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Volume 61  
Issue 3 *Dickinson Law Review - Volume 61,*  
*1956-1957*

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3-1-1957

## Book Review

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### Recommended Citation

*Book Review*, 61 DICK. L. REV. 294 (1957).

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## BOOK REVIEW

REPORT OF THE SPECIAL COMMITTEE ON THE FEDERAL LOYALTY-SECURITY PROGRAM OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK. N. Y.: Dodd, Mead & Company, 1956. Pp. xxvi, 301. \$5.

Almost since the inception of the "cold war" against Russia, the United States has maintained a series of loyalty and security programs, designed to combat treason, espionage, sabotage and advocacy of the overthrow of the government, by means of programs for counter-espionage, detention of persons suspected of espionage or sabotage, publicity, loyalty oaths, restriction of immigration and emigration privileges, maintenance of physical security, tightening of civil service requirements, and close security supervision of personnel employed by the government or engaged in doing work under private contractors for the government. This book represents a careful study only of the last-named procedures—that is, of the size, achievements, costs and procedures employed by the government in conducting personnel investigations and hearings.

The personnel security program has affected almost 6,000,000 persons, including about 2,300,000 Federal employees, 80,000 employees of the Atomic Energy Commission or contractors working for the Commission, 800,000 seamen under the Port Security Program, and about 300 Americans working with international organizations.

It appears that, actually, more than 6,000,000 investigations have taken place, because many of these employees have been subjected to repeat investigations and hearings, either because of the discovery of new evidence after they had been given clearance, or because, after clearance by one agency, employees have taken new jobs requiring new clearance by a new agency, as well as because of the turnover of employees. Thus, in the period between 1939-1955, although there were only 2,300,000 Federal employees, actually, 4,750,000 were investigated, with reference to loyalty and security. Thus, the total number of investigations runs far over six million. The search for security risks, of course, has led to the investigation of the investigators, such as employees of the Central Intelligence Agency, and, presumably, those who investigate the investigators have, likewise, been the subjects of inquiry.

The beginning of the report reviews generally the nature and extent of the Communist threat. Actually, no thorough study of Communism and its

dangers was conducted, and the report merely summarizes prevalent thinking on the subject. The obvious need for defense against Communism is assumed, and study is then concentrated on the effectiveness of our security program, with proper emphasis upon the necessity for maintaining our traditions of liberty and fair play. Two chapters of particular interest—six and seven—are devoted to an appraisal of the cost and achievements of our security program, thus far. No overall statistics showing the cost of security investigations and hearings appear to have been available. However, the Civil Service Commission alone spent \$7,165,536 for the fiscal year 1955. In addition, the F.B.I. security investigations for that year alone cost \$9,548,261. F.B.I. costs alone for the nine-year period from 1947 to 1956 were \$124,208,960. The report notes that perhaps the largest additional expense item is not the direct costs of investigations, but overhead costs resulting from maintenance of the security system. These costs cannot be estimated, nor can the expenditures of manufacturers and contractors who supplement the security program with investigations of their own.

In appraising the benefits of the program, the report states that dangers averted in ousting employees who were security risks may be "assumed" not to be negligible, although statistics do not show how many of the ousted employees were in sensitive positions, and available data do not establish the grounds for removal in all of the cases. Another achievement recognized by the report is the discouragement or prevention from entry into government service of potentially dangerous persons, although the extent of this achievement, too, is "necessarily" conjectural. Finally, the report refers to the public lack of confidence which prevailed in the late 1940's, as to the loyalty of government employees, and notes that one result of the security program has been to reassure the public on this score. In this connection, it is interesting that, after four years of the loyalty program, the Chairman of the Loyalty Review Board stated that not one case of espionage had been encountered. However, hundreds of employees were discharged or suspended for security reasons not involving disloyalty. Again, however, the records, unfortunately, do not show the number of such discharged persons who occupied sensitive positions, nor the specific grounds for the decision. Perhaps illustrative of the results of the security program which have served to reassure the public is the fact that, although the security program of the Atomic Energy Commission resulted in 499,900 clearances, only 494 clearances were refused for security reasons—an average of less than one in a thousand.

On the debit side of the ledger, the Committee which prepared this report states that it is "persuaded" that the present security system has hampered "positive security", as, for example, by impeding the development of science

and technology; that the program has had a harmful effect on the morale of government employees and government servants, and that it has contributed to a lack of initiative and responsibility on the part of administrators, and to a lack of frankness among employees. Moreover, the program in its actual operation, says the report, has discouraged entry into and continuance in government service, has possibly impaired the national sense of justice and fairness, and resulted in some "blunting of our national concern with freedom of speech and fair hearings".

In analyzing security investigations, the report finds four specific weaknesses:

1. There is a lack of coordination resulting from the existence of multiple, independent investigating bodies with different procedures;
2. The scope of the security program is too broad, in that positions having no substantial relation to national security are covered;
3. Standards and criteria for judgment are inadequate for a "common-sense judgment", and fail to consider the positive contributions of the employees who are under investigation;
4. Present procedures fail in various ways to protect the interests both of the government and of the employee investigated.

Studies made by the Committee have led to many recommendations, of which the following, perhaps, are the most important:

1. It is suggested that there should be consolidation of most of the programs, in order to make standards and procedures uniform and in order to avoid multiple and needless overlapping investigations, such as, for example, in cases of change of position of previously cleared employees, which presently requires new security clearance;
2. Clearances should be required, says the report, only for sensitive positions involving access to secret or top-secret data, or affecting policy-making functions in security matters;
3. The report recommends a continuous review of standards, criteria and methods for classifying information as secret, and declassification of such information as soon as consistent with security. In this connection, the report shows that there has been a tendency to over-classify data as secret, and, thus, unnecessarily extend the scope of security investigation.
4. The Attorney-General's list of subversive organizations recommends the report should be abolished, unless:
  - (a) Modified to exclude organizations which have been defunct for over ten years;
  - (b) Providing information as to the period and general nature of the organizations' allegedly subversive activity;
  - (c) Kept up to date and limited to organizations which were given notice and opportunity, under Due Process, for a hearing;

(d) Including a statement that mere membership in a listed organization does not, per se, establish the subversive character of a member, other than where membership has been made illegal by statute.

5. Employees should have an opportunity for informal conference with investigating officials, in order to answer adverse security information;

6. When charges are filed against an employee, a specific statement of such charges should be prepared;

7. The attorney representing the government at these proceedings should be under a duty to bring out all facts known to him, whether favorable or unfavorable to the employee;

8. The suspended employee should continue to receive his pay, pending final disposition, in view of the hardship caused the employee, and in view of the fact that only a very small proportion are eventually denied clearance.

In evaluating security procedures, the Committee has shown remarkable fortitude and objectivity in seeking to avoid extremes. The recommendations offered are not likely to appeal to ardent proponents of a strong security system who are unwilling to make any compromise which might jeopardize national safety. On the other hand, critics of the security program who are seriously disturbed over procedural inadequacies under Due Process are likely to feel that the recommended reforms do not go far enough. Thus, while the report suggests that charges be made specific, the Committee tempers proposed reform by suggesting that the inquiring board should exercise its discretion to determine what additional information should be furnished. So, too, while the Committee suggests that charges should include all adverse security information, it provides for an exception "in extraordinary circumstances where security considerations forbid". The Committee recommendation that the employee be provided with an attorney is qualified with the suggestion that participation by counsel be only to the extent that the "board deems proper". Likewise, the recommendation that the government should allow cross-examination of adverse witnesses is counter-balanced by a qualification, "unless disclosure of the identity of the witness or requiring him to submit to cross-examination would be injurious to national security". In the same vein, the report would withhold disclosure of the identity of informants if such disclosure is "detrimental to national security", and the decision as to whether adverse witnesses should be produced for cross-examination, or as to whether mere affidavits and statements should be accepted in lieu of testimony, is left to the discretion of the board, depending on security considerations. Those who see a danger to civil liberties in our present procedures are likely to be dissatisfied with such proposed reform, on the theory that, in times of hysteria, investigating officials, if given absolute power to determine the nature and extent of protection to be afforded the investigated employee, are likely, how-

ever well-intentioned, to exercise such discretion adversely to the employee, even on minimal considerations.

However, as the Committee acknowledges, its recommendations are based on the premise that our security system should be designed both to assure safety and to guard individual liberty. At the risk, perhaps, that neither end will be entirely effectuated, the Committee proposals strive for a "common-sense balance" between both important objectives.

It is a tribute to the American Bar, as well as to the Association of the Bar of the City of New York, that its Committee has shown the courage, at a time when it is unpopular to question security programs, to appraise our procedures so objectively and dispassionately, without yielding to the pressures of extremists. The members of the Committee—a Special Committee of the Association of the Bar of the City of New York—and of the staff which prepared this report are listed in a preface to the report itself. The roster of distinguished and honored lawyers who comprise the committee and staff, of itself, serves as a guarantee, not only of the integrity of the authors of the report, but also of the skill and care which went into the finished product.<sup>1</sup> It is also a tribute to the Fund for the Republic, Inc., which supplied the funds for this worthy project, and which has been suspect, at least in certain Congressional committees, that it scrupulously refrained from directing the nature and course of the project, and permitted the Committee "to work with complete independence", without suggestions or advice as to the appointments to the Committee, choice of research staff, and findings or conclusions.

As previously indicated, this project involves an appraisal only of one phase of our security program: the security investigation of employees. The results of this scholarly, penetrating and thought-provoking report suggest an extension of the study to the many other aspects of our security program.

DONALD J. FARAGE.\*

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<sup>1</sup> Members of the Special Committee: Dudley B. Bonsal, Chairman; Richard Bentley, Henry J. Friendly, Monte M. Lemann, George Roberts, Frederick M. Bradley, Harold M. Kennedy, John O'Melveny, Whitney North Seymour. Members of the Staff: Elliott B. Cheatham, John Carey, Jerre S. Williams, John R. Miller.

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