

The Federal Loyalty-Security Program. A Report by a Special Committee of The Association of the Bar of the City of New York (Book Review)

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THE FEDERAL LOYALTY-SECURITY PROGRAM. A report by a Special Committee of The Association of the Bar of the City of New York. New York: Dodd, Mead & Company, 1956. Pp. XXVI, 301. \$5.00.

Many committees, of many bar associations, have done valuable work in fields of special interest to lawyers. Not often, however, has a commercial publisher made the report of such a committee available to the general public. The recently published Report of the Special Committee on the Federal Loyalty-Security Program of the Association of the Bar of the City of New York has now been made so available. The Special Committee has done its work so well, and the subject of its Report is of such vital importance, that the Report here reviewed ought to be read by every thoughtful citizen and carefully studied by every member of the bar.

Since the cold war started there has been general recognition that the United States must protect itself against infiltration and corruption by the hostile forces of what the Report calls "a new kind of imperialism." At the same time there is general, if not unanimous, agreement that this country's greatest weapon in the battle for men's minds is (in the Report's language) "the moral values for which we stand and toward which we and free peoples everywhere have long been striving."¹

It is against the background of such convictions that a distinguished Special Committee, composed of members of the New York, Chicago, Los Angeles, New Orleans and Washington bars, under the chairmanship of Dudley B. Bonsal, Esq., of New York, and aided by an able professional staff, has considered the Federal Loyalty-Security Program presently in force.

At the outset the Committee has recognized, or rather proclaimed, that there is "no irreconcilable conflict between liberty of the citizens on one side and national security on the other." The keynote of the Committee's philosophy is sounded in these words: "if fear of totalitarianism were to force us into coerced uniformity of thought and belief, we should lose security in seeking it."² The Report makes the further valid point that it is our "ideal of freedom and liberty, far more than our economic system, which appeals to other peoples and attracts them to our side, and so contributes to our national security."³ Quoting from President Eisenhower's 1956 message to Congress on the State of the Union, the Report reminds us that our weapons, in the struggle that now engages the free world, "are the principles and ideas embodied in our historic traditions applied with the same vigor

¹ P. 21.

² P. 27.

³ P. 41.

that in the past made America a living promise of freedom for all mankind."⁴

Finding that "the emphasis on liberty as well as security is essentially conservative in its adherence to established and tested principles,"⁵ the Report recommends certain modifications in our Government's personnel security program. Lest it be thought "presumptuous for private citizens to take upon themselves the responsibility of proposing to our Government far-reaching changes in this field"⁶ the Committee has justifiably expressed the opinion that it is "appropriate" for members of the bar to do this; for the American bar "has always been, and must always be, alert in the protection of the liberties on which our country was founded as well as of other measures essential to national security."⁷ The Committee suggests that, if the present Loyalty-Security Program is modified in accordance with its proposals, that Program will "have its proper place in halting those who would abuse liberty and will at the same time encourage the continuing growth of the nation's strength through the achievements of its citizens."⁸

Part One of the Report, only eight pages long, consists of a single chapter entitled "Liberty and Security." Concluding that chapter the Committee quotes with telling effect the following statement by the Chief Justice of the United States, taken from an article he wrote for the November 1955 issue of the magazine *Fortune*:

In the present struggle between our world and Communism, the temptation to imitate totalitarian security methods is a subtle temptation that must be resisted day by day, for it will be with us as long as totalitarianism itself.⁹

The Report tells us that 6,000,000 public and private employees are subject to seven federal personnel security programs. The only civilian federal employees not covered are those who work for Congress and the federal courts. Civilian employees of the government's executive branch are subject to Executive Order 10450; and regulations of the Civil Service Commission are applicable to classified civil service personnel. On June 30, 1955, 2,371,373 persons were covered by these programs.

In March, 1955, 86,000 persons were covered by the program of the Atomic Energy Commission, which applies to that agency's employees and also to employees of firms contracting with it. There is also the Armed Forces Industrial Security Program, administered by the Department of Defense, which reported late in 1955 that clearance had then been given to almost 3,000,000 industrial employees of mili-

⁴ P. 41.

⁵ P. 27.

⁶ P. 24.

⁷ P. 24.

⁸ Pp. 27-28.

⁹ P. 28.

tary service contractors, who had access to "classified" information. Then there is the Port Security Program, under which as of December 31, 1955, clearance had been granted to 425,334 American seamen and 395,271 longshoremen. Finally, there is a separate program covering the relatively few Americans who are employed by international organizations.

These figures provide some idea of the enormous sweep of the Loyalty-Security Program as a whole, under which is determined the "suitability" for employment (in government service and in industry) of a large segment of our employable population.

Part Two of the Committee's Report is only eighteen pages long. It consists of Chapter II, dealing with "The Communist Threat," and Chapter III, outlining "The Counter-Measures by the United States, Including the Loyalty Security Program." Those chapters present the reasons why personnel security programs are considered necessary and refer to various security measures, traditionally available or more recently devised: *e.g.*, prosecution for treason, or under the Smith Act of 1940 for advocacy of the overthrow of the government by force, as well as counterespionage, loyalty oaths and the like. This part of the Report is a proof of the lawyer's passion for thoroughness in making a record. Like Part One it may be quickly skimmed.

Chapter II fairly sets forth a variety of popular notions of "The Communist Threat," which may strike some as being superficial, or even outdated. This reviewer finds it not so much a reasoned analysis of the present situation in world politics (which may be shifting and developing new and significant trends), as a workmanlike marshalling of established points of view. But it would be ungracious, and unfair, to criticize the Report for not testing and evaluating some of the conclusions it sets forth regarding the nature and direction of "The Communist Threat" today. The Committee's assignment was to consider the security program—not to reinterpret the situation that makes the program necessary.

The meat of the Committee's Report appears in its Part Three, which consists of Chapters IV through VII. There, in eighty-three closely packed and solidly documented pages, one finds an admirable description of the present personnel security programs, their administration, their effect on the employees and applicants for employment who are subject to them, and their cost in money. In Chapter VII, which merits the most thoughtful consideration, the achievements of the programs are weighed on the scales of national interest against the damage they may have done to the very security they were intended to serve.

Limitations of space make it impossible to do more than emphasize the principal shortcomings of the existing system to which the Report calls attention. The seven programs now in force apply standards of suitability for employment which are not uniform. They employ varying procedures to attain their ends—some of which are fairly subject to criticism on the ground that they do not sufficiently

secure the rights of the individuals concerned. Administration of the machinery of security clearance is far from uniform. "Derogatory information," in a security file, may block the employment of an applicant for a position (or his transfer from one position to another) without his being given the opportunity of meeting it. There is the problem of the professional informant, who may or may not be worthy of credence. Similarly, there is perhaps unnecessary concern with positions that are "nonsensitive" in character.

One of the worst features of the present system may be its effect on the scientific research that is so important to national defense in the modern world. The Report quotes a statement by the Los Alamos Chapter ; Federation of American Scientists which must give pause :

In granting clearance to anyone there is always involved a calculated risk, but it seems to us that in the past the calculation has given the greatest weight to the negative aspect of keeping secrets inviolate and very little weight to the positive aspect of keeping ahead of our competitors by means of fresh ideas and positive achievements.¹⁰

Putting it differently, the Report paraphrases a statement by the former president of the Federation, Dr. M. Stanley Livingston :

. . . a security system which was sufficiently tight and compartmentalized to have forestalled the loss of secrets through the treachery of Klaus Fuchs would have restricted scientific progress so severely that the atomic bomb could not have been completed in time to be used in the war against Japan.¹¹

Part Three of the Report, in its entirety, together with Appendix B (setting forth the pertinent statutes, orders and regulations), may be regarded as an indispensable manual for any practicing lawyer who is called upon to represent a client caught in the toils of the present security system. The Committee and its staff have done a praise-worthy job of collating and analyzing the materials he will need. The only reservation to be noted is that if the Report's index were a little more complete, its nuggets of knowledge would be easier to dig out. However, the conscientious lawyer will wish to read *all* of Part Three and Appendix B ; and it will both deepen his understanding and sharpen his professional tools to read it with great care.

Part Four, consisting of Chapter VIII, presents the Committee's recommendations for improving the existing system, with a convincing statement of supporting reasons. The Committee favors a unified security program, centrally administered, which would recognize the close logical relationship between suitability for the job (personnel security) and the need to "classify" information that really ought to be closely guarded. It is proposed that job clearance be required for "sensitive positions and for no others."¹² A sensitive position, ac-

¹⁰ P. 127.

¹¹ P. 126.

¹² P. 141.

ording to the Committee, should be defined as one whose occupant would have access to material classified as "secret" or "top secret"; and, in addition, one that has "a policy-making function" bearing "a substantial relation to national security."¹³

A uniform standard for judging suitability for employment in a sensitive position is proposed: "whether or not in the interest of the United States the employment or retention in employment of the individual is advisable."¹⁴ Such a standard seems quite adequate. The Committee proposes procedures for the preferring of charges, and for their hearing and determination, that are effectively keyed to American concepts of due process of law. (Laymen sometimes call it ordinary fair play.)

The Committee has expressed the belief that adoption of its proposals would free our personnel security system of "the weakness and defects" it now exhibits, and would simultaneously afford adequate protection to the nation's security. The present reviewer wholeheartedly concurs.

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¹³ P. 141. A position which effects national security has been defined by the Supreme Court as one which ". . . relates only to those activities which are *directly concerned* with the Nation's safety, as distinguished from the general welfare." *Cole v. Young*, 351 U.S. 536, 543 (1956) (emphasis added).

¹⁴ P. 149.

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