News of Science

Loyalty-Security Program

The Special Committee of the Association of the Bar of the City of New York recently issued its report under the title, *The Federal Loyalty-Security Program* [Dodd, Mead and Company, (New York, 1956), xxvi + 301 pp.]. By special permission of the Bar Association, we reprint the following excerpts from the summary of the report, which constitute the recommendations of the committee.

A. Coordination and Supervision

1. The Director of Personnel and Information Security

(1) The Office of Director of Personnel and Information Security should be established in the Executive Office of the President.

(2) The Director should be appointed by the President subject to confirmation by the Senate and serve at the pleasure of the President.

(3) It should be the primary responsibility of the Director to conduct a continuous review of and supervision over:

(*a*) The personnel security programs, in order to assure efficiency, uniformity and fairness of administration, consonant with the interests of national security.

(*b*) The classification of information, so that only such information shall be classified as the interests of national security actually require.

(4) In the performance of his responsibility the Director should make recommendations to the President which, when embodied in regulations prepared by the Director and approved by the President, would be binding upon the departments and agencies concerned.

B. Scope

2. Scope of Personnel Security

(1) Clearance under the personnel security programs should be required for all sensitive positions and for no others.

(2) The head of each department or agency should designate as sensitive only those positions within his department or agency the occupant of which would

(*a*) have access to material classified as secret or top secret in the interests of national security, or,

(*b*) have a policy-making function which bears a substantial relation to national security.

(3) The President, on recommendation of the Director, should specify criteria in accordance with which the head of each department or agency should classify positions.

3. Classification of Information

The Director should continuously review and, after consultation with the agencies involved, make recommendations to the President concerning the standards and criteria and methods to be used in the classification of information and in its declassification when secrecy is no longer important to the interests of national security. These recommendations, when approved by the President, would be binding upon the departments and agencies concerned.

C. Standards and Criteria

4. Standard for Personnel Security

(1) The personnel security standard for all sensitive positions should be stated as follows:

"The personnel security standard shall be whether or not in the interest of the United States the employment or retention in employment of the individual is advisable. In applying this standard a balanced judgment shall be reached after giving due weight to all the evidence, both derogatory and favorable, to the nature of the position, and to the value of the individual to the public service."

(2) There should be no re-examination of cases already determined because of the change in standard here recommended, whether clearance has previously been granted or denied.

5. The Employee's Associations

A person's associations with organizations or individuals may properly be considered in determining his security suitability. But a conclusion against his security suitability on the ground of such associations should not be reached without adequate basis for determining that he shares, is susceptible to, or is influenced by, the actions or views of such organizations or individuals.

6. The Attorney General's List

(1) The Attorney General's list of subversive organizations should be abolished, unless it can be and is modified and revised in the following respects:

(*a*) The list should not include any organization which has been defunct more than ten years. [Information as to such organizations, however, would be available under the procedures set forth in paragraph (2) of this recommendation.]

(*b*) The list should give information as to the period and the general nature of the subversive activity of each organization listed.

(*c*) The list should be kept up to date by periodical supplements eliminating organizations which have been defunct over ten years and adding new organizations found to be subversive since the last publication.

(*d*) The list should include only those organizations which have been given notice and an opportunity to be heard in conformity with the requirements of due process of law.

(*e*) The list should contain a statement that mere membership in any of the organizations listed is not in itself to be construed as establishing the subversive character of a member unless membership has been made illegal by statute.

(2) The Department of Justice should upon request make available to security personnel and boards relevant information in its files concerning all organizations, whether defunct or not, the character of which may be pertinent in a pending inquiry. Such information may be taken into consideration in the inquiry together with all other evidence presented.

D. Personnel

7. Security Personnel

Personnel engaged in security matters should be individuals whose qualities and standing will inspire confidence in the fair, wise and courageous administration of the programs. To this end the Director should establish training courses for security personnel. The training should include intensive and thorough instruction in

(*a*) the nature of Communism and the techniques of Communist espionage and infiltration in the United States and in other countries;

(*b*) the political history of the United States and of the world, especially in this century;

(*c*) constitutional and legal principles; and

(*d*) the relative reliability of various kinds of evidence.

E. Procedure

8. Central Screening Board

(1) A central screening board should be created in the Civil Service Commission. This board should have the responsibility, except as set forth in paragraph (3) below, of determining whether or not security charges should be filed against any person covered by a security program, whether a Federal or a private employee.

(2) The central screening board should act in panels of not less than three members. At least one member of each panel should be a lawyer, and at least one member should be a person whose only government employment is his work on the board.

(3) Subject to further action by the Director, the Atomic Energy Commission and the Department of Defense should continue their present methods of screening to determine whether or not security charges should be filed, unless they wish to utilize the services of the central screening board. The Director should determine whether any other department or agency may establish or maintain its own screening board.

9. Screening Procedure

(1) Screening boards should afford the employee an opportunity for an informal conference with the board or its representatives to answer adverse security information.

(2) When a screening board determines that charges should be filed, it should prepare a specific statement of charges. If a person charged contends that charges are not specific enough to enable him to prepare his defense, the board should, in the exercise of reasonable discretion within the limits of security requirements, determine what additional information shall be furnished him.

(3) Charges should include all adverse security information which is to be considered in making a security determination, except in extraordinary circumstances where security considerations clearly forbid.

(4) Every employee against whom a security question is raised should be entitled to have an attorney advise and aid him in preparing statements to be submitted to a screening board, and should be entitled to assistance of counsel during his appearance before the board, with such participation by counsel in the proceedings as the board deems proper.

10. Treatment of Charged Employees Pending Disposition of Charges

Pending the final disposition of charges against Federal employees or employees of private employers:

(1) The pay of suspended employees should continue.

(2) Employees under charges, if not retained in the positions held when charges are filed, should be transferred without loss of pay to nonsensitive positions instead of being suspended, whenever this is practicable and consistent with the interests of national security.

11. Hearing Boards

(1) Every charged employee, other than a probationary employee, should be entitled to a hearing before a hearing board of three members to be appointed by the head of the charging agency. One member but not more than one member of the hearing board should be an employee of the charging agency, at least one member should be a lawyer, and at least one member should come from outside the government service. In the alternative, a hearing board may be composed entirely of persons outside the government service but in such case also one member should be a lawyer.

(2) The Director should maintain a panel of qualified private citizens who are willing to serve on hearing boards, and appointment of the citizen members of such boards should be made from this panel.

(3) In the appointment of the members of hearing boards, consideration should be given to the value of continuity of service.

12. Hearing Procedure

(1) The charging agency should be entitled to have an attorney present at the hearing. He should have the duty and responsibility to see to it that all relevant facts known to him are brought out whether favorable or unfavorable. The attorney should not participate in the deliberations of the board or be present at them.

(2) It should also be proper for the charging agency to have other representatives, such as a security officer, at the hearing, but such representatives should not participate in the deliberations of the board or be present at them.

(3) Every charged employee should be entitled to have an attorney present at the hearing to represent him. The attorney should have the right to offer evidence and examine and cross-examine witnesses.

(4) Hearing boards should prepare written findings of fact and conclusions. These should be furnished to the charged employee for his use with only such deletions as are required in the interests of national security.

(5) The charged employee should be furnished a copy of the transcript of the hearing for his use in the proceedings.

(6) The security hearing should not be public.

13. Appearance of Witnesses and Confrontation

(1) Except as provided below, screening boards and hearing boards should have the power in their discretion to subpoena government witnesses and witnesses for employees and to permit the submission of evidence by depositions, interrogatories, affidavits, letters, and other written statements.

(2) When a subpoena is granted, reasonable allowance should be made for traveling expenses and a per diem fee.

(3) It should be the policy of the government to permit the employee to cross-examine adverse witnesses before a hearing board when the hearing board believes this important for the development of the facts, unless the disclosure of the identity of the witness or requiring him to submit to cross-examination would be injurious to national security.

(4) The identity of an informant who regularly provides or is employed to provide secret information should not be disclosed by requiring his appearance before a screening board or a hearing board or otherwise identifying him, whenever the head of the department or agency which obtained such information shall certify that the identification or presence of such an informant would be detrimental to the interests of national security. To the extent practicable and consistent with the interests of national security, certificates should be accompanied by data which would aid the board in evaluating the evidence given by the informant, including a statement of whether he obtained the information first hand or through hearsay.

(5) As to all other witnesses, including casual informants, and with due consideration of the national security and fairness to the employee

(*a*) the screening board should determine whether it desires a witness to appear before it for interview, and

(*b*) the hearing board should determine whether the witness should be produced for cross-examination, or whether because of special circumstances he should be interrogated by the board without the employee being present, or whether his evidence should be given to the board in other ways, such as by an affidavit or a signed statement. So far as consistent with the requirements of national security, a hearing board should make available to the employee the substance of all evidence it takes into consideration which was given by any witness whom the employee has not been permitted to cross-examine.

(6) In determining the probative effect of information given by informants who are not made available for cross-examination by the charged employee, under the exceptions contained in paragraphs (4) and (5) above, screening and hearing boards as well as appeal boards and agency heads should always take into account the lack of opportunity for cross-examination.

14. The Attorney for the Charged Employee and His Fees

(1) Every employee under investigation by a screening board or against whom charges are filed should be entitled to obtain an attorney of his own choosing to represent him.

(2) In the event an employee is cleared at the screening stage, he should be reimbursed in the amount of his reas-

onable attorney's fee, the amount to be fixed by the screening board. If the proceedings reach the stage of an agency hearing board and if the employee is later cleared, similar reimbursement should be authorized, the amount to be fixed by the hearing board.

(3) Employees of private employers contracting with the government should be entitled to reimbursement by the government for attorney's fees on the same basis as government employees.

(4) Bar associations are urged to make provision through lawyer reference plans or otherwise for adequate representation of employees in security proceedings.

15. Final Determination

The head of the charging agency should have the power to make the final security determination.

16. Successive Security Determinations

(1) It should be the policy of the government to prevent insofar as is practicable and consistent with national security the repetition of security proceedings on substantially the same facts as to the same person, whether in the same agency or in different agencies.

(2) In the absence of new evidence a security clearance should not be reopened.

(3) When there is new evidence a security clearance should be subject to reopening only with the concurrence of the screening board and the head of the agency concerned. If a new hearing is directed, all relevant evidence, whether or not presented in the earlier proceeding, may properly be considered in making the new security determination.

(4) The regulations to be promulgated by the Director should include provisions for reciprocal recognition of clearness wherever feasible, and such regulations, upon approval by the President, would be binding on the agencies affected.

17. Applicants for Positions and Probationary Employees

(1) So far as consistent with the interests of national security, an applicant for a position covered by the programs who is denied employent should, upon request, in accordance with regulations to be established, be furnished with a statement of all adverse security information concerning him, such statement to be as specific as security considerations permit, or a statement that there is no such adverse information.

(2) An applicant furnished with a statement of adverse security information should have the right to file an affidavit denying or explaining it. Such affidavit should be placed in the personnel file which contains the adverse security information and should be part of any report of an investigation of the applicant.

(3) A governmental agency should also afford an informal interview to an applicant for, or a probationary employee in, a sensitive position so that he may have an opportunity to explain adverse security information, in any case where the general counsel of the agency recommends that an interview be given because of the importance of the employment of the person to the agency.

F. Name

18. Name of the Program

The name of the personnel security programs as a whole should be:

"The Federal Personnel Security System."

The Committee believes that with the adoption of these recommendations the future personnel security system would be substantially free of the weaknesses and defects which have appeared in connection with the present programs. National security would be adequately protected and no reasonable citizen could feel that this was being achieved at the sacrifice of our basic principles of liberty and our sense of fairness.

Individuality in Chimpanzee Behavior

The high degree of anatomical variability among chimpanzees, even among those of the same species, is well known; and, as might be expected, physiological variability has also been recorded, even though investigations in this area have not been numerous. H. W. Nissen, on the basis of studies of 151 chimpanzees (all presumably of one species) at the Yerkes Laboratory in Orange Park, Fla., during a period of 25 years, concludes that the behavioral variability of these animals is even more striking than their anatomical and physiological variability [*Am. Anthrop.* **58**, 407 (June 1956)]. These observations are especially significant, since particular effort has been made to maintain uniform environmental conditions for some 60 animals born since 1939.

Excluding three obvious sources of individual variability,—namely, age, sex, and experience—Nissen considers only those instances of individuality that may have a genetic basis. Differences have been noted among adults in locomotor, postural, oral, and manipulative acts that have no apparent basis in differential experience—for example, extent to which bipedal locomotion is used, manner of quadrupedal gait, grooming, manner of eating, food preferences, manner of rocking or swaying, occurrence of thumbsucking. Furthermore, variability is also evident in more general behavior traits, such as intelligence, dexterity, skill, inventiveness, emotionality, drive, persistence, aggressiveness, and timidity—for example, thresholds of excitability, attitude of the mother toward her young, speed of learning, tool-using and instrumental problem-solving.

Nissen believes that the 57 chimpanzees now at Orange Park are as distinctive as an equal number of human beings drawn from any place on this planet. Although they do not differ in as many details of behavior—since the repertoire of human behavior is much larger—the range is sufficient to guarantee each chimpanzee its own individuality. It is well recognized that culture has a very great role in shaping human behavior and so producing variability therein. The Orange Park chimpanzees, however, show pronounced behavioral individuality, although they live in roughly the same environment. Nissen, however, emphasizes that this does not definitely prove that their behavioral variability was not environmentally determined, for it is possible that minute elements of early experience act cumulatively to produce wide variability in later life. But the same differences could well be produced by minute hereditary differences in endowment and propensities. Thus, on the basis of present knowledge, it appears likely that both environmental and genetic factors are involved in the production of individual variability in chimpanzee behavior.

Whatever future experiments along this line may reveal, it is obvious that Yerkes was entirely correct in calling the chimpanzee "a rugged individualist."
—W. L. S., Jr.

Patent Ruling

The received date printed at the end of an article in a publication can no longer be employed by the U.S. Patent Office to bar a patent to an inventor, according to a ruling by the Court of Customs and Patent Appeals. The court's holding reverses a long line of decisions of the board of appeals of the Patent Office.

The decision was handed down on 21 June, in the case of *In re Emil Schlittler et al.* Schlittler is vice president and director of research of CIBA Pharmaceutical Products Inc., assignee of the patent application involved in the decision. The legal issue involved in the case was of such widespread significance that three patent law associations—the American Patent Law Association, the Connecticut Patent Law Association, and the New York Patent Law Association—filed briefs *amicus curiae,* all of which urged reversal of the Patent Office's policy of reliance on the "received" date.

In its rejection of the Schlittler *et al.* application, the Patent Office relied on a single reference, which was an article in the *Journal of the American Chemical*