation [redacted] [Paragraph 1.g] and Regulation

25X1A [redacted] (It seems apparent that this Agency was originally established on the thesis that the highest standards of personal

responsibility, security, and loyalty was expected from its employees and that the Director, in Section 102c of the National Security Act of 1947, was given a wide authority to insure this.) In those cases in which the Director is immediately satisfied that grounds for dismissal exist (the

25X1A9a [redacted] case) it is a waste of valuable time to require any further administrative action such as an Employment Review Board. That in those cases where it appears equally obvious to the Director of Security or the General Counsel that the charges are not specific or serious enough to require review by a Board, the present handling is satisfactory, with the possible exception that a review by the Inspector General might be called for in certain cases. That in those cases where the Director feels a further review is advisable he

25X1A can use Regulation [redacted] and appoint an Employment Review Board.

b. It is not recommended that a statement of charges be provided the subject of the inquiry as this might establish an undesirable precedent or provide grounds for attempting court review. (Should be permissive but not mandatory. As practical matter if reasonable give some written evidence charges)

c. It is recommended that every effort be made to speed up handling of all loyalty cases to the utmost within the Agency but that no suspension be permitted without payment or compensation in order that no employee will be damaged materially by the need of thorough investigation and review.

(We have no option under 10450; practice under non-10450 is not suspend)

d. Although no Agency Regulation need be written which would establish the procedures in loyalty cases, a policy should be followed which will permit:

(1) Advising the subject insofar as possible of the nature of the charges. Any practical matter why not written form?

(2) Permitting and assisting the subject to obtain counsel within the Agency, said counsel to represent the employee and not the Agency during the proceedings.

(3) Always provide the subject an opportunity to be heard, to proffer evidence, and to call witnesses.

e. That every effort be made by the Agency to obtain in the Civil Service Commission and all other Federal Agencies a consistent recognition of its higher security and employment standards in order that personnel terminated by the Agency will not necessarily be considered by these other agencies as unqualified for Government employment elsewhere. In this connection, all other Federal Agencies should be advised that any derogatory information concerning employees has been put on file with the FBI. In this way, the CIA files which might contain allegations, unresolved questions or other grounds upon which the Agency decided to terminate the employee within the concept of its higher security and

employment standards but which could not fairly be termed "derogatory information," would not be required to be released by the Agency.

FOIAb3b [redacted]

Lyman B. Kirkpatrick
Inspector General

The recommendations contained in Paragraph 5 are approved.

(See DDCI Memorandum for DD/S, dtd 27 June 57)

Director of Central Intelligence