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THE OFFICE OF THE GENERAL COUNSEL OF THE AIR FORCE

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ESTABLISHMENT

THE United States Air Force was born on September 18, 1947, clothed with very little except a full set of vexatious legal problems. Legally, or perhaps legalistically, it had a Secretary and a corporate entity but, as of that moment, no other personnel, no property, and no specific functions.

Sections 207 and 208 of the National Security Act of 1947¹ in substance created the entity, provided those general powers necessary for functioning as an entity, provided mechanics for equipping the new department with people, property and functions by transfer from the old War Department at the order of the Secretary of Defense, and then went on to other subjects. It was not until a week later when Transfer Order No. 1² was approved by Secretary Forrestal that the empty Air Force closet began to fill up. In that Order the Secretary of Defense transferred to the fledgling the military personnel who had belonged to the Army Air Forces, and conferred on the Secretary of the Air Force and his Chief of Staff the functions of the Commanding General, AAF.

A day or two before the first transfer order became effective, Mr. W. Stuart Symington, as first Secretary of the Air Force, established the office of General Counsel within his own office to help him thread his way through the legal maze with which he was confronted. The General Counsel's office is thus a creation of and responsible to the Secretary

¹ Pub. Law 253, 80th Cong.; approved 26 July 1947.

² See Table of Transfer Orders, *supra*.

of the Air Force while the Judge Advocate General is the legal adviser to the Chief of Staff. As a further measure of distinction between the two offices, the Judge Advocate General is by statute responsible for superintending the administration of military justice within the Air Force but has no duties in connection with law relating to procurement and contracting. The General Counsel is responsible for advice on request to all echelons in the Air Force in the latter field and, in addition, for advising the Under and Assistant Secretaries on the legal aspects of all other matters coming within their respective jurisdictions.³

The office, consisting of eleven lawyers, is divided into two portions; that which handles matters coming under the general heading of procurement, including management and disposition of property; and that which deals with other matters of interest to the members of the Secretariat. It is thus not parallel with any office in either of the other military departments, despite the fact that there is one bearing the same name in the Navy Department. A listing of some of the major problems considered since the foundation of the office will demonstrate this distinction even more clearly. They include the interpretation and application of the National Security Act; development of loyalty programs for civilian employees of the Department, military personnel, and employees of contractors working on classified Air Force contracts; the legal authority for appropriation of long-term procurement funds for aircraft; and assistance in the development of the Armed Services Procurement Regulations and the Renegotiation Act of 1948.

SEPARATION FROM THE ARMY

Reference was made above to Transfer Order No. 1 issued under the authority of the National Security Act. Faced with the problem of moving officers, enlisted personnel, civilian employees, aircraft, responsibility for the loyalty of Air Force civilian personnel, authority to approve contracts for the purchase of aircraft, and innumerable other equally diverse items from the Department of the Army (formerly the War Department) to the Air Force, the lawyers in the two departments affected and the office of the Secretary of Defense developed the "Transfer Order" which has now become a term of art in the Pentagon Building.

The transfer provisions of the National Security Act are set out in a footnote.⁴ It will be seen that a number are mandatory and no serious

³ Memo 20-5, Office, Sec'y. of the Air Force, 30 Aug. 1948, Chart 6E, Organization & Functions of the Hq., USAF, 1 Dec. 1948.

⁴ National Security Act of 1947 Sec. 207(f). So much of the functions of the Secretary of the Army and of the Department of the Army, including those of any officer of such Department, as are assigned to or under the control of the Commanding General, Army Air Forces, or as are deemed by the Secretary of Defense to be necessary or desirable for the operations of the Department of the Air Force or the United States Air Force, shall be transferred to and vested in the Secretary of the Air Force, and the Department of the Air Force: . . . Such of the property, personnel, and records of the Department of the Army used in

problem arose as to them except to decide whether further action was necessary and if so by whom. This was solved in Transfer Order No. 1 which carried these mandatory items. The new Air Force was, however, nearly left without a Chief of Staff as the result of the requirement in the Act⁵ that he be appointed from the general officers "assigned to or commissioned in the United States Air Force." The officer transfer provision in Section 208 (c) authorized the transfer only of officers commissioned in the Air Corps or the AAF, and all general officers were at that time commissioned in the United States Army. In order to transfer the AAF general officers to the Air Force so that the Chief of Staff could be appointed from among them it was necessary to include in this first transfer order a special provision under the broad provisions of Section 208 (e).

By far the most difficult problem involved in the working out of the transfer process has been the definition of "functions," the determination of which ones pertained to the department merely by virtue of its status, and the decision as to which additional ones should be transferred. In view of the fact that the wages and salaries of hundreds of thousands of military and civilian personnel, the expenditure of literally billions of dollars for new aircraft, the responsibility for untold amounts of property, and the job of keeping the Air Force in operation as a going concern were involved, it was clear from the outset that each function would have to be defined with clarity and transferred with precision in order that at no time would there be room for doubt as to which department had the responsibility for what.

the exercise of functions transferred under this subsection as the Secretary of Defense shall determine shall be transferred or assigned to the Department of the Air Force.

Sec. 208(a) . . . The Army Air Forces, the Air Corps, United States Army, and the General Headquarters Air Force (Air Force Combat Command), shall be transferred to the United States Air Force.

Sec. 208(b) . . . The functions of the Commanding General, General Headquarters Air Force (Air Force Combat Command), and of the Chief of the Air Corps and of the Commanding General, Army Air Forces, shall be transferred to the Chief of Staff, United States Air Force. . . .

Sec. 208(c). All commissioned officers, warrant officers, and enlisted men, commissioned, holding warrants, or enlisted, in the Air Corps, United States Army, or the Army Air Forces, shall be transferred in branch to the United States Air Force. . . .

Sec. 208(e). For a period of two years from the date of enactment of this Act, personnel (both military and civilian), property, records, installations, agencies, activities, and projects may be transferred between the Department of the Army and the Department of the Air Force by direction of the Secretary of Defense.

Sec. 306. All unexpended balances of appropriations, allocations, non-appropriated funds, or other funds available or hereafter made available for use by or on behalf of the Army Air Forces or officers thereof, shall be transferred to the Department of the Air Force for use in connection with the exercise of its functions. Such other unexpended balances of appropriations, allocations, non-appropriated funds, or other funds available or hereafter made available for use by the Department of War or the Department of the Army in exercise of functions transferred to the Department of the Air Force under this Act, as the Secretary of Defense shall determine, shall be transferred to the Department of the Air Force for use in connection with the exercise of its functions. . . .

⁵ Sec. 208(b).

As a means to this end it was early decided to define "function" as a function, power or duty⁶ conferred expressly on the War Department by statute or executive order. With this postulate laid down, it was possible for the new Department to proceed with its day to day business while preparing itself for the gradual assumption of the additional jobs which the War Department had in the past performed for the Army Air Forces but which were necessary for the operation of an autonomous department. The mechanism of the transfer order enabled the Air Force to cull out all of the laws in a given field of activity which it needed in order to operate efficiently, reach an agreement with the equivalent section of the Army staff as to post-transfer relationships, make whatever preparations were necessary to insure that the responsibility could be performed when received, and then, upon joint recommendation of the Secretaries of Army and Air Force, secure the signature of the Secretary of Defense effective at a carefully fixed time. By January 1, 1949, there had been a total of 30 transfer orders signed, on subjects ranging from procurement of aircraft, jurisdiction over real property in the hands of the Air Force, representation on the Air Coordinating Committee, management of the loyalty programs, finance functions relating to Air Force matters, to "certain functions relating to military records."

TRANSFER ORDERS

<i>Transfer Order Number</i>	<i>Subject</i>	<i>Effective Date</i>	<i>Federal Register Citation</i>
1	General	26 Sep. 1947	12 FR 6616
2	Officer Personnel Act	1 Oct. 1947	12 FR 6736
3*	Military Personnel	31 Oct. 1947	12 FR 7327
4	Civilian Personnel	30 Nov. 1947	12 FR 8891
5	Air Coordinating Committee	31 Dec. 1947	13 FR 218
6	Procurement and AF Procured Property	15 Jan. 1948	13 FR 218
7	Inspection	5 Mar. 1948	13 FR 1378
8	Unit Organization	1 Apr. 1948	13 FR 1930
9	Central Welfare Fund	17 Apr. 1948	13 FR 2292
10	Civilian Components	27 Apr. 1948	13 FR 2428
11	Finance	10 May 1948	13 FR 2678
12	Repairs and Utilities	14 May 1948	13 FR 2951
13	Civil Air Patrol	21 May 1948	13 FR 2967
14	Real Property	1 July 1948	13 FR 3094
15	Atomic Energy Act	7 June 1948	13 FR 3252
16	Military Personnel Management	14 June 1948	13 FR 3461
17	Foreign Missions	6 July 1948	13 FR 3970
18	Construction	7 July 1948	13 FR 4014
19	Loyalty and Security	1 Sep. 1948	13 FR 4419
20	Military Records	12 Aug. 1948	13 FR 4874
21	Aviation Cadets	4 Sep. 1948	13 FR 5383
22	Security of Contractors	1 Sep. 1948	13 FR 5665

⁶ Sec. 308(a), National Security Act of 1947. "As used in this Act, the term 'function' includes functions, powers, and duties."

23	Correction of Military Records..	27 Sep. 1948	13 FR 5837
24	Soldiers' Finance Matters.....	11 Oct. 1948	13 FR 6126
25	Finance & Fiscal Matters.....	14 Oct. 1948	13 FR 6270
26	Transportation	15 Oct. 1948	13 FR 6302
27	Civilian Welfare Fund.....	1 Nov. 1948	13 FR 6707
28	Military Signal Duties.....	22 Nov. 1948	13 FR 7417
29	Recruiting and Enlistment.....	10 Dec. 1948	13 FR 8162
30	Decorations and Awards.....	10 Dec. 1948	13 FR 8163

* Amendment No. 1, Transfer Order No. 3, effective 12 June 1948, 13 FR 3867.

The transfer process is now so nearly completed that there are at present only about half a dozen additional transfer orders in contemplation, covering for the most part items for which much advance preparation was necessary. As a partial result of the care which went into the planning of this process, the Secretary of Defense was able to say in a statement saluting the first anniversary of the establishment of his office and the separate Air Force, "It has been a source of gratification to observe the smoothness and efficiency which have marked the separation of the Air Force from the Army."⁷

LEGISLATIVE PLANNING

The conclusion of the transfer process will not, however, result in a complete statutory house for the Air Force neatly bounded by a picket fence of laws made applicable by Transfer Order. The laws transferred refer nearly without exception to the "War" Department and the Secretary of "War" — but not all of the laws so phrased have been transferred or are desired by the Air Force. The researcher seeking to find the powers of the Air Force must, accordingly, first determine whether the old War Department had been authorized to take the action under consideration and must then search through the Transfer Orders to see if the law involved has been transferred. It is apparent that serious study must be given to the question of whether such a situation is adequate for the long pull, and if not, what sort of legislation should be requested to replace it.

A similar, although quite separate, problem is the extent to which the organization of the Department of the Air Force is based on the laws prescribing the organization of the War Department and the Army, the extent to which it is possible or desirable to transfer the applicability of such laws, and the desirability or necessity of obtaining new legislation defining whatever internal organization is determined upon. Without attempting to decide the many purely policy issues involved in the solution to these questions, the Office of the General Counsel has been active in attempting to isolate and define the problems and point out the relevant legal considerations. As a member of the Air Force Legislative Policy Board,⁸ along with the Assistant

⁷ National Military Establishment Release No. 152-48, 18 Sep. 1948.

⁸ Memo 20-10, Office, Sec'y. of the Air Force, 14 Sep. 1948.

Secretary (Management), the Director of Legislation and Liaison, the Director of Public Relations, and the Vice Chief of Staff, the General Counsel is afforded an opportunity to bring to the attention of the policy formulators the fields in which he considers that additional legislation is necessary.

PROCUREMENT

In the field of procurement law, the principal responsibility of the Office of the General Counsel is to provide advice on legal matters to the Under Secretary who is ultimately responsible for Air Force procurement. Staff supervision over procurement activities is exercised by the Deputy Chief of Staff, Materiel, and his organization located at the Air Force Headquarters in Washington.⁹ Such legal advice as is needed by this staff is also furnished by the Office of the General Counsel. The actual business of negotiating and drafting contracts is performed by the Air Materiel Command at Wright-Patterson Air Force Base in Dayton, Ohio. Legal advice as to the normal incidents of routine contracting is furnished the Materiel Command buyers by a section of the office of the Materiel Command Staff Judge Advocate who is authorized direct communication with the Office of the General Counsel on particularly troublesome legal problems or those requiring policy decisions.¹⁰

Under the National Security Act, one of the functions of the Secretary of Defense is to coordinate procurement among the military departments.¹¹ He transferred legal authority and responsibility for procurement of the items assigned to it by the Munitions Board to the Air Force by Transfer Order No. 6, effective January 15, 1947.¹² Well before this date the General Counsel's office had been engaged in designing a system to insure that the responsibility when acquired would be performed according to the law, as well as in the preparation of the transfer order to insure that all necessary statutory authority was included.

The first aircraft purchased by the Government were bought under the provisions of an 1861 statute of general application to Government procurement¹³ which as a general rule required advertising and competitive bids as a precedent to procurement. As a result of the Morrow Board, Congress enacted the Air Corps Act of 1926¹⁴ requiring what was called "design competition," but the accent remained on competitive bidding as a result of advertising. During the war years, however,

⁹ Chart 8, Organization & Functions of the Hq., USAF, 1 Dec. 1948.

¹⁰ Paragraph 1-103, Joint Procurement Regulations, as amended by Joint Army & Air Force Procurement Circulars Nos. 1 & 16, dated 15 Jan. and 28 June 1948.

¹¹ Sec. 202 (a) (3).

¹² See Table of Transfer Orders, *supra*.

¹³ Revised Statutes, Sec. 3709, as amended; 41 USC 5.

¹⁴ 10 USC 310; 44 Stat. 784.

when the great bulk of aircraft was procured, contracts were negotiated under the authority of the First War Powers Act.¹⁵

With the approach of V-J day, the armed services realized that the technical advance in aircraft and other items of combat materiel made procurement through advertising in many instances completely impracticable, even in peacetime. Accordingly, they drafted and supported a bill which, as changed in minor respects by the Congress, was eventually enacted and approved by the President on 19 February 1948 as the Armed Services Procurement Act of 1947.¹⁶

This Act is considered as a milestone in the history of military procurement. Consistent with the long history of Government purchasing, it recognizes competitive bidding as a result of advertising to be the basic and normal method of procurement of supplies and services, but it also recognizes that this general principle has a number of exceptions and provides procedures to authorize procurement through negotiation in those exceptional circumstances. Exception 14, which was inserted in the law particularly to cover the procurement of aircraft, applies to "supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture, as determined by the agency head, when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies." Much of the work of the Office of the General Counsel during the past year has centered around the interpretation and application of this law.

The power to negotiate contracts for aircraft is essential. As the military and technical sciences progress, requirements are developed which cannot be filled by any existing military airplane. There may, indeed, be no known method of fulfilling the requirement and an attempt to invite bids for construction of an aircraft would therefore be out of the question. Under these circumstances, one or more research contracts are necessary to determine whether it is possible to develop an item which will satisfy the military requirement. The "know-how" of particular companies within the general fields involved then becomes an important item, and research contracts may be negotiated with the company or companies which from past experience are considered by the Air Force most likely to produce the desired result.

Months or even years of basic research and development may be spent before the Air Force is sure that an airplane evolved out of the research and development under one or more contracts is what is wanted. To stop at this stage and circulate invitations for bids to manufacture the resulting airplane as an end item would be costly, time-consuming and unlikely to result in the greatest advantage to the

¹⁵ 50 USC App. 611, 55 Stat. 839, 18 Dec. 1941.

¹⁶ Pub. Law 413, 80th Cong.; approved 19 Feb. 1948.

Government. Those companies which have developed the airplane have acquired "know-how" with respect to it and may have, whether for their own account or for the account of the Government, made an extensive investment in industrial facilities. Considerations of industrial mobilization could warrant placing production contracts for that aircraft with other manufacturers, but usually the manufacturer who developed the aircraft is best qualified of all potential manufacturers to produce it in quantity. The statutory exception to the general rule regarding competitive bidding which is quoted above recognizes this fact and authorizes the procurement of the final product by negotiation. Under the Armed Services Procurement Act, negotiation is authorized by a number of other exceptions to the general rule in such circumstances as when the public exigency so demands or when competition is impracticable, and it not infrequently becomes a legal question to determine whether negotiation has been undertaken under the proper exception.

A complete airplane is rarely procured from a single contractor. As a general rule, the airframe itself, the main body of the airplane, is procured from a prime contractor, who may subcontract various portions of the airframe assembly. Usually, the manufacturer who constructs the airframe is not engaged in the manufacture of engines or propellers. These items, and frequently many others, are procured by the Government from other manufacturers and furnished to the airframe manufacturer for incorporation therein so as to make a complete aircraft. The procuring of a quantity of airplanes is thus in reality a *program* of negotiated contracts relating to airframes, propellers, engines, or a dozen other items which go into a completed aircraft.

The considerations outlined above have extended for greater and greater periods the time required to design and produce an airplane but the Constitutional grant to Congress of the power "to raise and support Armies" provides further that "no Appropriation of Money to that Use shall be for a longer Term than two Years."¹⁷ Although the conclusion that this is not a limitation on *all* procurement for the Army has been recognized for many years, appropriations to the War Department for the procurement of aircraft normally have been limited to one or two years. The point has now been reached where procurement of aircraft will be seriously hampered if appropriations cannot be made available for more than one or two years and long term procurement authority was recommended as essential by the President's Air Policy Commission¹⁸ and by the Congressional Aviation Policy Board.¹⁹

¹⁷ Article I, Sec. 8, Clause 12.

¹⁸ Pp. 60-61, *SURVIVAL IN THE AIR AGE*, a report by the President's Air Policy Commission, Washington, 1 Jan. 1948.

¹⁹ Recommendations 57 and 58, p. 35, *NATIONAL AVIATION POLICY*, Report of Congressional Aviation Policy Board, March 1, 1948, Senate Report No. 949, 80th Cong., 2nd Sess.

Without passing on the question of whether this constitutional limitation still applied to the Air Force following its separation from the Army, the conclusion was reached by the office that, even if it did, "there appears to be no legal objection to a request to the Congress to appropriate funds to the Air Force for the procurement of aircraft and aeronautical equipment to remain available until expended." This conclusion rested on a 1904 opinion of the Solicitor General that the constitutional limitation does not apply to the procurement of weapons and other equipment necessary to enable personnel to carry on war,²⁰ and has been confirmed by the present Attorney General.²¹

With the foundation thus laid, in the Supplemental National Defense Appropriation Act, 1948,²² which appropriated funds to the Department of the Air Force for construction of aircraft and related procurement, Congress included the following provision:

"Provided, That the unexpended balance of funds appropriated for the foregoing purposes under the head 'Air Corps, Army,' in the Military Appropriation Act, 1948, shall be consolidated with this appropriation, to be disbursed and accounted for as one fund which shall remain available until expended." (Italics supplied.)

This was not only the first appropriation made by the Congress directly to the Department of the Air Force, it was also the first time the Congress had provided money for the procurement of military aircraft with unlimited time for utilization. Under the new law, contracts have been placed in such a manner as to constitute the beginning of a long-range procurement program which is related to the needs of the Air Force rather than to limitations on the use of appropriations.

The same act provided appropriations and contract authorizations to the Departments of the Army, Navy and Air Force in a total amount of more than \$4,000,000,000. Since the major portion would be spent with the aircraft and related industries, thus creating an abnormal volume of business for them, the Congress included a provision making certain contracts — roughly those executed pursuant to that Act — subject to renegotiation, in order to insure that excessive profits would not result to contractors from such huge expenditures. Responsibility for the enforcement of this "Renegotiation Act of 1948"²³ which the office helped to develop at the request of the Congressional Committee, is vested in the Secretary of Defense.

Although the regular appropriations to the Military Establishment for the fiscal year 1949²⁴ were not subjected to renegotiation, in another

²⁰ 25 Op. Atty. Gen. 105, 2 Jan. 1904.

²¹ Opinion No. 132, 40 Op. Atty. Gen., 8 Jan. 1948.

²² Pub. Law 547, 80th Cong.; approved 21 May 1948.

²³ *Id.* Sec. 3(f) and (i).

²⁴ Pub. Law 766, 80th Cong.; approved 24 June 1948.

law²⁵ Congress provided that "The Secretary of Defense is authorized and directed, whenever in his judgment the best interests of the United States so require, to direct the insertion of a clause incorporating the Renegotiation Act of 1948 in any contracts for the procurement of ships, aircraft, aircraft parts, . . . entered into by or in behalf of the . . . Department of the Air Force which obligates any funds made available for obligation in the fiscal year 1949." In conformity with this provision, the Secretary of Defense has directed²⁶ that renegotiation shall be applicable to any procurement of aircraft and aircraft parts from funds made available to the services for obligation in the fiscal year 1949.

Pursuant to the Renegotiation Act of 1948, the Secretary of Defense has set up joint Army, Navy, Air Force renegotiation boards to carry out the provisions of the Act.²⁷ The prescribed contract clause has been included in the contracts to which renegotiation is applicable, and the boards now are in the process of preparing regulations for administration of the Act.²⁸

As a further measure of inter-service cooperation in the field of procurement, there is now in preparation by a joint committee in which the office participates a code of Armed Services Procurement Regulations, six sections of which had been published by January 1, 1949.²⁹

LOYALTY AND SECURITY

Since its inception the Department of the Air Force has been responsible for the loyalty of its military personnel and the safety of its information vital to national security. Transfer Order 19,³⁰ effective September 1, 1948, extended this responsibility to civilian employees of the Department and Transfer Order 22,³¹ effective the same date, imposed a similar security responsibility on the Department with respect to contractors' employees who are engaged in performing work for it.

Nowhere is the necessity for keeping military secrets more essential than in the Department of the Air Force where operational plans and research and development together will very likely determine the shape of any future war. On the other hand, it is vitally important that an individual accused of disloyalty be given every opportunity to defend

²⁵ Sec. 401, Pub. Law 785, 80th Cong.; approved 25 June 1948, "Second Deficiency Appropriation Act, 1948."

²⁶ 13 Fed. Reg. 8640; 29 Dec. 1948.

²⁷ 13 Fed. Reg. 4522; 5 Aug. 1948.

²⁸ The first two parts of such regulations were published in 13 Fed. Reg. beginning at page 8640. (Dec. 29, 1948).

²⁹ 13 Fed. Reg. 3074, *et seq.*, 9 June 1948; 13 Fed. Reg. 4914, *et seq.*, 25 Aug. 1948.

³⁰ See Table of Transfer Orders, *supra*.

³¹ See Table of Transfer Orders, *supra*.

himself consistent with the military security requirement. The Office of the General Counsel has devoted considerable time to a study of the problem in an endeavor to set up in the new Department a system which will provide the ultimate in safeguards on both sides of the case, and has reached the basic conclusion that a clear distinction must be made between "loyalty" on the one hand and "security" on the other.

Under the President's loyalty program,³² which is applied to civilian employees of the Air Force, a final determination that the individual under investigation is, in fact, disloyal is hedged about with extensive safeguards. Once that has been determined, however, the procedure provides for his discharge from the Federal service, even though he does not hold a position of trust and confidence and is not in a position to steal secrets or affect policy decisions, on the basis that the United States does not desire disloyal citizens in its employ.

A security risk, on the other hand, cannot be trusted with secrets for any one of a number of reasons which may well cast no reflection whatsoever on his loyalty, such, for instance, as extreme bad judgment, excessive boastfulness, or unwise choice of associates. Such individuals may have to be removed from their contact with so-called "sensitive" projects immediately but in a manner which will not stigmatize them as disloyal nor prevent their future employment in any position where their known shortcomings will not endanger the security of the country. Special wartime statutes authorizing summary removals and suspensions for security reasons are still in effect for the so-called sensitive agencies — the military and State departments³³ — and a new law to extend this power into peacetime has been under consideration by Congress.³⁴

In the case of military personnel, a loyalty removal program alone appears to be sufficient. The Air Force cannot have in its midst disloyal uniformed personnel. On the other hand, control by a military service over its uniformed personnel is so complete that an individual known as a security risk can easily be assigned to peeling potatoes or, in the case of officers, an equivalently "safe" job. In the case of the employees of contractors, many of whom perform work of a highly confidential nature in the research and development or production of new weapons, the essential element is the maintenance of secrecy on military projects quite aside from questions of abstract loyalty to the United States. Therefore, what is needed here is a broad program providing for the removal from work on a confidential Government

³² Executive Order 9835, 12 Fed. Reg. 1935 *et seq.*, 25 March 1947; Civil Service Commission Loyalty Regulations, 13 Fed. Reg. 9361, *et seq.*, 31 Dec. 1948.

³³ Pub. Law 808, 77th Cong., Sec. 3, 46 Stat. 1053, 5 USC, 652 note; State Dept. Appropriation Acts for 1947, 1948 and 1949, 60 Stat. 446, 458, 61 Stat. 279, 288, and Pub. Law 597, 80th Cong., 3 June 1948, respectively.

³⁴ S. 1561, 80th Cong., passed by Senate, 1 June 1948 (94 Cong. Rec. 6780) but not by House of Representatives.

contract of an individual who is a security risk for any reason, with full freedom to the employer to utilize him anywhere else in his plant if he can do so without danger to military security. The category of civilian employees of the Department, however, requires both types of program. Here the Government desires to discharge disloyal personnel from the United States payroll and also to prevent leakage of confidential information by removing individuals who are security risks and assigning them, if possible, to some non-sensitive duty.

The procedure used to effect removals of individuals in each of the categories listed above has in the past been different. In view of the fact that a man is equally stigmatized whether he be discharged from the military service as disloyal or fired from his position as a civilian employee of the Department for the same reason, the standards and procedures for these categories should be substantially the same. So also, to the extent possible, should be the standards and procedures governing security removals of contractors' employees and civilian employees of the Department.

A careful distinction between the types of programs which apply to each class of persons, will constitute a long forward step in protecting those things which we want to protect. It will simplify the protection of military information by the relatively easy elimination of security risks with a minimum of stigma involved, and will insure that the individual who is discharged because he is a security risk will not be stigmatized as disloyal because of the failure to distinguish clearly between the two.

Coincident with its assumption of responsibility for loyalty and security, the Air Force issued a regulation embodying the principles developed out of the study made in the office and prescribing the procedures for dealing with its civilian employees concerning whom there is a question.⁸⁵ Programs for the other two categories of personnel are still under consideration.

OTHER MATTERS

In addition to the problems dealt with at some length above, the Office of the General Counsel has devoted time and thought to a number of other matters some of which grew out of transfer transactions and some of which just grew. Membership on the legal subcommittee of the Air Coordinating Committee is one such; although the fact that the great majority of legal problems arising there relate purely to civil aviation necessitates that the official participation of the Air Force representative be minimal. Some of the aspects of international law bearing on Air Force overseas operations, such as questions arising out of the Base Lease Agreement, have on occasion

⁸⁵ Air Force Regulation No. 40-12, 15 Sep. 1948, originally published 1 Sep. 1948.

been referred to the office for opinion, as have the legal aspects of the various foreign aid programs. It must also pass on the legality of all Air Force real estate transactions.

Although prognostication is always dangerous, particularly on the basis of only a little more than a year's experience, it can safely be hazarded that for the immediate future the pressure of legal business on the office in connection with procurement and long-range legislative planning will continue or even increase. On the other hand, it can be expected that the loyalty and transfer programs will require less attention as, on the one hand, the loyalty problems change from those of developing a new program to monitoring an approved procedure and, on the other, the transfer process approaches completion.

Those of us who are now in the office hope that it has assisted in the provision for the Air Force of more effective raiment than that with which it started life and thereby contributed slightly to the cause of national defense and world peace.