AN ADMINISTRATIVE HISTORY OF PERSONNEL SECURITY PROGRAMS IN THE ATOMIC ENERGY COMMISSION*

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*As of January 19, 1975, the AEC was reorganized into two separate agencies: the Energy Research and Development Administration, and the Nuclear Regulatory Commission. The entire existing AEC Security Clearance Program was transferred to ERDA.

AN ADMINISTRATIVE HISTORY OF PERSONNEL SECURITY PROGRAMS IN THE ATOMIC ENERGY COMMISSION

Abstract

Erica D. Wulf

This paper examines some of the more significant aspects of personnel security programs in the Atomic Energy Commission by looking at the origins of personnel security programs in the Federal Government as a historical background. The paper demonstrates that the problems of implementing these programs in today's society are becoming increasingly complex because of regional differences in social mores and because of changes in state laws. In addition, on January 19, 1975, the AEC was reorganized into two separate agencies: The Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission (NRC). One of the agency's first actions was to transfer the entire existing AEC security clearance program to ERDA. However, it remains to be seen whether ERDA personnel security policies will be affected by changes in social mores and state laws decriminalizing or reducing sanctions for certain behaviors.

To my mother, Virginia C. Wulf, and
my aunt, Theresa M. Conover;
their dreams became my reality.

ACKNOWLEDGMENTS

I wish to thank Dr. Leon Weaver for his help and direction throughout my graduate training, and for his encouragement and interest in my personal and career goals.

I am indebted to my sister, Ginny, who kept me "on course" and encouraged me to finish.

And finally, my thanks to David, my husband, for his support and tolerance, his love and understanding through both graduate school and the completion of this paper.

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CHAPTER I

INTRODUCTORY CONSIDERATIONS

Introduction

This chapter establishes a statement of purpose and objective of the "B" paper and describes research utilized.

A Statement of Purpose and Objective

The purpose of this paper is to present some of the more significant aspects of an administrative history of personnel security in the Atomic Energy Commission.

To accomplish this, it is necessary to look at the origins of personnel security programs in the Federal Government as a historical background, because it is from these early programs that the A. E. C.'s program is derived.

The paper addresses itself to the problems of implementing these programs in today's society. Its final objective is to show how the emphasis of the loyalty-security program has changed and to suggest some realistic recommendations and guidelines for evaluating prospective civil servants for "sensitive" A. E. C. positions.

Methods of Research

The writer used three methods in conducting research for this paper: (1) library research into the history of Federal loyalty-security programs for civil servants, with particular reference to the A.E.C., (2) on-the-job observation and experience (including talks with inidividuals who were part of those early security programs)[1] and (3) information derived from the writer's personal security background and training.

Some of the principal sources used in the library research were published materials on personnel security, case studies on personnel security, Report by the Sub-Committee (1972) on Loyalty-Security, official A.E.C. directives, and "fugitive" materials (internal agency documents) obtained from officials of the Atomic Energy Commission.

In the case of on-the-job observation and experience, the investigator was fortunate to have had an occupational environment from which to actively study an on-going security program, both at the "government" and "industrial" security levels.

The writer was able to participate in a training program in personnel security, technical security, physical security and security education at a U.S. Atomic Energy Commission Field Office,

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[1]The author has been afforded a unique opportunity in the writing of this paper in that she is employed as a Security Officer by the San Francisco Operations Office, U.S. Atomic Energy Commission, at Oakland, California.

and also had the opportunity to witness policy-making and implementation of policies at the A. E. C. Headquarters Office in Germantown, Maryland. In addition, she benefited from informal interviews and discussions with A. E. C. staff members on "sensitive" cases, both past and present. Finally, as part of the researcher's training program as a security management intern, she was able to take advantage of cross-training at the Lawrence Livermore Laboratory Personnel and Security Departments in Livermore, California.

The Security Training Program involved fundamental concepts of physical security of the laboratory, pass and identification procedures, and police operations by day and by night. The writer was also given two days' training in marksmanship at the "Site 300" pistol range of Lawrence Livermore Laboratory. The pistol range is located near "Site 300," an isolated area for testing high explosives.

CHAPTER 2

HISTORY OF FEDERAL LOYALTY-SECURITY PROGRAMS FOR CIVIL SERVANTS

Introduction

Although the Atomic Energy Commission's security program is based on E.O. 10450,[2] the requirements of its security program are more specifically defined by the provisions of the Atomic Energy Act of 1954, as amended. The act provides for a special category of classified information designated as "Restricted Data," embracing aspects of atomic weapons and the production and use of special nuclear material. The act also provides for clearance of personnel, and since all AEC employees occupy "sensitive" positions, full field background investigations by the F.B.I. are required for these employees.[3]

The A.E.C. has pretty much pursued its own course in security matters; in some respects it has set an example for other agencies.[4]

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[2]Ralph S. Brown, Loyalty and Security (New Haven: Yale University Press, 1958), pp. 63-64.

[3]Committee on Internal Security, House of Representatives, Ninety-Second Congress, Second Session, Report by the Subcommittee on Loyalty-Security (Washington: U.S. Government Printing Office, 1972), p. 101.

[4]Brown, op. cit., p. 64.

On the other hand, the A.E.C.'s security program evolved from E.O. 10450, so for this reason, the history of the Federal loyalty-security program for civil servants should not be overlooked.

Safeguarding Information--Beginnings

Official government censorship of information in this country began as long ago as the Revolutionary War with the censorship of military information. However, the early control was highly personalized: individual judgments were made in each case.[5] George Washington had to cope with internal subversion and espionage with little or no real machinery for effectively dealing with the situation.

The Civil War period represented a bitter struggle over whether the southern states could secede. The emotional atmosphere of that period prompted the development and application of some of the most arbitrary devices imaginable for testing the loyalty of citizens to the Government, such as the Lincoln Administration's "Oath of Allegiance." In 1861, Lincoln's Attorney-General, Edward Bates, proposed to the Cabinet that " . . . all the employees of the Department from the head Secretary to the lowest messenger, be required to take anew, the Oath of Allegiance." The Cabinet agreed and thus, the loyalty tests of the Civil War began. Civil servants in Federal offices across

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[5]Robert L. Taylor, "Secrecy and the Dissemination of Scientific Information," Industrial Security, XV (June, 1971), p. 6.

the country reaffirmed their allegiance by taking an oath of intent to "support the Constitution of the United States." This was the only statutory loyalty requirement which existed when Congress convened in July 1861.[6]

The use of loyalty tests spread rapidly in the early months of the Civil War and continued to affect the lives of citizens on both sides of the Mason-Dixon line on through the Reconstruction period.[7]

Not until World War I did our nation as a larger and more complex governmental body, take an organized approach to the restriction of information. First, voluntary restrictions for published information were requested. Then on April 13, 1917, E.O. 2596 was issued, and the Committee on Public Information was formed. George Creel, chairman of that committee, felt that censorship as it existed during the war had failed; everything his committee had asked the press not to print was nevertheless known by many persons. Thus, Creel believed the answer to be "secrecy at the source"--the military departments, and without depending on press judgment.[8]

Each of the executive agencies developed its own restrictive measures as it grew in size and complexity, although the continued use of restrictions was not a vital issue until World War II.[9]

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[6]John G. Connell, Jr., "Loyalty-Security--Parallels in History," Industrial Security, II (April, 1958), p. 36.

[7]Ibid. [8]Taylor, op. cit., p. 6. [9]Ibid.

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But even before World War II, the threat of the Communist and the now defunct Nazi and Fascist movements was impressed upon the public consciousness beginning in the early thirties. To combat these movements two special committees were created by Congress: (1) the McCormack-Dickstein committee, a special committee of the House created in 1934 to investigate "subversive activities," and (2) its successor, the Dies committee, created by the House in 1938 to investigate "subversive and un-American propaganda." Together, these two committees laid the foundation for a substantial body of legislation on subversive and un-American activities.[10]

The Foreign Agents Registration Act of 1938 and the Smith Act of 1940 followed specific recommendations of the McCormack-Dickstein committee. Of particular importance was the Dies Committee's recommendation for legislation to exclude Facists and Communists from employment by the Government, resulting in the August 2, 1939 enactment of Section 9A of the Hatch Act.[11] Section 9A of the Hatch Act was the first modern statutory step toward a loyalty-security program,[12] and under its provisions, forbade federal

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[10]Committee on Internal Security, House of Representatives, Ninety-Second Congress, Second Session, Report by the Subcommittee on Loyalty-Security (Washington: U.S. Government Printing Office, 1972), p. 5.

[11]Ibid. [12]Brown, op. cit., p. 21.

employment to members of a party or an organization "which advocates the overthrow of our constitutional form of government in the United States."[13] It also required that any person violating that prohibition should be immediately removed from the position or office held by him. Thus, its initial emphasis was upon organizational membership.[14]

An appropriations rider of 1941, which was regularly re-enacted and then permanently codified in the Act of August 9, 1955 (P.L. 330, 69 Stat. 624 (1955), 5 U.S.C., Section 118 (p-r)), extended the ban to include personal advocacy of violent overthrow, and made the acceptance of employment by such an advocate or party member a felony.[15] Under this authority the Civil Service Commission attempted to check on communist or fascist affiliations among a flood of World War II employees.[16] Also during this period, immediately preceding and at the beginning of World War II, Congress enacted legislation granting the power of "immediate removal" of employees of the War, Navy, and State Departments, and of the Coast Guard, which, in the opinion of the Secretary concerned, was "warranted by the demands of national security."[17] These acts were subsequently

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[13]Ibid. [14]Committee on Internal Security, op. cit., p. 5.

[15]Brown, op. cit., p. 21, and sources cited. [16]Ibid.

[17]Except where otherwise noted, this chapter summarizes the treatment in Committee on Internal Security, House of Representatives, Ninety-Second Congress, Second Session, Report by the Subcommittee on Loyalty-Security (Washington: U.S. Government Printing Office, 1972), p. 101.

extended in the Act of August 26, 1950 (Public Law 733, 81st Congress, 5 U.S.C. 7531-7533) to include 11 designated agencies, and any other departments or agencies as the President may designate "in the best interest of national security." This gave the heads of the named departments and agencies summary suspension and unreviewable dismissal powers when deemed necessary "in the interest of the national security of the United States." Both Section 9A of the Hatch Act, until its invalidation in Stewart v Washington (301 F. Supp. 601 (1969)), and Public Law 733 (81st Congress, 5 U.S.C. 7531-7533) formed a major base in the structure of the present Federal Civilian Employee Loyalty-Security Program.[18]

Responsibility for the enforcement of the Hatch Act was divided between the Civil Service Commission, which retained responsibility for certification of applicants, and the employing departments and agencies which retained a continuing responsibility for the removal of those in employment. In enforcing the Hatch Act, the Civil Service Commission took pains to point out the provision that stated that no alien, no Communist, and no member of any Nazi Bund organization should be given employment. In addition, no part of any money appropriated by Congress should be available to any person who does not make affidavit as to United States citizenship and to the effect that

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[18]Ibid.

he is not a Communist and not a member of any Nazi Bund organization; furthermore, this affidavit was to be considered "prima facie evidence" of his citzenship, that he was not a Communist, and not a member of any Nazi Bund organization.

Meanwhile, congressional anxiety over the pace with which the Executive Branch was being rid of subversives was set forth in the Appropriation Act of June 28, 1941 (Public Law 135, 77th Congress). This included an appropriation of $100,000 to the FBI for the exclusive purpose of investigating all Federal employees "who are members of subversive organizations or advocate the overthrow of the Federal Government," and required that the Federal Bureau of Investigation "report its findings to Congress." This report, along with a copy of a report made to the Attorney General by his Interdepartmental Committee on Investigations noted above, was transmitted to the Congress in a letter from the Attorney General dated September 1, 1942.

The conclusion of both the Interdepartmental Committee and the Honorable Martin Dies, Chairman of the Special Committee to Investigate Un-American Activities, was that "sweeping charges of disloyalty in the Federal service had not been substantiated. The futility and harmful character of a broad personnel inquiry have not

been too amply demonstrated."[19] This statement was undoubtedly based on the "result" achieved--36 dismissals after sifting through several thousand complaints.

Indeed, in its June 30, 1942, report which the Attorney General submitted with that of the FBI, it was the Interdepartmental Committee's conclusion that the results achieved had been "utterly disproportionate to the resources expended." But neither the Interdepartmental Committee nor the FBI included in its report a statement of the precise "reasons" for the action or failure of action within the departments and agencies. However, some indication of the basis for the low rate of dismissals may be inferred from this report. A careful analysis suggests that the negative results of the investigation may be traceable to two principal reasons: (1) that most Communist-front organizations were not regarded as "subversive" within the mandate of the Appropriation Act of June 28, 1941, and (2) the employing departments and agencies were not adequately prepared to deal with the "unique" problems presented.

For, even though it applied its new loyalty standard toward the screening of only a limited number of applicants for employment, especially key administrative personnel, the Civil Service Commission became bogged down with a backlog of investigations, mainly because

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[19]Ibid., p. 9.

it lacked a comprehensive program for the investigation of applicants for employment.

Meanwhile, the agencies were struggling with the responsibility of applying the Hatch Act standards to persons who had escaped the Civil Service Commission's grasp and were on board with permanent tenure. Congress continued to be troubled by increasing reports of the existence of Communist cells in sensitive agencies of the Federal Government. Pressed to further inquiry, the House in January, 1945, authorized the Civil Service Commission to conduct studies and investigations of policies and practices relating to civilian employment. A subcommittee was appointed to make investigations with respect to employee loyalty and employment practices, and out of this subcommittee's recommendations came President Truman's Temporary Commission on Employee Loyalty in November of 1946.

This commission was composed of representatives of the departments and agencies recommended in the subcommittee's report (the Departments of Justice, War, Navy, State, and Treasury, and the Civil Service Commission) and was specifically authorized by the terms of the order establishing it (E.O. 9806) to inquire on behalf of the President into standards and procedures for the removal and disqualification from employment of disloyal and subversive persons.

When it reported its results in March of 1947, the Commission declared that the most significant disclosures made to it by the

departments and agencies were the existence of a wide disparity of standards established for judgment of employee loyalty, a lack of uniformity in preemployment and removal procedures, and a wide divergence of opinion as to the character and scope of remedial action. In addition, as mentioned above, the agencies normally relied upon the Civil Service Commission to ascertain the loyalty of a prospective employee, but since the Civil Service Commission had been unable to investigate a large percentage of applicants the agencies had relied almost exclusively on the veracity attributed to the "Oath of Office" and "Affidavit" executed by new apointees, the signature of these two documents being taken as "prima facie evidence" of loyalty.

Overall, the President's Commission found that no further legislation was required to protect the Government against the employment or continuance in employment of disloyal or subversive persons except for the necessity of permanently extending existing temporary legislation to protect certain sensitive agencies. In addition to recommending that an agency be established with advisory powers only (the Loyalty Review Board) and suggesting the legislation that was ultimately to be embodied in P.L. 733 (81st Congress, 5 U.S.C. 7531-7533), the Commission also made detailed recommendations for executive action.

Executive Order 9835 (1947)

The substance of these recommendations was embodied in E.O. 9835, which was promulgated by President Truman on March 21, 1947, immediately following receipt of the Commission's report. E.O. 9835 established the first comprehensive loyalty program ever initiated by the U.S. Government in peacetime, and was the first thorough, all-inclusive screening of federal employees.[20]

The terms of E.O. 9835 provided that the "standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States."[21] The criteria of the loyalty program in E.O. 9835, item 2, are succinct enought to be set out in full:

> 2. Activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may include one or more of the following:
> a. Sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs;
> b. Treason or sedition or advocacy thereof;
> c. Advocacy of revolution or force or violence to alter the constitutional form of government in the United States;
> d. Intentional, unauthorized disclosure to any person, under circumstances which may indicate disloyalty to the United States, 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

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[20]Brown, op. cit., p. 23. [21]E.O. 9835, Part V.

> of the United States;
> e. 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;
> f. 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 other persons their rights under the constitution of the United States by unconstitutional means.[22]

The terms of E.O. 9835 also required that the minimum degree of investigation mandatory for all applicants for employment was described as a "national agency check with inquiries" (NACI). Thus, reference was made to the following sources of information:

(a) Federal Bureau of Investigation files.
(b) Civil Service Commission files.
(c) Military and naval intelligence files.
(d) The files of any other appropriate government investigative or intelligence agency.
(e) House Committee on Un-American Activities files.
(f) Local law-enforcement files at the place of residence and employment of the applicant, including municipal, county, and State law-enforcement files.
(g) Schools and colleges attended by applicant.
(h) Former employers of applicant.
(i) References given by applicant.
(j) Any other appropriate source.

A "full field investigation" was required of persons falling within either of two categories: (1) when the NACI revealed loyalty-related

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[22] Ibid.

"derogatory information" and (2) applicants for specially designated positions or other such persons as were designated by the head of the employing agency on the basis of a determination that it was required in "the best interests of national security."[23]

As recommended by the President's Commission, E.O. 9835 established a general standard for refusal of employment or removal from employment on loyalty grounds. The standard initially adopted (that "on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States") was interpreted as requiring an actual finding of disloyalty. Because of the restrictive nature of this standard, it was amended on April 27, 1951 to read that "on all the evidence, there is a reasonable doubt as to the loyalty of the person involved to the Government of the United States."[24]

During the period the order was in effect (1947-1953) reports of investigation on 26,236 persons were referred to appropriate loyalty boards (regional boards of the Civil Service Commission, agency loyalty boards, and the Loyalty Review Board) for consideration. Of this number, 18,279 were cleared by favorable decisions, or were yet to be evaluated at the time the program was terminated; 6,828

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[23]Committee on Internal Security, op. cit., pp. 20-21.

[24]E.O. 10241, April 27, 1951.

cases were discontinued because of applicants' withdrawal of employment applications, 560 were removed or denied Federal employment on loyalty grounds; and the remaining 569 persons were processed by the Department of the Army under security laws.

In view of the controversial nature of the subject matter, it was inevitable that the administration of E.O. 9835 would become a political issue, which it did during the campaign of 1948. The administration's ineptitude in allaying public anxiety together with subsequent disclosures of alleged espionage and Senator Joseph McCarthy's attacks resulted in public confidence in the Truman Administration's handling of the loyalty program being shaken.

Executive Order 10450 (1953)

With the coming of the Eisenhower administration, E.O. 9835 was rescinded April 27, 1953, on the promulgation of E.O. 10450. The new order established a screening program which was not limited to the concept of loyalty, but was intended to unite with it other security and suitability considerations. E.O. 10450, extending the principles of P.L. 733 (81st Congress, 5 U.S.C. 7531-7533) to the entire executive establishment provides that the employment must be "clearly consistent with the interests of the national security."

Specifically, E.O. 10450, item 1, added a sweeping paragraph of "security" criteria to the already existing loyalty criteria. The new criteria were stated as follows:

1. Depending on the relation of the Government employment to the national security:

i. Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy,
ii. Any deliberate misrepresentations, falsifications, or omission of material facts,
iii. Any criminal infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion,
iv. Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of of the employee with due regard to the transient or continuing effect of the illness and the medical findings in such case,
v. Any facts 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 the national security.[25]

The remaining criteria of E.O. 10450 cover the same ground as E.O. 9835, with more words, and extend the earlier criteria in three respects. First, "sympathetic association" includes not only spies and saboteurs but also any advocate of violent overthrow. Second, disfavored organization membership is not confined to those "designated by the Attorney General," as in E.O. 9835, but presumably allowed each agency to make its own list. Third, an amendment to E.O. 10450, dated October 13, 1953, added a new criterion: reliance on the privilege against self-incrimination before a congressional committee.[26]

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[25] E.O. 10450, Sec. 8(a). [26] Brown, op. cit., p. 33.

In differentiating between the two executive orders, it may be said that the emphasis was on "loyalty" in one program and "security" in the other. And it is significant to note that the shifts in wording between E.O. 9835 and E.O. 10450 represented a hardening of the standard: from reasonable grounds for belief of disloyalty to reasonable doubts as to loyalty; and from discharge if advisable in the interest of national security, to retention only if clearly consistent with national security. "The later standard both in the loyalty and in the security cases puts more of a burden on the employee to clear himself, and a heavier onus on the administrator who clears him."[27] But the standards alone do not and cannot say what raises a doubt about loyalty, or when employment is inconsistent with the national security. Even when there was a doubt as to one's loyalty or security as demonstrated in Greene v McElroy (1959) (79 SCt. 1400, 360 U.S. 474, 3 L ed 2d 1377), where Greene, an engineer working for a private firm, had been denied his security clearance by the DOD for work on classified material on the basis of information indicating past association with communists, the courts ordered Greene's reinstatement on the basis that neither Congress nor the President had explicitly authorized the industrial security program to deny the right of confrontation and cross-examination.[28]

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[27]Ibid.

[28]Editorial, "There is No 'Right' to Work on a Secret Job," The Saturday Evening Post, September 19, 1959, p. 12.

As a result of this case, the Atomic Energy Commission issued new regulations providing (with very limited exceptions) employees and applicants with a right where their fitness had been challenged under the security program, to demand a confrontation with their accusers. The AEC thus became the first government agency to grant this right.[29]

However, before examining the effects of the implementation of E.O. 10450 and how it relates to AEC personnel security programs, it is necessary to trace the process by which E.O. 10450 came about, since it was intended to form the base for the present loyalty and security program. A knowledge of this process is the key to an understanding of subsequent successes and failures in the administration of the program.

Origin of E.O. 10450

The inception of E.O. 10450 was a letter written by President Truman on July 14, 1951, addressed to the Executive Secretary of the National Security Council. In this letter President Truman expressed his concern over the administration of existing legal provisions denying employment or dismissal from employment to those persons alleged

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[29]Howard Margolis, "Notes on the AEC's New Security Regulations--the Security Program: New AEC Regulations are a Reminder of How Much Things Have Quieted Down," Science, May 18, 1962, p. 637.

to be poor "security risks." The President made clear that he was referring to the administration of the "security program" as distinguished from the "loyalty program." Alluding to the fact that there were no uniform standards or procedures to be followed in the maintenance of the "security program" as opposed to the "loyalty program," Truman directed the National Security Council, utilizing its Interdepartmental Committee on Internal Security and with the participation of the Civil Service Commission, "to make an investigation of the way this program is being administered" and to advise him on what changes were believed to be required.[30]

The basis for the concepts applied at the beginning of the Eisenhower administration can thus be found in the Interdepartmental Committee's report of April 29, 1952, following the committee's investigation as directed by President Truman.

The Atomic Energy Act of 1946

When President Truman made his request for this investigation, there were several existing Federal statutes authorizing the removal or prohibiting the employment of persons commonly described as "security risks." For example, the Atomic Energy Act of 1946 was the basis for the security program in the Atomic Energy Commission.

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[30]Committee on Internal Security, op. cit., p. 24.

This Act limited the dissemination of restricted data in such a manner "as to assure the common defense and security" and required pre-employment investigation and report by the FBI on the character, associations, and loyalty of applicants.

In addition, Congress also enacted a statute of general application authorizing suspension and removal of "security risks." This was the Act of August 26, 1950 commonly referred to as "P.L. 733," previously mentioned. Its provisions were later extended to all departments and agencies of the Government by explicit provisions of E.O. 10450.

In reporting the measure ultimately enacted as Public Law 733, it is relevant to note that the House and Senate committees made the distinction, as did President Truman, between the "security program" and the "loyalty program," because it was becoming increasingly apparent that the concepts of "loyalty," "security," and "suitability" conveyed significant differences in meaning and consequences. For example, a disloyal person was undoubtedly a "security risk;" yet, all security risks were not disloyal persons. Moreover, all persons "unsuitable" for Federal employment were not necessarily security risks or disloyal persons. However, an individual committed to the destruction of our system of government was regarded as a disloyal person. He is also a security risk because entrusting him with the secrets of the nation would be unwise and unsafe. In addition, placing

the "disloyal" person in any position in which he could adversely affect the defense of the nation or do any grave injury to its economic, social, or political structure is definitely a "security risk." On the other hand, an individual who has no such commitment, but has some bad habits, such as over-addiction to alcohol or to loose talk, for example, or whose character has been soiled by criminal associations other than those of a treasonable or subversive nature, cannot be classified as disloyal, but may fall within the category of "security risk."

Therefore, it was not surprising when, in its April 29, 1952 report, the Interdepartmental Committee on Internal Security of the National Security Council called attention to the confused situation which existed by reason of there being three general programs dealing with the denial of employment and the suspension and separation of Government employees. President Truman accepted the Committee's recommendation that a study be made "to effect a single general program covering eligibility for employment in the Federal service, whether on grounds of loyalty, security, or suitability" to eliminate this confusion. In evaluating the Committee's recommendations, the President concluded "that the most desirable action at this time would be to merge the loyalty, security, and suitability programs, thus eliminating the overlapping, duplication, and confusion which currently exists."

The resulting Meloy Committee formulated the basic standards of

E.O. 10450. But there was a difference of profound significance between the Meloy proposal and the order ultimately promulgated by President Eisenhower. The drafters of E.O. 10450 paid no attention to Meloy's recommended standard for combining the programs or to the prior admonition of the National Security Council's Interdepartmental Committee, which warned that a "national security" program must be applicable only to positions which may be designated as "sensitive." Instead, the drafters of E.O. 10450 applied a "security standard" to a rigid combination of suitability, loyalty, and security concepts in which an individual's eligibility for employment became dependent upon whether such employment was "clearly consistent with the interests of national security." The error was further compounded by making this applicable to all positions (sensitive or not). These points of vulnerability were later seized upon in the Cole v. Young decision, 351 U.S. 536 (decided June 11, 1956) resulting in the nullification of that aspect of the order by which the drafters endeavored to maintain a loyalty program for non-sensitive, as well as sensitive, positions.

The Administration of E.O. 10450 (1953-1957)

From 1953 to 1956, E.O. 10450 provided the base for the administration of the loyalty, as well as the security, program. However, its operation was not free from controversy. In an endeavor to emphasize

its determination to eliminate Communists and subversives, the administration made startling claims of the great numbers of "security risks" being removed from the Federal service. This implied that "security risks" being removed from Federal service were, in fact, Communists and subversives. Therefore, many persons removed from the Federal service at this time who were not disloyal or subversive (including drunks and perverts, for example) were thus embraced within the concept of "security risks." Because of this scattergun approach, the new order came under its most serious attack in the investigations initiated during this period.

The investigation undertaken by the Senate Committee on Post Office and Civil Service was an effort to clarigy the question as to whether the large number of clearance denials claimed were on loyalty grounds or were on other grounds unrelated to loyalty. Accordingly, the Committee conducted an intensive investigation into the figures reported by the departments and agencies and by the Civil Service Commission.

The Committee concluded that the "scrambling" of the three categories of loyalty, security, and suitability under one general classification of "security risks" had brought about endless confusion. The confusion resulted because of the elimination from the Federal payroll of "security risks," assuming they were all disloyal persons, when, in reality only a small percentage of them were terminated for

that reason. The Committee recommended that the Executive Branch of the Government amend E.O. 10450 to restrict its application to "sensitive" positions in the 11 agencies listed in the Act of August 26, 1950 (P.L. 733) rather than to all departments and agencies of the Government whether sensitive or not. This was extended to the Panama Canal Zone by E.O. 10237. In addition the Committee recommended that Congress enact legislation to govern the dismissal or suspension of Government employees on loyalty and security grounds in sensitive positions and clearly set forth the criteria and the appeals procedure to be followed.

Another serious attack on the operation of the program under E.O. 10450 was made by the Commission on Government Security, a nonpartisan commission created by Congress in the summer of 1955, later called the Wright Commission after its chairman, Lloyd Wright (a former president of the American Bar Association).[31] The Wright Committee conducted no public hearings, but pressed its inquiry by private conferences into every aspect of the security programs administered by the U.S. Government.

According to Mr. Wright, the "heart" of the Commission's legislative program was the draft of a proposed legislation to establish

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[31]Public Law 304, 84th Congress, Report of the Commission on Government Security (Washington: U.S. Government Printing Office, 1957), 807 pp.

a Central Security Office to coordinate the Administration of Federal personnel loyalty and security programs. This bill was not enacted.

In addition, while there were no definitive statistics available, it was the Commission's opinion on the best evidence available that the vast majority of removals which had been reported as security removals had, in fact, been suitability removals handled under the normal Civil Service or related procedures. While the current program had been labeled and justified as a security program, said the Commission, it had in practice been "an unnatural blend of suitability, loyalty, and security programs. The hybrid product had been neither fish nor fowl, resulting in inconclusive adjudications, bewildered Security personnel, employee fear and unrest and general public criticism."[32]

The Commission felt that there should be a return to a loyalty program complemented by the suitability program. In this way, pure suitability cases would be treated as such, and persons removed from their jobs because of personal aberrations or unfortunate associations where loyalty was not an issue would not be branded as security risks. According to the Commission, a loyalty program is the only test of employment which can satisfactorily protect the rights and interests

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[32]Federal Employees' Security Program, hearings before the House Committee on Post Office and Civil Service, 85th Congress, First Session, on H.R. 8322 and H.R. 981.

of both the Government and the individual. This standard, it concluded, can be applied by examining an individual's case history in itself without regard to the relationship of his job to the national security.

Although the Wright Commission's report is already 16 years old, its observations may reflect conditions which in varying degrees have remained with us.

However, perhaps the true application of the standards of E.O. 10450 must be deduced from the charges that are made and the questions that are asked at hearings. Although there is no systematic published collection of these materials (since the government normally keeps them administratively confidential for the employee's protection and others who may figure in them), enough case histories have been disclosed to journalists and scholars to permit rough generalizations. But the grounds for decision are never published except in cases of great notoriety. One can readily list the important ones. Terse Loyalty Review Board decisions were released in the well-known cases of three State Department officers: Service, Vincent, and Davies. The Atomic Energy Commission disclosed the basis for action on three of its advisors: Condon, Graham, and Oppenheimer.[33] The Oppenheimer case will be examined as exemplifying key issues in personnel

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[33]Brown, op. cit., pp. 33-34.

security administration during the 1950's and as a case generating passions in the political arena.

The Oppenheimer Case

The most infamous case in the Atomic Energy Commission, that of J. Robert Oppenheimer, is more than a personnel security inquiry. This case demonstrates how security proceedings may become an arena in which major issues of policy (in this case, differences of military policy) are fought out, with removal as the price of defeat.[34]

To begin with, there are few people who do not recognize the name Oppenehimer. Several years after he played a key role in the development of the atomic bomb, Dr. J. Robert Oppenheimer was catapulted from his semi-private world of research to the national stage--cast not as a hero for his scientific achievements, but as a potential villain, a suspected security risk.[35]

What is a security risk? Whose security are we concerned with? Our country's security? Or the security of our secrets? In the Oppenheimer Case, we are concerned with the security of our secrets.

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[34]Ibid., p. 279.

[35]Joseph Boskin and Fred Krinsky, The Oppenheimer Affair: A Political Play in Three Acts (Beverly Hills: The Glencoe Press, a division of the Macmillan Company, 1968), p. 2.

Clearly, the way Oppenheimer could have endangered our security was either by revealing our secrets or by allowing them to escape him. Oppenheimer had many of our most precious secrets in his possession, and yet there was no question of sabotage or subversion unless one wants to see one or the other in the way Oppenheimer criticized our official military strategy.

The question of whether a man is a security risk expands into the question of whether we want to employ him instead of somebody else, which thus confronts us with the applicable law, Section 10 of the Atomic Energy Act of 1946, which says that a person shall not have access to restricted data until the FBI "shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual and the Commission shall have determined that permitting such person to have access to restricted data will not endanger the common defense or security." Also affecting the Oppenheimer case was the Hatch Act of 1939 (the provision barring Federal employment to members of subversive organizations), Public Law 733 of 1950 (which provided the statutory basis for the present Federal Employees Program), and Executive Order 10450 of April 27, 1953, which provides the Security Requirements for Government Employment (investigation of applicants for sensitive Government jobs).[36]

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[36]Boskin and Krinsky, op. cit., pp. 7-10.

In addition, the AEC goes into particulars in what it calls, "AEC Personnel Security Clearance Criteria for Determining Eligibility," a document which "recites the fact that the Commission in September 1950, issued its procedure for administrative review, and points out also that this procedure places considerable responsibility on the managers of operations, and it is to provide uniform standards for their use that the Commission adopted the criteria described herein."[37]

In making determinations in a particular case, a number of specific types of derogatory information are contained in this document. With regard to Dr. Oppenheimer these are listed under Category (A) paragraph no. 1 and parts of paragraph no. 3:

> 1. Committed or attempted to commit, or aided or abetted another who committed or attempted to commit, any act of sabotage, espionage, treason, or sedition;
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> * * *
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> 3. Held membership in or joined any organization which has been declared by the Attorney General to be totalitarian, Fascist, Communist, subversive . . . or, prior to the declaration by the Attorney General, participated in the activities of such an organization in a capacity where he should reasonably have had knowledge as to the subversive aims or purposes of the organization.[38]

The Atomic Energy Act of 1946 then adds that "cases must be

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[37]AEC Appendix 2301, Annex A, "Criteria & Procedures for Determining Eligibility for Access to Restricted Data and Defense Information (Amended June 25, 1968)."

[38]There are other types of derogatory information contained in these "clearance criteria" which the writer did not include because they do not apply to the Oppenheimer case.

carefully weighed in the light of all the information, and a determination must be reached which gives due recognition to the favorable as well as unfavorable information concerning the individual and which balances the cost to the program of not having his services against any possible risks involved. In making such practical determination, the mature viewpoint and responsible judgment of Commission staff members and of the contractor concerned are available for consideration by the general manager."

However, despite the AEC's effort to make the criteria as specific as possible and as palatable to the scientific community as possible, even the AEC criteria are general, vague, and indeterminate. For example, the AEC criteria condemn the homosexual and the pervert as security risks because of the risk of blackmail, but they are silent as to the married adulterer. In reality, we do not yet know who is the greater security risk: the paragon of virtue who has a record of carelessness in locking classified materials in his safe or the chronic alcoholic who has a spotless record of security performance. Clearly, in the Oppenheimer case, we do not yet know whether the national security was further advanced by denying clearance to a brilliant scientist of dubious loyalty, or by assuming the risk and doubling the guard.[39]

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[39]Harold Green, "The Unsystematic Security System," Bulletin of the Atomic Scientists, XI (April, 1955), p. 118.

The case of J. Robert Oppenheimer also has the dubious distinction of being the only "security" case in which the public obtained a transcript of the proceedings before a security board. The untimely release of the transcript (even before the final decision of the Commission) was the end result of a story that began with the suspension of J. Robert Oppenheimer's clearance. The New York Times received a report of the case and sought verification of the facts from AEC Chairman Lewis Strauss and Joint Committee on Atomic Energy (JCAE) Chairman Sterling Cole as well as from Oppenheimer. Since the Times was in possession of most of the facts of the case already, Lloyd K. Garrison, Oppenheimer's counsel, decided to give a copy of the charges and a copy of Oppenheimer's reply to James Reston of the New York Times, "so that the record of the case could be written from the actual documents."[40]

Following the close of the hearings on May 6, 1954, the transcript of the testimony--nearly a thousand printed pages--remained secret for over a month. The Board had made its recommendations, and the General Manager had filed his report with the Commission, when a strange thing happened. On June 15, 1954, the Commission, in spite of the promise which the Chairman of the Board had made on

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[40]Phillip M. Stern, The Oppenheimer Case: Security on Trial (New York: Harper & Row, 1969), p. 267.

the Commission's behalf, gave the full transcript to the press for release at noon the next day. This occurred with only a few hours' notice to Oppenheimer and his counsel.

As a result, Garrison and John W. Davis, who had joined him as counsel for Oppenheimer, hurriedly made their brief for the Commission public too, in time to have much of it published in the New York Times for June 15, when the transcript was released.

The Commission said that the release of the transcript was being made "in advance of the time--later this month--when the Commission will reach its decision." The reason for its release, the Commission said, was because "The wide national interest and concern in the matter made inevitable and desirable close public examination of the final determination."[41]

While the transcript omits classified material and all of the FBI reports, what is left is enough to give us a pretty clear understanding of how our security system worked at that time (1953).[42] In addition, the Oppenheimer case is significant because "in a very real sense it puts the security system of the United States on trial,

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[41]Charles P. Curtis, The Oppenheimer Case: The Trial of a Security System (New York: Simon and Schuster, Inc., 1955), p. 4.

[42]U.S. Government Printing Office, In the Matter of J. Robert Oppenheimer, Transcript of Hearing Before Personnel Security Board, Washington, D.C., April 12, 1954 through May 6, 1954.

both as to procedure and as to substance."[43]

In order to understand the impact of what Oppenheimer allegedly did, a biographical sketch is necessary. J. Robert Oppenheimer was born in New York in 1904, of a German immigrant father and an American mother. He was educated at Harvard and Cambridge Universities, receiving his Ph.D. degree in 1927 from the University of Gottingen, Germany. From 1927 to 1947 he held academic posts concurrently at the University of California (Berkeley) and the California Institute of Technology (Pasadena). At Berkeley, Oppenheimer built the largest graduate and postdoctoral school of theoretical physics in the country. Later, while on leave from his academic posts during World War II, he recruited many of his former graduate students for atomic development work in his role as one of the chief architects of the Manhattan Project and top administrator of the Los Alamos, Nex Mexico, operation. After he successfully completed his wartime assignment, he resigned from the Los Alamos project to return to Cal Tech in 1945, moving to Princeton University as Director of the Institute for Advanced Studies in 1947, a post he held until his death in 1967.[44]

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[43]U.S. Government Printing Office, In the Matter of J. Robert Oppenheimer, Texts of Principal Documents and Letters of Personnel Security Board, General Manager, and Commissioners, Washington, D.C., May 27-June 29, 1954.; "Findings and Recommendation of the Personnel Security Board in the Matter of J. Robert Oppenheimer," p. 1.

[44]Boskin and Krinsky, op. cit., p. 5.

After World War II, Oppenheimer remained active in governmental posts and continued in his academic and professional capacities. He was elected Chairman of the General Advisory Committee to the Atomic Energy Commission in 1946, a position he held until 1952. For seven years he served on the Committee on Atomic Energy of the Research and Development Board. In June 1953, shortly before Gordon Dean retired as chairman of the AEC, the Commission renewed Oppenheimer's contract as consultant for another year. It was then that the proceedings against Oppenheimer began to emerge and take shape.

On July 7, 1953, within a week after Lewis Strauss succeeded Dean as chairman, the Commission, at Strauss' request, "initiated steps to organize the removal of classified documents" from Oppenheimer's custody at Princeton. And yet, the Commission was in no great hurry to remove the classified documents from Oppenheimer's custody.

What triggered further action was a letter to the FBI, in November 1953, written by William L. Borden, former executive director of the Congressional Joint Committee on Atomic Energy. The letter charged that Oppenheimer was, "more probably than not," an agent of the Soviet Union. A month later, on December 23, 1953, General K. D. Nichols, General Manager of the Atomic Energy Commission, officially notified Dr. Oppenheimer of the charges against

him and of his right to a hearing. At the same time, Oppenheimer's clearance was suspended. On the following day, December 24, 1953, two security officers delivered a letter to him directing that all his AEC classified documents be returned.

On March 4, 1954, Oppenheimer replied to General Nichols' charges. Oppenheimer attempted to refute the charges "in the context of my life and work" by giving a chronology of his life with specific comments on the items (or charges) in General Nichols' letter.[45]

Then, witnesses were subpoenaed by both prosecution and defense for testimony before the three-man Personnel Security Board of the Atomic Energy Commission in Washington, D.C. The Board opened its proceedings early in April and sat almost day to day from the middle of April to the end of May. The hearings centered around two major issues: (1) Was Oppenheimer involved in Communist-front associations or susceptible to the influence of friends and associates with histories of Communist affiliations? (2) Was his lack of enthusiasm for the fusion (H-bomb) program detrimental to the best interests of the country?[46]

A little more than a month after the start of the hearings, the findings and recommendations of the Personnel Security Board were

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[45]Ibid., p. 19. [46]Ibid., p. 45.

forwarded to the General Manager and Commissioners of the Atomic Energy Commission. The carefully worded report evaluated the original allegations before going into an exposition of the general problems of defining loyalty. A strong dissent by Dr. Ward Evans (Board member) possibly modified the majority recommendations which did not impeach Oppenheimer's loyalty but rather his judgment in continuing associations which could conceivably open him to charges of being susceptible to influences detrimental to national security interests.

It was left for the Commissioners of the Atomic Energy Commission to deliver the final coup and avoid the ambiguities of the Personnel Board findings. In a harshly worded decision, the majority decided that Oppenheimer had "defaulted not once but many times upon the obligations that should and must be willingly borne by citizens in the national service" and denied him reinstatement and access to restricted data.

In a concurring opinion, Commissioner Thomas E. Murray discussed the nature of loyalty; Commissioner Henry D. Smyth strongly dissented from both the evaluations and decisions of the majority.

Immediate responses to the AEC action varied. An Associated Press dispatch stated, "When the Commissioner's decision was announced to the House late this afternoon by Chairman W. Sterling

Cole (R-N. Y.) of the Senate-House Atomic Energy Committee there was considerable applause . . ." In Los Alamos, however, there was another reaction: "Indignant scientists at the atomic bomb birthplace today assailed the Atomic Energy Commission decision barring J. Robert Oppenheimer from Secret data. Dr. David L. Hill, past president of the Federation of American Scientists, said, 'Seldom on this side of the Iron Curtain has a citizen who has served his country as well as J. Robert Oppenheimer been more miserably rewarded by his Government.'" (AP dispatch, June 30, 1954).[47]

The reaction of influential persons in government and in the press was generally guarded. In a period when no one was quite sure whether the anticommunist hysteria was over or dormant, open support or condemnation of the Commission decision was simply "unpolitic." The American public had not been altogether unaware of the effects of McCarthy at home and abroad. Yet, why did it tolerate his antics so long and to the extent it did? The obvious answer is that public concern about the apparent indifference to national security on the part of previous administrations had reached a point where the demagogic methods of McCarthy were waved aside as unessential or dismissed as a small price to pay for a security long delayed. In retrospect, however, the price of McCarthy's methods

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[47]Boskin and Krinsky, op. cit., p. 81.

was much too high to compensate for the dubious securities they may have won.[48] As Edward Shils wrote in a 1955 issue of the Bulletin of the Atomic Scientists, "Some of the consequences of security for science will take years to be uncovered. Only after many years, if ever, will it be known which crucial bits of knowledge lay hidden by classification and had to wait for a long time to be rediscovered by someone else who then made use of them for some more important discovery."[49]

The question of loyalty continued to remain a hot issue in the '50's. In September, 1958, for example, the National Defense Education Act was passed by Congress (Public Law 864, U.S. Code 1964, Title 20. Para. 401 et seq.). This Act set up a system of loans administered by participating colleges, but required that students applying for these loans file a disclaimer affidavit swearing they did not belong to, believe in, or support any organization advocating or teaching overthrow of the U.S. Government by violence or illegal methods. Additionally, the rationale behind the affidavit provision was that students are "suspicious characters" and that the government should get some written proof of their loyalty to it.[50]

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[48]Sidney Hook, "Security and Freedom," Confluence, III (March 1954), pp. 155-171.

[49]Edward Shils, "Security and Science Sacrificed to Loyalty," Bulletin of the Atomic Scientists, XI (April 1955), pp. 106-133.

[50]"Loyalty Still Hot Issue," Science News Letter, July 1, 1961, p. 4.

It is difficult to tell whether the quiet response of critics and intellectuals to the Oppenheimer decision was due to fear, guilt, or simply exhaustion brought on by prolonged national anxiety; but one thing is certain: the spotty response to a decision with far reaching effects was in itself an important comment on the future of politics in the '50's, for the remainder of the 1950's was almost apolitical and became known as the "silent generation."

After the adverse judgment of the Personnel Security Board of the AEC, Oppenheimer retired from government service but continued an active academic and professional life. In 1963, nine years after the denial of his security clearance, the Kennedy Administration's Atomic Energy Commission gave Oppenheimer its highest honor, the $50,000 Enrico Fermi Award.[51]

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[51] Boskin and Krinsky, op. cit., p. 135.

CHAPTER 3

THE AEC PERSONNEL SECURITY PROGRAM TODAY

Introduction

The following chapter outlines the principal features of the AEC personnel security program today. The writer explains why there is a security program in terms of the kinds of information which must be protected and, finally, the procedures involved in obtaining a "Q" clearance. The data in this section are derived from the writer's personal experience in the AEC and notes from Security Education briefings, except where otherwise noted.

The Atomic Energy Act of 1954

Under the Atomic Energy Act of 1954, as amended, the AEC controls the dissemination and declassification of classified data in a manner designed to assure the common defense and security.[52]

In the AEC, classified national security information[53] is

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[52] What You Should Know About Security, Division of Security, Washington, D.C., US Atomic Energy Commission (Washington, D.C.: U.S. Government Printing Office, 1964), p. 3.

[53] Executive Order 11652, effective March 8, 1972, replaced Executive Order 10501 and incorporated some of the following points: (1) "National Security Information" (a new category of information including

information affecting the national defense and security and is broken down into two categories: that which contains Restricted Data as defined in the Atomic Energy Act of 1954 and that which does not contain Restricted Data but nevertheless affects the national defense and security and is protected under various espionage laws. Restricted Data is defined in the Atomic Energy Act as all data concerned with the manufacture, design, and utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy. Other classified national security information which does not fall within this definition is also referred to as non-Restricted Data national security information.

Both Restricted Data and non-Restricted Data national security information have varying degrees of importance to the national defense. These degrees are denoted by the use of classifications, and in descending order of importance are: Top Secret, Secret, and Confidential. All persons having access to Restricted Data and

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information of interest to the national defense or foreign relations--replaced National Defense Information, (2) automatic downgrading and declassification schedule within a 10 year period, unless documents specifically excepted, (3) indication of downgrading and declassification schedule on document itself, (4) accountability which requires designation of Top Secret Control Officers and an annual inventory of Top Secret documents and accountability of Secret matter, (5) limitation of authority to downgrade and declassify on agencies and personnel who may classify, downgrade, or declassify, (6) revised extra new markings for Restricted Data, Formerly Restricted Data, the Espionage Act, etc.

non-Restricted Data national security information must safeguard such information in accordance with security regulations.

Designation of "Sensitive" Positions and Scope of Investigations

No person may work for the AEC or have access to Restricted Data unless he has been granted an access authorization (or "clearance" in informal terminology). An access authorization granted by the AEC is known as a "Q" access authorization (or "Q" clearance). This clearance also permits access to non-Restricted Data national security information in the AEC.[54] A "Q" clearance is granted only by the AEC and is based on a full background investigation conducted by the FBI or the Civil Service Commission as circumstances warrant. Under provisions of the Atomic Energy Act, the Commission requires a full background investigation going back fifteen years by the FBI of all AEC employees and those AEC contractor employees whose positions are deemed "sensitive." According to AEC Appendix 2301, Annex C, those categories of functions for determining "positions of a high degree of importance or sensitivity" are listed below:[55]

A. All AEC positions, including AEC consultants.

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[54] What You Should Know About Security, p. 3.

[55] AEC Appendix 2301, Annex C, "Categories of Functions for Determining 'Positions of a High Degree of Importance or Sensitivity,'" (February 23, 1967), p. 51.

B. Positions within the organization of AEC contractors and subcontractors, including consultants, which require regular access to Top Secret Restricted Data or Top Secret National Security Information.

C. Positions within the organization of AEC contractors and subcontractors, including consultants, which involve responsibility for formulation of broad policy or program direction in:

(1) Research and development programs pertaining to nuclear weapons or special nuclear material production.

(2) Production or stockpile of nuclear or thermonuclear weapons or special nuclear material.

(3) Research and development programs pertaining to military nuclear propulsion reactors.

D. Positions within other Federal Departments, (exclusive of personnel of the Department of Defense, who do not require AEC security clearance by virtue of Section 143 of the Atomic Energy Act of 1954, as amended), and agencies having responsibilities in connection with the Atomic Energy Program comparable to those indicated in B and C(1), (2), and (3) above.

AEC clearance procedures are different from those in most government agencies, particularly the Department of Defense where an individual is investigated and cleared up to and including a certain classification. It is for Top Secret and certain critical-sensitive positions that a full background investigation in conducted in the DOD. Lesser checks are made for the lower classifications. In the DOD, an employee would say, "I have a Top Secret clearance," or "I have a Secret clearance," or "I have a Confidential clearance." In the latter two cases, the statement means that the individual's access to the

higher classification or classifications is not authorized without the additional investigation required for the higher classification desired. An AEC employee or an AEC contractor employee would say, "I have a 'Q' clearance." A "Q" clearance permits access to all classifications. Division Directors determine the highest classification in a position. Should at some later time it be necessary to have access to a higher classification no additional investigation is required.

CHAPTER 4

SPECIAL PROBLEMS IN IMPLEMENTING THE EMPLOYMENT CRITERIA UNDER E.O. 10450-- THE DRUG SCENE

Introduction

It is impossible to treat all aspects of administering personnel security in the AEC and do justice to them in one report of less than book length. Therefore, the writer has chosen selected features or "special areas" in the AEC Personnel Security Program which merit discussion using the following criteria for selection: (1) frequency of recurrence of similar cases, (2) the controversiality of the issues in these cases, and (3) the fact that most of these issues are undergoing policy changes or legal changes in the courts.

One of the most controversial issues concerning the AEC Personnel Security Program today is the clearance determination of individuals who are reported to have "used a narcotic or hallucinogenic drug, except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine,"[56] or an

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[56]AEC Appendix 2301, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or Defense Information," May 5, 1962, Section 10.11, Derogatory Information (b). Category "B" derogatory information (12)--amended, effective May 4, 1967, p. 43.

individual who has "been, or is, a user of a narcotic or hallucinogenic drug habitually, without adequate evidence of rehabilitation."[57] Where the AEC and its contractors are concerned this type of case is showing up with increasing frequency; the hallucinogenic drug most often to come under question in the course of a clearance investigation is alleged use of marijuana by the subject being investigated. Heroin use and addiction almost never become an issue for those who apply for an AEC "Q" clearance, although there have been scattered cases of ex-addicts who apply for clearance and who are currently on a methadone maintenance program. Therefore, the Commission has taken a position on both the use of marijuana and the use of methadone. In order to provide necessary background information for AEC personnel security policy regarding drugs, the writer will discuss the history of marijuana usage in the United States, its classification as a hallucinogenic drug, and the AEC's current position on both marijuana and methadone use.

History of Marijuana Usage in the United States

Marijuana came to the United States from Mexico and Cuba around the 1920's, when it was smuggled by Mexican laborers across the

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[57]Ibid., Section 10.11 Derogatory Information (a) Category "A" derogatory information, (9), p. 42.

border into Texas. Meanwhile, American and Mexican sailors were also go-betweens, buying the drug in the ports of Havana, Tampico, and Veracruz for $10 to $12 per kilogram (2.2 lbs.) and selling it wholesale in New Orleans at $35 to $45 a kilogram.[58]

The first American users of marijuana were almost entirely members of underprivileged and often disreputable groups.[59] In New Orleans, for example, the consumers were largely the poor and the Negro population.[60] Other disreputable groups of that time included Mexican-Americans and members of the new urban Bohemias. So, it would appear that marijuana's early bad reputation was due, in part, to its accidental linkage with the ill-repute of those first using it.[61]

In the early 1920's, only 16 states had laws against the sale or use of marijuana, and these were laxly enforced. In the mid-thirties, however, a major crime wave struck New Orleans. During the general Prohibition climate of the time, followed by a scare campaign

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[58]Roger Jellinek, "Marijuana--Cops and Docs," The Great Contemporary Issues: Drugs (New York: Arno Press, 1971), p. 443.

[59]J. L. Simmons, Ph. D., Marijuana--Myths and Realities (North Hollywood: Brandon House, 1967), pp. 230-231.

[60]Solomon H. Snyder, "What We Have Forgotten About Pot--A Pharmacologist's History," The Great Contemporary Issues: Drugs (New York: Arno Press, 1971), p. 426.

[61]Simmons, op. cit., p. 231.

carried out by leading Prohibition organizations, marijuana use was outlawed by the Federal Government.[62] The Marijuana Tax Act was passed and other federal laws prohibit the sale and possession of marijuana except for scientific use. Under these laws, the penalties range up to 40 years in prison plus $20,000 in fines on a single count. Until 1966, no parole was permitted.[63]

Also, from the 1930's to the 1960's, marijuana use remained among the same underprivileged and fringe groups and knowledge about it remained outside the ken of the ordinary citizen. In this decade, however, its use is rapidly spreading among all segments of the populace including the dominant white middle-class and youth.[64]

In the three decades following 1937, the marijuana laws were amended by both state and Federal Governments, making penalties increasingly severe and mandatory. Since few members of the dominant white middle-class society were users, there was almost no debate over these increases. In fact, the Marijuana Tax Act, itself, had been hastily passed with little discussion and almost no medical or scientific testimony on the facts of marijuana.[65]

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[62]Snyder, op. cit., p. 426.

[63]Robert Reinhold, "Medical Scientists Differ on Safety of Marijuana," The Great Contemporary Issues: Drugs (New York: Arno Press, 1971), p. 358.

[64]Simmons, op. cit., p. 231. [65]Ibid., pp. 234-235.

As a result, sale, possession, or use of marijuana is a felony throughout most of the United States, calling for compulsory sentences without the possibility of probation in many cases. Such sentences are equivalent to those for heroin users, and in some jurisdictions are more severe than those imposed for armed robbery or forcible rape. Because of these harsh laws, many courts are hesitant to convict ordinary users and amateur sellers.[66]

What is Marijuana?

What is marijuana? The term is associated with Indian hemp (Cannabis sativa), a plant that grows in the United States and elsewhere throughout the world. The principal ingredient in the cannabis weed is tetrahydrocannibal (T.H.C.) which is found mainly in the flowering tops and to a lesser degree in the plant's leaves, stem, and seeds.

T.H.C. is the chemical which in small doses produces a mild pot high, and in larger doses gives rise to hallucinogenic and psychotomimetic (resembling psychosis) effects similar to an L.S.D. trip. But despite this similarity, T.H.C. has no chemical resemblance to any psychedelic drugs such as L.S.D., mescaline, or psilocybin, and moreover, cannabis is not physically addictive. It is also worth

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[66]Ibid., p. 235.

noting that the T.H.C. content from the hemp plant grown in the United States is low and therefore less potent than that which is found in other countries.[67]

What is an hallucinogen? The term refers to those drugs which are capable of altering the mind, provoking changes of sensation, thinking, self-awareness, and emotion. Depending on the dosage used, alterations of time and space perception may be minimal or overwhelming.

Psychological effects also include illusions, hallucinations, and delusions, and tend to create emotional and psychological problems, for example, anxiety reactions and panic states. Impaired judgment and sense distortion result in accidents, mental confusion, memory disturbance, loss of contact with reality, and even social maladjustment. The psychological effects of marijuana vary so widely that it can act as either a stimulant or a depressant. However, generally the feeling is one of passive euphoria and a tendency to withdraw into oneself.

The immediate physical effects from marijuana inhalation include dilation of blood vessels and enlargement of pupils of the eye, throat irritation, increased heart rate, and lethargy. Similar behavioral reactions occur with the ingestion of marijuana extract.

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[67]Snyder, op. cit., pp. 420-421.

The long-term physical effects of extended marijuana use are not known but are now being researched. Withdrawal symptoms observed in the heroin addict are not found in the heavy user of marijuana, although sudden withdrawal may result in restlessness and anxiety.

Marijuana does not lead to physical dependence and therefore it is not considered addictive; however, chronic users may become psychologically dependent upon the effects of the drug. Hence marijuana is classified as habituating whereby the individual has a psychological desire to use the drug intermittently or continuously because of emotional reasons. As mentioned in the recently published book by the federal government, A Federal Source Book: Anwers to the Most Frequently Asked Questions on Drug Abuse (1971), the fact that a drug is not addictive has little relationship to its potential for harm, since dependence, whether psychological or physical, is a serious matter.

Finally, marijuana is not a narcotic and therefore it is not classified in the pharmacological class of narcotic drugs such as heroin and morphine. It has no approved medicinal use in the United States, although it did as recently as the 1920's for a large number of medical conditions from migraines and excessive menstrual bleeding to ulcers, epilepsy, and even tooth decay. At the present

time marijuana is again being researched and evaluated for possible beneficial effects to mankind.[68]

Extent of Methadone Use in the United States

In 1968, there were fewer than 400 patients enrolled in methadone programs in the United States.[69] A recent survey conducted in February 1973 by the Special Action Office for Drug Abuse Prevention (SAODAP) estimated the number of patients on both Federal and non-Federal methadone maintenance programs to be approximately 73,000. (The National Institute of Drug Abuse estimates that there are 200,000 to 250,000 methadone addicts in the United States today, primarily psychological.) Since October 1971, the approximate number of persons in Federally funded non-maintenance programs has increased from 10,000 to 40,000. A significant percentage of these persons are enrolled in methadone detoxification programs. Regulations promulgated by the Food and Drug Administration contemplate an even broader proliferation of methadone. As of February 1973, 666 methadone treatment programs have filed protocols as required by the new regulations, and an additional 138 applications are being processed.

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[68] Ibid., p. 420.

[69] Except where otherwise noted, this section summarizes the treatment in Methadone Diversion Control Act of 1973, Report of the Committee on the Judiciary, United States Senate, on S. 1115, 93 Congress, 1st Session.

Thus, more than 800 programs may be dispensing methadone in the treatment of heroin addicts.

According to Dr. Jerome Jaffe, Director of the Special Action Office on Drug Abuse Prevention, the treatment of 80,000 individuals with an average dose of 80 mg per day involves the dispensing of about two and a half tons of methadone each year. He explained that if even a small fraction is diverted, the hazard is considerable. For example, if only five percent of the patients gave away or sold their medication, there would be enough methadone diverted to create 6,000 new methadone addicts annually.

Illicit sales lead to the addiction of others. Polydrug abusers and experimenters are among the regular purchasers of illegal methadone. Many of these new addicts are younger and less experienced with drug abuse than the seasoned heroin addict. Some doctors express concern that, unless we rigidly control the distribution of methadone, we may be creating a new generation of addicts: methadone addicts. In relative terms, the extent of methadone abuse does not presently rival heroin abuse, but the trend is alarming.

What Is Methadone?

Methadone is a synthetic narcotic that is being used as a

supportive device in the treatment of heroin addicts.[70] It relieves the physical craving for heroin, has a longer duration of action in the body than heroin, and thereby enables the addict to work and lead a relatively normal life without engaging in criminal activities to support a heroin habit.

Since methadone is itself physically addicting, it is administered under strict Government regulations. Methadone programs dispense the drug as an oral medication, usually in liquid form. Those admitted to methadone treatment are usually over 18 years of age, with a long history of addiction. Once the addict succeeds in the rehabilitative process, many program directors feel he should be provided opportunities to withdraw from methadone treatment. Research is under way to develop longer-acting methadone, and to measure the implications of long-term use.

Most deaths from overdoses of methadone occur when individuals take it who are not already tolerant to its effects.

Physiological Effects

Constipation appears to be the chief medical problem associated with methadone maintenance. No serious signs of drug toxicity or

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[70]Except where otherwise noted, this section summarizes the treatment in The Most Frequently Asked Questions About Drug Abuse, Executive Office of the President, Special Action Office for Drug Abuse Prevention.

impairment of neuromuscular or cognitive functioning have been reported during the controlled administration of methadone. Methadone has not been found to adversely affect menstrual function or pregnancy. "Withdrawal symptoms" in infants born to patients participating in methadone maintenance programs have been reported to be of minor consequence, and have not required intensive therapy.[71]

The decision to include methadone under the narcotic laws was based upon intensive research with findings such as these by Dr. Harris Isbell and others:

> It is the unanimous opinion of all those who have been concerned with the evaluation of the addiction liability that methadone, like morphine, is dangerous with respect to habituation. Since persons with known narcotic experience get a satisfactory subjective reaction from the drug, since the drug suppresses completely the morphine abstinence syndrome, since it can be satisfactorily substituted for morphine in cases of known morphine addiction, and since it produces, in our opinion, a real, however mild, withdrawal picture, methadone must be classified as an addicting drug.
>
> We believe that unless the manufacture and use of methadone are controlled, addiction to it will become a serious public health problem.
>
> In sufficient dosages methadone was shown to produce intense euphoria in former morphine addicts which was manifested by increased talkativeness, boasting, requests for more of the drug; and with larger doses, marked sedation. The effects of methadone on psychological tests

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[71] Except where otherwise noted, this section summarizes the treatment in The National Clearinghouse for Drug Abuse Information Report Series 12, No. 1, January 1972.

> were similar to those of morphine. The euphoria produced by methadone came on more slowly than the euphoria produced by morphine, but persisted much longer. Intravenous injections of methadone produced striking euphoria, which experienced addicts described as similar to that following intravenous injections of heroin and dilaudid. After intravenous injections of methadone the addicts would writhe in joy and say: "Oh boy, that's a good shot. What is the name of that dope? Can you get it outside? Will it be put under the law? If God made anything better than that, He kept it for Himself." In blind experiments, experienced addicts could not distinguish the subjective effects of methadone from those of heroin, morphine, or dilaudid.
>
> The behavior of men addicted to methadone was similar to the behavior seen during morphine addiction. The patients ceased all productive activity, neglected their persons and quarters, and spent most of their time in bed in a semi-somnolent state which they regarded as very pleasurable. During addiction to methadone, the patients continually requested increases in dosage.[72]

There can be no question that methadone abuse displays all the properties of morphine and heroin. As Dr. Isbell and other respected scientists have concluded, the heroin addict finds in this synthetic drug the same attractions that he discovered in heroin.

Dr. Milton H. Joffe, of the National Institute of Drug Abuse, has pointed out some interesting facts about users of methadone. The more recently a user has started on methadone, the more unreliable are any statements that he might make. This has been found to be

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[72]Samuel M. Levine, Narcotics and Drug Abuse (Cincinnati: The W. H. Anderson Company, 1973), pp. 318-319.

particularly true with regard to statements concerning (1) personal drug history, and (2) arrest records. Fifty percent of patients under methadone treatment "drop out" of the program within the first six months, and revert to the use of heroin; however, if a patient stays with the treatment program for at least six months, he will probably not revert to heroin use. Additionally, a person is not likely to start on methadone if he is not a former heroin addict. With regard to job performance, methadone users are capable of performing, but tend to be extremely indifferent.

Legal Aspects

Methadone maintenance programs are subject to controls jointly exercised by the Drug Enforcement Administration (DEA) of the Department of Justice, and the Food and Drug Administration (FDA).[73] Methadone treatment for narcotic dependence is considered to be under experimental evaluation for safety and effectiveness. Therefore, an Investigational New Drug (IND) permit must be obtained by any physician seeking to establish a methadone program, the operation of which must adhere to the regulations of the Federal Food, Drug, and Cosmetic Act relating to the investigational use of drugs, and to special regulations concerning methadone itself.

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[73]Except where otherwise noted, this section summarizes the treatment in The National Clearinghouse for Drug Abuse Information Report Series 12, No. 1, January 1972.

Careful supervision and dispensing techniques in methadone treatment programs have appeared to be effective. However, with ever-expanding programs and the desire to allow responsible patients "take-home doses," the problem of illicit methadone use has increased. Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, illegal possession of methadone could result in a sentence to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both. Conviction of illicit manufacture or sale of methadone could result in a sentence to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. Subsequent convictions would result in increased penalties.

In summary, the use of methadone in the treatment of narcotics addicts has prompted considerable interest, discussion, and controversy. The controversy centers primarily around scientific and moral questions. However, the effectiveness of methadone treatment programs as compared to other treatment techniques will only be accurately assessed by strictly controlled research studies. The moral questions surrounding narcotics addiction and methadone maintenance cannot be resolved by scientific means, but rather by intelligent consideration of the psychological and sociological problems involved.

AEC Position on Marijuana and Methadone

In 10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or Defense Information," AEC Manual Appendix 2301, Annex A, Section 10.11 relating to derogatory information was amended May 4, 1967, to clarify and expand personnel security criteria concerning the use of narcotic and hallucinogenic drugs. This amendment is based on AEC Staff Paper 377/24 dated March 31, 1967.

Under the amended Criteria which represent the principal ground rules for denial or revocation of access authorization, the Personnel Clearance Policy of the Commission specifically includes for consideration and evaluation the use of hallucinogenic drugs and furthermore, differentiates between the habitual use and the single or occasional use of narcotic or hallucinogenic drugs.

Under Section 10.11, Category "A," paragraph (a) (9) was amended to read as follows:

> Been, or is, a user of narcotic or hallucinogenic drugs habitually, without evidence of rehabilitation.

This paragraph emphasizes the "habitual" factor and the individual is presumed to be a security risk. The derogatory information, if found to be true, establishes sufficient grounds to deny or revoke clearance.

Any case falling within this paragraph is normally referred

to analysis and review for possible consideration by a Personnel Security Board.

Under Section 10.11, Category "B," paragraph (b) (12) was added to read as follows:

> Has used a narcotic or hallucinogenic drug, except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine.

This paragraph permits other factors to be considered before deciding whether the individual is a security risk. These factors include the extent to which the drug was used, when and under what circumstances it was used, and the individual's attitude and conviction regarding the future use of the drug.

Any case falling within this paragraph is normally referred to the personnel security screener for analysis and review for possible additional investigation and informal interview of the individual. If the substantially derogatory information is not satisfactorily resolved by these procedures, the case is then referred to a Personnel Security Board.

In conclusion, the current AEC security concern toward individuals who use or in the past have used marijuana or other hallucinogenic drugs is the belief that the individual may be subject to influence or pressure, and possible coercion, which may cause him to act contrary to the best interests of the national security. According to AEC officials, the issue of those presently and "habitually"

using marijuana is further complicated by the lack of data available concerning the long-range effects on behavior patterns of those who still habitually use the drug.[74] This is probably the one factor on which the Commission bases clearance denials regardless of changes in the courts toward legalization of marijuana use. As stated in a staff paper to the General Manager of the U.S. Atomic Energy Commission regarding the use of hallucinogenic drugs in the Personnel Security Criteria, the object of the amended criteria is "neither the imposition of a criminal penalty nor discouragement of the use by the general public of any particular drug, but merely to identify, among other factors, some courses of conduct which may be the subject of further inquiry as leading to possible loss of self control by a person having access to classified information."[75]

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[74]More scientific evidence is becoming available now that accepted procedures for the quantitative analysis of marijuana have been established and carefully standardized strains of marijuana have become available for research purposes. See Committee on the Judiciary United States Senate, Ninety-third Congress, Second Session, May 9, 16, 17, 20, 21, and June 13, 1974, Marijuana-Hashish Epidemic and Its Impact on United States Security, Hearings Before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws (Washington: U.S. Government Printing Office, 1975); see National Institute on Drug Abuse, Marijuana and Health: Fourth Annual Report to the U.S. Congress from the Secretary of Health, Education, and Welfare (Washington: U.S. Government Printing Office, 1974).

[75]AEC Staff Paper 377/24, March 31, 1967.

CHAPTER 5

AEC POLICY IN HIRING HOMOSEXUALS

Introduction

The writer has used the same criteria as in Chapter 4 in choosing the issue of homosexuality for discussion with regard to AEC and AEC contractor applicants for security access authorizations ("clearances"). Clearance cases involving male homosexual applicants occur more frequently than those involving female homosexual applicants. There are very few personnel security cases involving transvestite behavior.

AEC Criteria and Its Implementation with Regard to Homosexual Activity

As in all cases involving substantially derogatory information, the homosexuality issue also is covered in AECMC 2301, Appendix 2301--"Criteria and Procedures for Determining Eligibility for Access to Restricted Data or Defense Information," Section 10.11. Homosexuality personnel security case determinations are governed by category "B" (9) derogatory information in the criteria, where the statement occurs that the individual or his spouse "is a homosexual or other sexual pervert, or has engaged in homosexual or other sexually perverted conduct without adequate evidence of rehabilitation." The

AEC deals with these cases on a case-by-case basis in accordance with the criteria, the Atomic Energy Act of 1954 (as amended), and recent court decisions.

The AEC official evaluating a case where alleged homosexual activity has occurred interviews the applicant concerning the extent of his activities, the period in which such activities occurred, the length of time which has elapsed since the last act was committed, and the present attitudes and convictions of the applicant, in making a clearance determination. If there is still any doubt in the AEC official's mind concerning the applicant's current involvement in homosexual activities, the applicant is referred to an AEC consultant psychiatrist to further ascertain his current or possible future involvement in homosexual activities. If the case is still not satisfactorily resolved by these procedures, the case is then referred to a Personnel Security Board.

It is interesting to note that in many cases involving alleged homosexual activity, the clearance request is withdrawn (at the request of the applicant) before the final determination is reached--either after the interview or before a Personnel Security Board takes action.

In some cases involving alleged homosexual activity by employees already in jobs, the case is generally reopened for reinvestigation and the new investigative reports are evaluated in light of his current activities. In order to clarify the new data from the investigative

reports the employee is interviewed. If it appears that the information that the individual has access to may be jeopardized by his having access during this procedure, then access is temporarily withdrawn until the case is resolved. But in the interim--before a final decision is reached--the employee sometimes terminates his employment and the case is closed. In the writer's opinion, to the AEC official making the clearance determination, this action by the applicant not only constitutes an admission of guilt, but also indirectly demonstrates his inability to cope with the "pressure" of continuing his clearance action. Moreover, failure of the applicant to defend his behavior as a homosexual and pursue the clearance matter further is seen by the AEC official as evidence of the applicant's own self-doubt and lack of confidence in his sexual preference. In addition, the evidence points to the AEC official seeing this as a weakness in character and/or emotional instability on the part of the applicant, who if cleared, may have acted ultimately in a manner "contrary to the best interests of the national security."[76]

In attempting to illustrate actual AEC practice with regard to personnel security cases, the writer met with an AEC official in his

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[76]Except where otherwise noted, this section summarizes the present Standard Operating Procedures of AEC officials in dealing with Homosexuality Personnel Security Cases.

Germantown, Maryland office. The official declined to comment on any recent AEC decisions or general policy with regard to homosexuality cases, but hastened to emphasize that the homosexuality issue is dealt with on a case-by-case basis, indicating close scrutinization of the facts of each case taken individually.

Therefore, the writer endeavored to find examples of court decisions with regard to homosexuals in other Federal agencies, and offers the following summaries as examples which seem to parallel AEC-type cases:

> Dew, an FAA air traffic controller, and an Air Force Veteran, was removed from his position by FAA in 1960 under a statute and implementing regulation authorizing his removal only on grounds "which will promote the efficiency of the service."
>
> The grounds assigned were "criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct," in that he had admitted committing at least four unnatural sex acts with males in 1950, when he was 18 or 19 years of age, and being paid for some of the acts. He also had admitted smoking marijuana cigarettes on at least five occasions in 1951 and 1952 when he was in the Air Force. A psychiatrist testifying for Dew following his removal stated that Dew then was mentally and emotionally functioning within normal range and had been for several years, and that he was not believed to have a homosexual personality disorder.
>
> The Court, in affirming his removal, stated it could not regard Dew's removal as arbitrary and capricious, and that it "cannot ignore the nature of applicant's (Dew's) duties," "which are significantly related to public safety, and require 'skill, alertness, and responsibility.'"[77]

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[77] Dew v. Halaby, 317 F 2d 582 (Court of Appeals, D.C., 1968) petition for cert. dismissed, 379, US 951, reportedly after FAA reinstated Dew.

CSC discharged "Anonymous" appellant, a U.S. Post Office employee, capacity unspecified, for homosexual acts, nature of which was also unspecified.

In a brief opinion affirming the CSC decision, the Court stated that "Counsel for appellant . . . argue . . . that homosexual acts constitute private acts upon the part of such employees, that they do not affect the efficiency of the service and should not be the basis of discharge. That contention is not accepted by this Court."[78]

* * *

Adams, an electronics technician employed by National Scientific Laboratories under a DOD secret clearance, was put in for Top Secret access in 1962.

A personnel clearance hearing ensued, based on Adams' reported homosexual acts, and at its conclusion in 1964, the DOD board found that Adams had engaged in homosexual acts with two fellow employees perhaps around 1957, that he had solicited a third person to engage in homosexual acts in 1962, and that he had had a homosexual act with a fourth person in 1963. The Board thereupon suspended Adam's secret clearance and denied his application for TS.

Adams sued, asserting that the findings denied him due process, and that no finding was made that the denial of clearance was "required in the national interest."

The District Court dismissed the case.

The Court of Appeals quoted approvingly the DOD Board's findings indicating that a homosexual may be subject to "factors of emotional instability and possible subjection to sinister pressures," that there was reason to believe that Adams "may be subjected to coercion, influence, or pressure which may be likely to cause (him) to act contrary to the national interest" and that Adams was "characterized by 'such poor judgment and instability' as to suggest the vulnerability to disclosure of classified information in his possession."

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[78] Anonymous v. Macy, 398 F 2d 317 (Court of Appeals, 5th Circuit, 1968).

> The Court of Appeals held the E.O. 10865 standard that classified access need be granted only on a finding that it is clearly consistent with the national interest, that to do so is compatible with due process, and the Government need not predicate a denial on demonstration of a clear and present danger that access will be misused. Therefore, the Government is not required to grant a security clearance unless it is able to prove definitely that an applicant would use it improperly.
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> The Court of Appeals affirmed the dismissal of Adams' complaint.[79]

* * *

A recent U.S. Court of Appeals decision on October 9, 1973 reaffirmed a District Court's finding where a homosexual was denied a security clearance. However, a significant recent shift in the attitude of the courts is evident from the two decisions above; that is, the mere status of being a homosexual may not justify denial of a security clearance as in the Dew case, but rather, the additional element of fear of disclosure did justify denial of the higher security clearance.[80]

Another recent decision on March 12, 1974, upheld an administrative determination of the U.S. Civil Service Commission, where an admittedly homosexual federal employee was discharged under a rule barring immoral conduct. The Court in this case held that the

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[79] Adams v. Laird, 420 F 2d 230 (Court of Appeals for D.C. Circuit, 1969), Cert. denied 397 US 1039 (1970).

[80] McKeand v. Laird, 6 EPD, ¶8896 (1973).

"rule barring immoral conduct was not arbitrary, capricious, or an abuse of discretion and was not to be overturned on judicial review. The administrative regulation barring immoral behavior by federal employees was not improperly vague and it gave adequate notice that homosexuality was prohibited conduct falling within the regulation's coverage."[81]

Current AEC Position on Homosexuality

In conclusion, the AEC's main security concern in personnel security cases where homosexuality is the issue, is the applicant's current pattern of sexual behavior. A past history of homosexual activity or an isolated homosexual act is not seen as important as the possibility of present or future "habitual" homosexual activity on the part of the AEC applicant.

Finally, the crux of the homosexuality issue as it relates to personnel security clearances is whether the individual may be subject to influence or pressure, and possible coercion (as a result of this activity), which may cause him to act contrary to the best interests of the national security.

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[81] Williams v. Hampton, 7 EPD ¶9226 (1974).

CHAPTER 6

USE OF POLYGRAPHS IN THE AEC

Introduction

A paper on the administrative history of key personnel security issues in the AEC would not be complete without a discussion of the use and later the discontinuance of polygraph examinations in the AEC. Simply because the polygraph played a role in the development of the AEC's personnel security program, it merits discussion here. As background information for discussion of the AEC's handling of this issue, a few facts regarding the capabilities and limitations of the instrument will be summarized.

The Instrument

The polygraph is essentially a pneumatically operated mechanical recorder; in most models it measures three things: change in the blood pressure, respiration, and the amount of sweat the individual is producing. The physiological changes are recorded on a graph.

The Reid Polygraph, as an example, is attached in the following manner to the person being tested: a pneumograph tube, with the aid of a beaded chain, is fastened onto the subject's chest or abdomen; a blood pressure cuff, of the type used by physicians, is fastened

around one arm; and a set of electrodes is attached to the palmar and dorsal surfaces of the hand on the other arm.[82]

The changes recorded on the graph are then interpreted by a trained expert who, armed with background knowledge of the case, makes a judgment concerning whether the individual has lied.

The polygraph, or "lie detector," has its greatest value as a scientific aid when a confession is induced by showing the chart record to the suspect and discussing with him the meaning of the irregularities in the blood pressure, pulse, respiration, and electrodermal measurements made during the test.[83]

However, according to Professor Fred Inbau who wrote a book on lie detection with John E. Reid, a leading polygraphist, in order for the polygraph to be effective in exposing deception the person being examined "has got to have some fear of having his lie detected by this technique,"[84] (by having irregularities show up).

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[82]Fred E. Inbau and John E. Reid, Lie Detection and Criminal Interrogation (Baltimore: The Williams and Wilkins Company, 1953) pp. 5-6.

[83]James W. Osterburg, The Crime Laboratory, Case Studies of Scientific Criminal Investigation (Bloomington: Indiana University Press, 1968), p. 5.

[84]"Lie Detector's Use by Business: Is it Reliable? Is it Right?" Washington Post, July 21, 1974, p. 2.

In addition, "the instrument itself plays rather a minor role in the conduct of a lie-detection test," according to Professor Inbau, because the technique is no better than the man who is making the diagnosis.[85]

Therefore, it is important that the results of the test be properly evaluated. The "lie detector" itself does not decide whether a suspect is innocent or guilty. It simply is an aid to an interrogator in determining whether the person is telling the truth. Therefore, if the test indicates that the suspect is lying, or if the suspect confesses after the test, the work of the investigator is far from completed. As the case now stands, the investigator now possesses a number of leads. Testimony of witnesses and other evidence must be gathered to prove the facts establishing the elements of the offense. The "lie detector" has not eliminated any of the essential work of the investigation, but it has provided useful leads, and saved a great deal of investigative time. It may even have induced the suspect to confess.[86]

Validity of the Polygraph

Because of the role that the subjective opinion of the examiner

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[85]Ibid.

[86]Harry Soderman et al, Modern Criminal Investigation (New York: Funk and Wagnalls Company, Inc., 1962), p. 38.

plays in the outcome of the test, questions have arisen over its validity, which is part of the reason the AEC discontinued using it.

Most practicing polygraphists today are former law enforcement officers, armed service personnel or government employees. Many received their training from the army training school at Ft. Gordon, Georgia. Others are graduates of one of the eight schools recognized by the American Polygraph Association (APA), where the curricula involve a six-month internship with courses in physiology, psychology, and interpretation.

Because of the large degree of interpretation required on the part of the examiner, the AFL-CIO today contends that this training period is too short. In addition, the American Civil Liberties Union (ACLU) and the labor unions currently contend that polygraph devices violate the First, Fourth, Fifth, Sixth, and Ninth Amendments of the Constitution, which taken together guarantee the right of privacy.[87]

History of the Polygraph in the AEC[88]

In 1945, Manhattan Engineer District (the forerunner of the AEC)

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[87]"Lie Detector's Use by Business: Is it Reliable? Is it Right?" op. cit., p. 2.

[88]Except where otherwise noted, the remainder of this chapter is excerpted from the treatment in a letter of June 26, 1953, from the Atomic Energy Commission to the Joint Committee on Atomic Energy explaining the AEC's decision to end use of polygraphs. This information was a response by AEC General Manager A.R. Luedecke sometime in 1964 to the Hon. John E. Moss' March 25, 1964 request for

officials at Oak Ridge needed to establish some type of material diversion control measures in their final product plant at Oak Ridge, without simultaneously undermining employee morale. The only device which seemed to fit this criterion was the polygraph, although other physical security measures had been considered and discarded because of inherent weaknesses such as the the use of beta meters, fluroscopes, and physical examination of employees.

Manhattan Engineer District officials then convinced the contractor operating the final product (Y-12) area at Oak Ridge, who initially opposed the polygraph, that "lie detector" examinations would be conducted to insure the security of products and information, and not as a means of turning up irrelevant derogatory information.

On January 6, 1946, the Manhattan Engineer District entered into a contract for the use of the lie detector, on a trial basis, with the late Leonarde Keeler, the foremost expert of his time in "lie detector" technique. The provisions of the contract included the determination "insofar as possible," of "the loyalty, integrity, reliability, mental stability, and suitability for employment of certain

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this information. Moss was then Chairman of the Foreign Operations and Government Information Subcommittee of the Committee on Government Operations, House of Representatives. This information was taken from Hearings Before the House Committee on Government Operations, April 7, 8, 9, 1964, 88th Congress, Second Session, Use of Polygraphs as Lie Detectors by the Federal Government, Part I (Washington: U.S. Government Printing Office), pp. 166-170.

individuals at the Clinton Engineer Works, Oak Ridge, Tennessee." This would be accomplished by using the polygraph to record physical evidence of emotional stress of all employees in the final product plant.

The results of 690 of these tests conducted during February 1946, under Dr. Keeler's personal supervision are listed below:

Information Obtained	Number of Persons
No derogatory information developed	498
Admitted having stolen product material	9
Knowing of others having taken product material	7
Admissions of responsibility for unreported spills	11
Having knowledge of other unreported spills	8
Admissions of having stolen tools, supplies, etc.	75
Having knowledge of others who have stolen tools, etc.	14
Admissions of having used "aliases"	22
Thought they had given outsiders valuable information	5
Polygrams indicating emotional instability	36
Persons objecting to test	5
Total	690

Of the five people objecting to the test, four feared that they would be questioned about their personal lives. When the purposes and techniques of the examinations were explained, the objections were withdrawn. The fifth person objected because of personal beliefs.

The Manhattan Engineer District analyzed the results of Dr. Keeler's tests and decided to continue using the lie detector as part of its security program for the Y-12 area at Oak Ridge. However, the question of the polygraph's continued and perhaps

extended use again came under discussion shortly thereafter, when early in 1947, the Atomic Energy Commission assumed the administration of the atomic energy program. The Commission decided to continue using the polygraph for selected groups of employees at Oak Ridge until May 30, 1953, when the contract with the polygraph operator was terminated.

The Commission continued to study the use of the polygraph at Oak Ridge to determine the real effectiveness of its use there, and whether to extend its use to other operations of the Atomic Energy Commission. Additionally, the AEC made informal surveys of polygraph use by other agencies to determine whether or not the polygraph programs of other agencies could be adapted to the AEC security program.

Finally, the Commission invited a group of recognized experts in the field of detection of deception to furnish the Commission with an appraisal of the polygraph with respect to its effectiveness in (1) determination of character, loyalty, and type of associations, (2) detection of breaches of physical security, such as pilferage, (3) detection of indiscreet disclosure of classified information, and (4) identification of undetected defectors. In addition, the experts were asked to consider and to furnish an appraisal of (a) experiments which could be devised to give objective answers with reference to the potential value of the "lie detector" in accomplishing (1) through (4) above, (b) the public reaction to and acceptance of the lie detector, and (c) the proper qualifications of a lie detector operator.

Those invited to participate as members of this panel, because of special competence and experience, were: Fred E. Inbau, Professor of Law, Northwestern University; George Ellson, Professor of Psychology, University of Indiana; LeMoyne Snyder, M.D., Lansing, Michigan; Dr. Eugene M. Landis, Professor of Physiology, Harvard Medical School; and Dr. Douglas M. Kelly, Professor of Criminology, University of California. The panel was briefed on the use of the lie detector at Oak Ridge by Commission representatives who also took part in the discussion.

The Panel concluded that the polygraph technique had its maximal value in the detection of breaches of physical security such as pilferage and would serve as an effective deterrent to those who might be tempted to engage in such activities. It was also concluded that its effectiveness in detection of indiscreet disclosures of classified information was less certain but that it might be a valuable aid in preventing disclosure of information and might also identify a defector provided that (1) the technique is employed by competent trained operators, (2) questions bearing on loyalty and associations are carefully particularized to minimize the risk that the subject of the examination might become concerned about irrelevant or inconsequential collateral situations, (3) adequate time is allowed not only for the actual examination but also for preliminary interviews, (4) control testing is generally employed, and (5) no attempt is made

to consider the review of the polygraph test records as a substitute for competency on the part of the person conducting the examination. It was also concluded that generally the polygraph technique would give accurate results in approximately 75 percent of the cases and that inroads could be made on the remaining 25 percent, depending upon the ingenuity and experience of the polygraph operator; that the probability of error in the use of the polygraph technique would be proportionate to the skill, experience, and training of the operator and the physical and mental conditioning of the subject of examination.

With respect to the detection of a subversive or defector it was concluded that the polygraph is not infallible and that positive reactions can be evaded not only by a subversive who has been trained to "beat the machine" but by a percentage of people who will lie about the most unimportant things and who cannot be detected.

The records maintained by the polygraph operator at Oak Ridge were carefully studied during 1951 and were found to be inadequate for proper evaluation of the effectiveness of the polygraph. Subsequently, a system of reporting was installed and keyed to an IBM operation. A report based on this system was considered by the Commission for the period April 1, 1952, through September 30, 1952, covering 6,058 polygraph examinations conducted at Oak Ridge during that period. This report reflected that in 6,058 examinations there were 128 cases in which reactions had been noted, and an additional

80 cases in which the polygraph charts were evaluated as uninterpretable. Of the 128 cases in which the polygraph examinations reflected significant reactions, the personnel security files of each of the individuals were carefully reviewed resulting in the granting of security clearances or the reaffirmation of security clearances previously granted in 102 cases. In the remaining 26 cases, of which 17 were applicants who had not been processed for investigation, admissions made during polygraph examinations reflected significant falsification of their employment application papers, which undoubtedly would have been uncovered during an investigation. In these 17 cases the contractor withdrew his request for security clearance. In the remaining nine cases, admissions of minor falsifications and minor infractions of security regulations were made resulting in the individuals being reprimanded by their employers. Of the 80 cases in which the polygraph charts were evaluated as uninterpretable, all were granted security clearances or the clearances previously granted were continued after careful review of the personnel security files.

Of the 5,850 polygraph examinations which resulted in no significant reactions, 5,662 were checked against the investigation reports in the personnel security files of these individuals. This check reflected that in three cases the investigation had developed substantially derogatory information involving significant falsification of personnel security questionnaires which had not been detected in the polygraph examinations.

In an "open letter" to the Commission the polygraph operator at Oak Ridge made allegations purporting to show that sensational results had been achieved through use of the polygraph at Oak Ridge. It was stated that 600 out of 6,000 persons examined at Oak Ridge had falsified or withheld information from their personnel security questionnaires, that some of the information withheld concerned extensive criminal backgrounds, pertinent medical histories, and past or present membership in subversive organizations. The allegation was also made that "loose talk" violations at Oak Ridge had been reduced by 70 percent through use of the polygraph, and finally it was implied that spies had not been able to penetrate Oak Ridge whereas they had penetrated other AEC installations where the polygraph had not been used.

On the basis of all the information submitted by Oak Ridge, it was shown that these allegations could not be supported by statistical reports. As a matter of fact, the record reflects that of 6,058 persons examined from April to October 1, 1952, only 17, or less than three-tenths of one percent, were found to have falsified their personnel documents to an extent warranting their rejection for employment, and in no case was information developed concerning an individual's past or present membership in subversive organizations.

With respect to the allegation that "loose talk" violations had been reduced by 70 percent through use of the polygraph, there were

no data available to support this claim. The Commission felt that any reduction in loose talk could not be attributed solely to the use of the polygraph but rather to the AEC's complete security program, including security education.

The allegation that "spies" had not been able to penetrate Oak Ridge because of the use of the polygraph but had penetrated other AEC installations where it had not been used was, from the Commission's point of view, without any foundation in fact.

In endeavoring to arrive at an AEC policy for the use of the "lie detector" in the AEC security program, consideration was given to the advisability of extending the "lie detector" program as operated at Oak Ridge for agency-wide usage; the adaptation of other Federal agency polygraph programs to the AEC security program; or the adoption of a limited "lie detector" program for application to especially sensitive areas and activities at all AEC installations.

Other Federal agency polygraph programs in effect at that time were rejected for adaptation to the AEC security program for the following reasons:

> (a) the personnel subjected to lie detector examinations at other Federal agencies were either applicants for employment or employees of the Federal Government who were or would be engaged almost exclusively in intelligence and security activities, whereas approximately 92 percent of the persons engaged in the atomic energy program were employees of private firms or corporations and not engaged in such activities. Since the personnel engaged in the AEC program represented a much less homogeneous group than the

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personnel employed by other Federal agencies it was obvious that the AEC would have to face problems of much greater magnitude in matters relating to employee morale, personnel recruitment, and public and labor relations. Moreover, application of such programs to the AEC security programs on a broad basis would have resulted in substantial costs. It was doubtful that such costs would be warranted from the security standpoint.

(b) a limited lie detector program directed at only a small percentage of the participants in the atomic energy program who were engaged in particularly sensitive areas or activities would similarly entail large expense for the purchase of equipment, selection, and training of operators. Such a program did not appear to be sufficiently effective from a security viewpoint to warrant the expenditure involved. If an attempt were made to infiltrate the atomic energy program, it was reasonable to conclude the subversives who might be introduced would not apply for positions in the sensitive areas and activities in which the lie detector would be used, but rather they would seek to infiltrate important but less sensitive fringes.

In weighing the advantages which might accrue to the AEC security program by the use of the polygraph technique on an agency-wide basis it was concluded from the experience gained at the Oak Ridge Operations Office that such a program could be expected to result in only an indeterminate marginal increase in security beyond that which was already afforded by established AEC procedures for personnel, physical, and document security. Against such an indeterminate marginal increase in security, consideration was given not only to the very substantial dollar costs of a polygraph program but also the intangible costs in employee morale, personnel recruitment, etc. It was concluded that the costs outweighed the benefits which might have accrued to the AEC security program at that time.

In discontinuing the polygraph program at Oak Ridge, the Commission did not entirely abandon the use of the "lie detector," but authorized its use in specific cases of security interest on a voluntary basis when authorized by the General Manager. The Commission also authorized the Division of Security to continue to collect pertinent data concerning polygraph use for possible future consideration of its applicability in the AEC security program.

CHAPTER 7

CONCLUSION

Introduction

In this chapter, the writer will summarize the key points raised in preceding chapters and meet the contract with the reader proposed in Chapter 1.

Summary of Preceding Chapters

In Chapter 1, the writer presented selected aspects of an administrative history of personnel security programs in the Atomic Energy Commission. The principal finding was the shift in emphasis in the implementation of these programs (e.g., from the hysteria over communism in the McCarthy era to the dilemmas posed by drugs and changing attitudes toward homosexuals in the late 1960's and early 1970's), and to suggest some guidelines for evaluating prospective civil servants for "sensitive" AEC positions in today's society.

In looking at the origins of personnel security programs in the Federal Government in Chapter 2, the writer discussed the wide disparity in standards for judging employee loyalty and the overall confusion that existed before the adoption of Executive Order 9835,

the first comprehensive loyalty program for all federal employees. Executive Order 10450, which followed Executive Order 9835, attempted to refine the criteria set forth in E.O. 9835. The new order established a screening program which was not limited to the concept of loyalty, but included with it other security and suitability considerations. Section 10 of the Atomic Energy Act of 1946 was the basis for the AEC's security program. When the Atomic Energy Act of 1946 was enacted, it incorporated the provisions of Executive Order 10450 which included cases of a security and suitability nature along with loyalty considerations in the screening process. The Oppenheimer case in the AEC is a prime example of the key issues involved in personnel security administration during the 1950's and was a case greatly influenced by the political climate of the time.

In Chapter 3 the writer explained the kinds of information which AEC security programs are designed to protect as defined in the Atomic Energy Act of 1954. The writer also explained the changes brought about by E.O. 11652, which not only revises definitions of classification categories, but also simplifies the processes of marking, downgrading, and declassifying classified information. This chapter also explains who may have access to Restricted Data and the requirements for obtaining a "clearance." Finally, Chapter 3 explains how AEC clearance procedures differ from those in most other federal government agencies.

In Chapters 4 and 5, the writer discussed two of the most controversial issues (drugs and homosexuality) involved in security clearance procedures today. What was not discussed, but is an all-important consideration is the question of why the Commission chose these issues as controversial when the subject of clearance determinations comes up. Certainly, the "pot" issue is a no more controversial issue today than was the use of alcohol in another era.

The reason why pot and "hard drug" users and homosexuals are considered security risks may be found in AEC Manual Appendix 2301, Annex 1, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information." These criteria are utilized by those in the AEC Security Program who make clearance determinations. And since all AEC positions and some AEC contractor positions are considered "sensitive," an applicant must pass the test of not having any of the derogatory information listed in this criteria as part of his past or present, or he must be able to rebut alleged derogatory information if it turns up during his full background investigation by the Civil Service Commission or the FBI.

The criteria have been amended several times and now add to the security risk criteria all habitual users of narcotic or hallucinogenic drugs (e.g. marijuana), except as prescribed by a licensed physician; homosexuals and other sexual "perverts" (Chapter 5); and

those who are financially irresponsible (e.g., those who have filed for bankruptcy or have trouble meeting their financial obligations). Anyone falling into these categories is allegedly subject to coercion and influence or pressure which could cause him to act contrary to the best interests of the national security. In short, the propensity to engage in any one of these activities by the applicant adds up to being a security risk, if blackmail or some other pressure could be brought to bear, resulting in the compromise of information affecting the security of the U.S. as a nation.

Thus, just as intellectual query into communist ideology was grounds for being a security risk in the past, the new security risks according to the AEC criteria are the pot smoker, the gay libbers, and the financially irresponsible. Even flagrant heterosexual indiscretion (especially among those in the political or scientific "in" group), today no longer holds the blackmail implications it once did.

It is interesting to note that the criteria seem very much in tune with current social taboos and mores; e.g., personnel security cases involving sexual indiscretions between heterosexuals, alcoholics, and inquiries into communist ideologies now have less priority than personnel security cases involving "dope," and homosexuality. One wonders whether the former behavior patterns are any <u>less</u> subject to coercion or "blackmail" pressure today than the latter. And yet, in reality, the "openness" with which the former behaviors are

accepted among "establishment" types today does seem to foster this shift in emphasis about what kind of behavior is, indeed, subject to blackmail.

The writer feels as a member of the "younger" generation, that in making a clearance determination a moderate pot user--especially one who freely admits having used it--is no more subject to pressure than a moderate consumer of alcoholic beverages. Recent correspondence between AEC field security personnel and their Washington Headquarters counterparts indicates a definite shift in this direction of thinking. However, the change in policy condoning pot experimentation (emphasizing those who have tried pot and given it up) is still only a possibility. There is still no advocacy of continual use of marijuana. However, in making clearance determinations, the question of where to draw the line for those who continue to use "pot" is still a controversial question.

Another question to consider with regard to pot smoking vs. consumption of alcohol is: when the pot smoker and the alcohol drinker get high, who is the more likely to compromise classified information? The writer does not believe that all of the statistics in the world could prove that more pot smokers give away classified information than do alcohol drinkers. The point the writer is trying to make here is that all of the "vices" constituting derogatory information should be considered equally as subject to coercion or

or pressure--and also, that the "pet" derogatory issues of the times should not necessarily affect what the policy makers in Washington change in the criteria.

The Future of the AEC Personnel Security Program

Since this paper was begun, there have been some significant changes in the AEC. The research for this paper covered the period through December 1974.

On January 19, 1975, by Executive Order 11834 dated January 15, 1975, the Atomic Energy Commission officially changed its name and its focus of activity.[89] The new Energy Research and Development Administration (ERDA) is now devoted to energy research--solar energy, nuclear energy, geothermal energy, et al.--in short, the focus has changed from weapons to peacetime research and use of atomic energy as a potential resource for running our mechanized society. The Nuclear Regulatory Commission (NRC), on the other hand, is responsible for the licensing and regulation of the nuclear industry under the provisions of the Atomic Energy Act. The NRC is fully empowered to see to it that reactors using nuclear materials

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[89]The Energy Reorganization Act of 1974 (Public Law 93-438, 88 Stat. 1233) nullified the existence of the Atomic Energy Commission and in its place established the Energy Research and Development Administration (ERDA), which also included the transfer of some employees from the Department of the Interior, the National Science Foundation, and the Environmental Protection Agency. The regulatory portion of the AEC and its employees became the Nuclear Regulatory Commission (NRC), a separate agency from ERDA.

will be properly and safely designed, constructed, and operated to guarantee against hazards to the public from leakage or accident. NRC will also exercise strengthened authority to assure that the public is fully safeguarded from hazards arising from the storage, handling, and transportation of nuclear materials being used in power reactors, hospitals, research laboratories, or for any other purpose. The creation of ERDA and NRC is the way the Federal Government will participate in the national effort to meet our future energy research and development needs.

One of ERDA's first actions was the issuance of ERDA IAD (Immediate Action Directive) 2301-1, which in effect, transferred the entire existing AEC security clearance program to ERDA.

Therefore, Section 145 of the Atomic Energy Act of 1954, as amended, still applies to all employees to be transferred to ERDA.[90]

How have these changes affected the administration of personnel security programs within the agency? Not very much.

In the past, all AEC positions were considered to be sensitive and a full field background investigation by the FBI was required for employment in the AEC. Thus, all employees who were transferred to ERDA from the AEC had a full background investigation by the FBI

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[90]Section 145 of the Atomic Energy Act provides the basis for security clearances required for employees of AEC and the types of investigations required for such clearances. Public Law 93-438 provides for the application of Section 145 to employees of ERDA.

as a prerequisite for employment and all were granted AEC clearances regardless of the degree of access to classified information or assignment in AEC. However, the majority of the employees who were transferred to ERDA from the Department of Interior, the National Science Foundation, and the Environmental Protection Agency have had no access to classified information and have no security clearance.

Since the provisions of the Atomic Energy Act still apply to ERDA employees, it is still necessary to continue the requirement that all ERDA employees be investigated and cleared prior to employment. However, the scope and extent of the investigation differs.

Since the majority of employees transferred to ERDA from Interior, NSF, and EPA require no access to Restricted Data or other classified information, they can be considered as not holding sensitive positions within the meaning of Section 145(f) of the Atomic Energy Act. Similarly, those positions transferring to ERDA from AEC which do not involve a need to handle classified information can also be considered nonsensitive positions within the meaning of Section 145. FBI full background investigations are now not necessary for those individuals in nonsensitive positions.

ERDA employees including consultants not occupying sensitive positions are considered as holding nonsensitive positions and a National Agency Check is sufficient. An "L" clearance which

authorizes access to National Security Information classified up to the Secret level is now granted on the basis of the NAC for these ERDA employees. The "L" clearance does not authorize access to any level of Restricted Data.

In addition to the above changes, there are two recent changes in California legislation which will be effective January 1, 1976 and could affect clearance cases.

The first has become known as "the law of consenting adults." The new bill removes criminal sanctions from adulterous cohabitation, and it removes specific criminal sanctions from sodomy and oral copulation except (1) when the sodomy or oral copulation is committed with a minor or by force, violence, duress, menace, or threat of great bodily harm; and (2) where the participants are confined in state prison or specified detention facilities. This bill makes sexual assault on an animal for specified purposes a misdemeanor.[91]

The second bill which could affect personnel clearance cases revises the penalty for unlawful simple possession of marijuana to make possession of not more than one avoirdupois ounce of marijuana, other than "concentrated cannabis," a misdemeanor punishable by a

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[91]California Assembly Bill 489, Chapter 71, Advance Legislative Service to Deering's California Codes Annotated, 1975, Pamphlet No. 2, Chapters 16-276 (San Francisco: Bancroft-Whitney Company), pp. 231-240.

fine of not more than $100. This bill also cites the legal sanctions for possession of more than one ounce of marijuana, and cites the penalties for giving away or offering to give away marijuana or unlawfully transporting or attempting to transport, not more than one avoirdupois ounce of marijuana (other than "concentrated cannabis") as a misdemeanor punishable by a fine of not more than $100. The new bill deletes the offenses of either being in a place where marijuana is being smoked and/or having any device or instrument in one's possession for smoking or injecting marijuana. It also deletes as a misdemeanor the offense of being under the influence of marijuana except when administered by a physician or other person licensed by the state.[92] For other sanctions covered by this bill, please refer to the recent Advance Legislative Service to Deering's California Codes Annotated, 1975, Pamphlet No. 2, Chapters 16-276, pp. 908-923.

The effect of these changes in the law has already been projected by ERDA officials as having a negligible effect on clearance cases. The general feeling of these officials is that since ERDA policy is generated in Washington, D.C., at the Federal level, any changes in the ERDA clearance criteria should occur at the Federal level and that states have no jurisdiction over Federal agencies. However, it remains to be seen whether ERDA personnel security policies will be unaffected

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[92] California Senate Bill 95, Chapter 248, Advance Legislative Service to Deering's California Codes Annotated, 1975, Pamphlet No. 2, Chapters 16-276 (San Francisco: Bancroft-Whitney Company), pp. 908-923.

by these changes of state laws decriminalizing or reducing sanctions for certain behaviors.

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