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FOREIGN SERVICE ACT OF 1979

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1450

A BILL TO PROMOTE THE FOREIGN POLICY OF THE UNITED STATES BY STRENGTHENING AND IMPROVING THE FOREIGN SERVICES OF THE UNITED STATES, AND FOR OTHER PURPOSES

JULY 27, DECEMBER 14, 19, 1979

Printed for the use of the Committee on Foreign Relations

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CONTENTS

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

FOREIGN SERVICE ACT OF 1979

FRIDAY, JULY 27, 1979

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m. in room 4221, Dirksen Senate Office Building, Hon. Claiborne Pell presiding.

Present: Senators Pell and Lugar.

Senator PELL. The Committee on Foreign Relations will come to order.

OPENING STATEMENT

Today we will hear testimony from the executive branch on the proposed Foreign Service Act of 1979. This legislation is a comprehensive revision of the Federal law governing the Foreign Service personnel system. It is intended to be a companion measure to the Civil Service Reform Act, designed to increase the effectiveness and efficiency of the foreign policy arm of Government.

[Text of S. 1450 follows:]

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

II

96TH CONGRESS
1ST SESSION

S. 1450

To promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 9 (legislative day, JUNE 21), 1979

Mr. CHURCH (by request) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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A BILL

To promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title I of this Act may be cited as the "Foreign Service Act of 1979".

TITLE I—THE FOREIGN SERVICE ACT OF 1979

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) that a career Foreign Service, characterized by excellence and discipline, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) that the Foreign Service of the United States, established under the Foreign Service Acts of 1924 and 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations; and

(3) that the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of other nations' affairs, cultures, and languages, available to serve in assignments throughout the world, and operated on the basis of merit principles.

(b) The objectives of this Act, in order to strengthen and improve the Foreign Service of the United States, are—

(1) to assure, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career de-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

velopment, advancement, and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) to foster the development of policies and procedures which will facilitate and encourage entry into and advancement in the Foreign Service by persons from all segments of American society, and equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) to provide for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) to establish a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and to maintain a fair and effective system for the resolution of individual grievances;

(5) to minimize the impact of the hardships, disruptions, and other unusual conditions of overseas service upon the members of the Foreign Service, and

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to mitigate the special impact of such conditions upon their families;

(6) to provide salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel and to provide a system of incentive payments and awards to encourage and reward outstanding performance;

(7) to establish a Senior Foreign Service characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and/or highly developed functional and area expertise;

(8) to improve Foreign Service managerial flexibility and effectiveness;

(9) to increase efficiency and economy by promoting maximum compatibility among the agencies authorized to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service and the Civil Service; and

(10) otherwise to enable the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—When used in this Act, the term—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency of the United States Government as defined in section 551 of title 5, United States Code;

(3) "chief of mission" means a principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary as diplomatic in nature (including any person assigned under this Act to be temporarily in charge of such a mission or office);

(4) "Department" means the Department of State;

(5) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(6) "Government" means the Government of the United States of America;

(7) "merit principles" means the principles set out in section 2301 of title 5, United States Code;

(8) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post of the United States;

(9) "Secretary" means the Secretary of State;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(10) "Service" means the Foreign Service of the United States;

(11) "United States", when used in a geographic sense, means the fifty States and the District of Columbia.

SEC. 103. PERSONNEL OF THE SERVICE.—The personnel of the Service shall consist of the following:

(1) chiefs of mission, appointed under section 302(a)(1) or assigned under section 511(c);

(2) ambassadors at large, appointed under section 302(a)(1);

(3) the Senior Foreign Service, appointed under section 302(a)(1) or 303, who shall provide the corps of leaders and experts for the management of the Service and the performance of its mission;

(4) Foreign Service officers, appointed under section 302(a)(1), who shall have general responsibility for carrying out the functions of the Service;

(5) Foreign Service personnel, appointed under section 303, who are citizens of the United States and who provide skills and services required for effective performance by the Service;

(6) foreign national employees, appointed under section 303, who provide clerical, administrative, tech-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

nical, fiscal, and other support at Foreign Service posts abroad; and

(7) consular agents, appointed under section 303, who provide consular and related services as authorized by the Secretary at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign nations and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any in the legislative or judicial branch) requiring their services.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—Under the direction of the President, the Secretary shall administer and direct the Service, and shall coordinate its activities with the needs of the Department and other agencies. The Secretary is authorized to prescribe such regulations as the Secretary may deem appropriate to carry out functions under this Act, and may delegate such functions which are vested in the Secretary to any employee of the Department or member of the Service.

SEC. 202. OTHER AGENCIES EMPLOYING FOREIGN SERVICE PERSONNEL.—(a) The Director of the International Communication Agency, the Director of the International Development Cooperation Agency, and the head of any other agency authorized by law to utilize the Foreign Service personnel system shall exercise the functions vested in the Secretary by this Act, with respect to personnel of the Service in their respective agencies, subject to the provisions of chapter 12 and other applicable laws.

(b) Except as otherwise provided, references in this Act to the "Department" and to the "Secretary" shall be deemed, with respect to the personnel and functions of the International Communication Agency, the International Development Cooperation Agency, and other agencies authorized by law to utilize the Foreign Service personnel system,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to be references to such agencies and to the heads of those agencies, subject to the provisions of chapter 12 and other applicable laws. References in this Act (or other law) to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to include references to Foreign Service information officers.

(c) Chapters 10 and 11 of this Act shall apply only to the Department, the International Communication Agency, and the International Development Cooperation Agency.

(d) Nothing in this Act shall be construed as diminishing the authority of the Director of the International Communication Agency or the Director of the International Development Cooperation Agency.

SEC. 203. THE CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government officers and employees in that country, except for personnel under the command of a United States area military commander; and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government officers and employees in that country,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

except for personnel under the command of a United States area military commander, comply fully with all applicable directives of the chief of mission.

(b) Any agency having officers or employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its officers and employees in that country, and shall insure that all of its officers and employees in that country, except for personnel under the command of a United States area military commander, comply fully with all applicable directives of the chief of mission.

SEC. 204. THE DIRECTOR GENERAL.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary in the management of the Service and shall perform such functions, including functions under chapter 12, as the Secretary may prescribe.

SEC. 205. THE INSPECTOR GENERAL.—(a) There shall be an Inspector General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. Under the direction of the Secretary, the Inspector General shall inspect the work of each Foreign

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Service post at least every three years, shall inspect periodically the bureaus and offices of the Department of State, and shall perform such functions as the Secretary may prescribe.

(b) Under the direction of the Secretary, the Inspector General may review the conduct of the Government's programs and activities performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary and the chief of mission.

(c) Whenever the Secretary has reason to believe that it is necessary in the public interest, the Secretary may authorize any Foreign Service inspector acting on behalf of the Inspector General to suspend from duty any member of the Service other than a chief of mission. If the member so suspended is a principal officer, the Secretary may authorize a Foreign Service inspector to serve in the place of the suspended officer for a period not to exceed ninety days.

SEC. 206. THE BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary on matters relating to the Foreign Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service and the Civil Service. The Board of the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary and shall include senior representatives of the Department, the International Communication Agency, the International Development Cooperation Agency, the Office of Personnel Management, the Office of Management and Budget, and such other agencies as the President may designate.

CHAPTER 3—APPOINTMENTS

SEC. 301. GENERAL REQUIREMENTS FOR APPOINTMENT.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe appropriate written, oral, physical, and other examinations for appointment to the Service (other than as a chief of mission) in accordance with merit principles.

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or a disabled veteran as defined in sections 2108 (1) or (2) of title 5, United States Code, shall be considered an affirmative factor in making appointments to the Service.

SEC. 302. PRESIDENTIAL APPOINTMENTS.—(a)(1) Appointment in the Service as a chief of mission, as an ambassador at large, as a career member of the Senior Foreign

50-236 O - 80 - 2

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Service, or as Foreign Service officer, shall be made by the President, by and with the advice and consent of the Senate.

(2) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service, in recognition of especially distinguished service over a sustained period. Such personal rank shall be in addition to the member's salary class, and no additional compensation shall be paid to a career ambassador solely by virtue of such personal rank.

(3) The personal rank of ambassador may be conferred by the President in connection with a special mission for the President not exceeding six months in duration if the President, before conferring such rank, transmits a written report of his intent to confer such personal rank to the Committee on Foreign Relations of the Senate and transmits with that report all relevant materials concerning any potential conflicts of interest by the proposed recipient of such personal rank.

(4) Except as provided in this section, appointment to any position having the title or rank of ambassador or minister shall be made by the President, by and with the advice and consent of the Senate.

(b) If a member of the Service is appointed to any position by the President, by and with the advice and consent of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the Senate or by the President alone, the period of the member's service in that position shall be regarded as an assignment under chapter 5, and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her class and remain eligible for performance pay under chapter 4 in lieu of receiving the salary of the position to which the member is appointed by the President.

SEC. 303. SECRETARIAL APPOINTMENTS.—The Secretary is authorized to appoint the members of the Service, other than the categories described in section 302(a), in accordance with the provisions of this Act and such regulations as the Secretary may prescribe.

SEC. 311. APPOINTMENT OF CHIEFS OF MISSION.—(a)(1) The position of chief of mission to a foreign country should be accorded to persons possessing clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum practicable extent, a useful knowledge of the principal language or dialect of the country in which they are to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of such country and its people.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(2) No person should be accorded the position of chief of mission to a foreign country primarily because of contributions to political campaigns.

(3) To the extent practicable, career personnel of the Service should be given consideration for appointment to chief of mission positions.

(b)(1) The Secretary shall from time to time furnish the President with the names of career members of the Service qualified for appointment or assignment as chiefs of mission, together with pertinent information about such members, in order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission.

(2) Each person appointed by the President as ambassador or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such person and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath or affirmation of the nominee, taken before any officer authorized to adminster oaths. The chairman of the Committee on Foreign Relations of the Senate shall have printed in the Congressional Record each such report. As used in this paragraph, the term "contribu-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tion" has the same meaning given such term by section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(e)), and the term "immediate family" means a person's spouse, and any child, parent, grandparent, brother, or sister of such person and the spouses of any of them.

SEC. 321. APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—Appointment to the Senior Foreign Service shall be to a salary class established under section 411, and not to a position. The total number of noncareer members of the Senior Foreign Service shall not exceed 5 per centum of the members of the Senior Foreign Service.

SEC. 322. CAREER APPOINTMENTS.—(a) Each candidate for a career appointment in the Service shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During a candidate's trial period of service, the Secretary shall decide whether or not—

(1) to offer a career appointment to the candidate, or

(2) to recommend to the President that the candidate be given a career appointment.

(b) Decisions by the Secretary under this section shall be based upon the recommendations of boards composed entirely or primarily of career members of the Service who shall

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

evaluate the fitness and aptitude of candidates for the work of the Service.

SEC. 323. ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A Foreign Service officer candidate shall not be initially assigned under section 431 to a salary class higher than class 4 in the Foreign Service Schedule established under section 421 unless—

(1) the Secretary determines in an individual case that assignment to a higher class is necessary because of the qualifications and experience of the candidate and the needs of the Service; or

(2) the candidate is currently serving under a career appointment in the Service at a salary rate equal to or higher than class 4 of such Schedule.

SEC. 324. RECALL AND REEMPLOYMENT OF CAREER PERSONNEL.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall for active duty any retired member of the Service who served under a career appointment. A retired member may be recalled under this section to any appropriate class, except that a retired member may not be recalled to the Senior Foreign Service in a class higher than the member held at the time of retirement unless appointed to such higher class by the President by and with the advice and consent of the Senate.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Former career personnel of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 322, in a salary class which the Secretary considers appropriate in light of the qualifications and experience of each such candidate for reappointment.

SEC. 331. LIMITED AND TEMPORARY APPOINTMENTS.—Noncareer and other limited appointments in the Service (other than as a chief of mission), including appointment of a person who is an employee of an agency, shall in no event exceed five years in duration and, except as provided in section 333, may not be extended or renewed. A time-limited appointment in the Service for not to exceed one year shall be a temporary appointment.

SEC. 332. REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is regularly employed shall be entitled, upon the termination of such limited appointment, to be reemployed in the same position the employee occupied at the time of appointment to the Service, or in a corresponding or higher position. Such reemployment shall include receipt of any within-grade salary advancements the employee would have received in accordance with law or regulation had the employee remained in the position in which regularly employed.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 333. FAMILY MEMBERS OF GOVERNMENT EMPLOYEES.—(a) The Secretary, when employing persons abroad in positions to which career Foreign Service personnel are not customarily assigned (including vacant positions normally filled by foreign national employees when continuity over a long term is not a significant consideration), shall give equal consideration to employing available qualified family members of Foreign Service and other Government personnel assigned abroad. Family members so employed shall serve under renewable limited appointments and be paid either in accordance with the Foreign Service Schedule established under section 421 or a local compensation plan established under section 451, as appropriate.

(b) Employment of family members in accordance with this section must be consistent with the needs of the Service for positions for career personnel.

(c) The Secretary shall prescribe regulations for the guidance of all agencies regarding the employment at posts abroad of family members of Government personnel.

SEC. 341. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

diplomatic or consular officer or both. The Secretary may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may perform under their commissions any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Each chief of mission shall receive a salary as determined by the President, at one of the annual rates provided by law for levels II through V of the Federal Executive Salary Schedule (5 U.S.C. 5313–5316), except as provided in section 302(b).

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that office. The official services of a chief of mission shall not be deemed terminated by the appointment of a successor, but shall continue for such additional period, not to exceed fifty days after relinquishing charge of the mission, as the Secretary may determine. During that period, the Secretary may require the chief of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

mission to perform such functions as the Secretary may deem necessary in the interest of the Government.

SEC. 411. SALARIES OF THE SENIOR FOREIGN SERVICE.—The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Salary rates for the Senior Foreign Service shall not exceed the maximum rate or be less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

SEC. 421. THE FOREIGN SERVICE SCHEDULE.—The President shall prescribe nine classes of salary rates for members of the Service who are citizens of the United States and for whom other salary rates are not provided by this chapter. The basic salary of the highest class established under this section, which shall be designated class 1, shall not exceed the highest rate of basic pay established for grade 15 of the General Schedule described in section 5104 of title 5, United States Code. Salary rates for the Foreign Service under this section shall be established in accordance with subchapter I of chapter 53 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the General Schedule.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 431. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign to an appropriate salary class established under this chapter each person appointed to the Service, other than a chief of mission or member of the Senior Foreign Service whose salary is determined by the terms of his or her appointment.

(b) The salary class to which a member of the Service is assigned under this section shall not be affected by the member's assignment to any position or post under chapter 5. Except as authorized by chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member receiving a salary under the Foreign Service Schedule shall be made only in accordance with chapter 6.

SEC. 441. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 332 to the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary as prescribed under section 411 and any other award. The fact that

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

a member of the Senior Foreign Service competing for performance pay would receive compensation thereby exceeding the compensation of any other member of the Service shall not be taken into account in consideration for the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Such awards shall be subject to the following limitations:

(1) not more than 50 per centum of the members of the Senior Foreign Service may receive performance pay in any one year;

(2) performance pay for a member of the Senior Foreign Service may not exceed 20 per centum of the member's annual rate of basic salary except as provided in paragraph (3);

(3) not more than 6 per centum of the members of the Senior Foreign Service may receive performance pay in any year in amounts which exceed the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any year,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

except that payments of up to $20,000 may be made to up to 1 per centum of such members; and

(4) the total amount of basic salary plus performance pay received by any member of the Senior Foreign Service may not exceed in any fiscal year the salary provided by law for level I of the Federal Executive Salary Schedule (5 U.S.C. 5312).

(c) The Secretary shall determine the amount of performance pay as described in subsection (b)(2) available each year for distribution among the several classes of members of the Senior Foreign Service, and shall make distribution to particular individuals on the basis of recommendations by selection boards established under section 603.

(d) The President may grant awards of performance pay as described in subsection (b)(3) on the basis of annual recommendations by the Secretary of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 442. WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the For-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

eign Service Schedule shall receive an increase in salary at periodic intervals to the next higher rate for the class in which such member is serving unless the member's performance during any such interval is found in a review by a selection board established under section 603 to fall below the standards of performance for his or her class.

(b) Without regard to any other law, the Secretary is authorized to grant to any member of the Service to whom subsection (a) applies additional increases in salary within the salary range established for the class in which the member is serving, based upon especially meritorious service.

SEC. 451. LOCAL COMPENSATION PLANS.—(a)(1) The Secretary shall establish compensation plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government personnel described in section 333. Such compensation plans shall be based upon prevailing wage rates and compensation practices for corresponding types of positions in the locality (including participation in local social security plans) to the extent consistent with the public interest. Compensation plans established under this section may include provision for leave of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to section 6310 of title 5, United States Code.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or is a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by those who have retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who have retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any in the legislative or judicial branch) is authorized to administer employment programs for its employees who are foreign nationals or family members of Government personnel serving abroad, in accordance with the applicable provisions of this Act.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c) The Secretary may prescribe regulations governing the establishment and administration of local compensation plans under this section for the guidance of all agencies and Government establishments.

SEC. 452. SALARIES OF CONSULAR AGENTS.—The Secretary is authorized to establish the salary rate for each consular agent, after taking into account the workload of the consular agency and the prevailing wage rates in the locality where it is located.

SEC. 453. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, including a foreign national employee who worked under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary (or, in the case of an employee of the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the foreign national's employment by the United States. Such compensation may not exceed an amount that the agency head determines approximates the salary and other benefits to which the employee or former employee would have been entitled had he or she remained employed during the period of such imprisonment, and may be paid under such terms and condi-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tions as the Secretary deems appropriate. For the purposes of this section, the agency head shall have the same powers with respect to imprisoned foreign national employees and former employees as those of an agency head under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a foreign national which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless the individual either—

(A) was subject to section 8334(a) of such title during the period of his or her Government employment last preceding the imprisonment; or

(B) qualified for annuity benefits under such subchapter III by reason of other service; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

50-236 O - 80 - 3

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within three years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary may prescribe regulations governing payments under this section for the guidance of all agencies and Government establishments.

SEC. 461. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time as any member of the Service is temporarily in charge of a post during the absence or incapacity of the principal officer he or she shall receive, in addition to the basic salary for his or her class, an amount equal to that portion which the Secretary may determine to be appropriate of the difference between such salary and the basic salary provided for the principal officer, or, if there be none, of the former principal officer.

SEC. 462. SPECIAL ALLOWANCES.—The Secretary may pay special allowances, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

additional work on a regular basis in substantial excess of normal requirements.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—The Secretary shall designate and classify all positions to be occupied by members of the Service (other than chiefs of mission), including positions at posts abroad and in the Department. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salary classes established under chapter 4.

SEC. 511. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a) The Secretary may assign a member of the Service, in accordance with merit principles, to any position classified under section 501 in which he or she is eligible to serve (other than as chief of mission), and may transfer a member from position to position as the needs of the Service may require.

(b) Positions classified as Foreign Service positions normally shall be filled by the assignment of members of the Foreign Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by personnel of the Department and, under interagency

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

agreements, personnel of other agencies (including military personnel); and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a member of the Service serving under a career appointment to serve as charge d'affaires or otherwise as the head of a mission for such period as the public interest may require.

SEC. 521. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or in an international organization, international commission, or other international body;

(2) with domestic or international trade, labor, agricultural, scientific, or other conferences, congresses, or gatherings;

(3) for special instruction, training, or orientation at or with public or private nonprofit institutions, or commercial firms; and

(4) in the United States, or in any territory or possession thereof, or the Commonwealth of Puerto Rico, with a State or local government, public school, community college, or other public or private nonprofit

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

organization, including assignment to a Member or office of the Congress so long as assignments under this paragraph emphasize service outside Washington, District of Columbia.

(b)(1) The salary of a member of the Service assigned under this section shall be the salary of the member's class, irrespective of the salary of the position to which assigned, and shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the salaries of members assigned under this section.

(2) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section shall not exceed four years of continuous service for any member of the Service, unless the Secretary approves an extension of such period in special circumstances.

SEC. 531. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career personnel of the Service shall be obligated to serve abroad, and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of mem-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

bers of the Service within the United States. No member of the Service may be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period in special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign career members of the Service who are citizens of the United States to duty within the United States at least once during each period of fifteen years in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the member's development and effectiveness. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 541. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail. Such a detail, whether at the commencement during the course of, or at the close of an assignment, shall not be considered an assignment within the meaning of this chapter.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS BASED ON MERIT.—(a) Promotions in the Service shall be based upon merit principles.

(b) Promotions of—

(1) members of the Senior Foreign Service, and

(2) members receiving salaries under the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 603, except that the Secretary may by regulation specify categories of career personnel receiving salaries under the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

SEC. 602. PROMOTION INTO AND RETENTION IN THE SENIOR FOREIGN SERVICE.—(a) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among those members of the Service who are serving under career appointments at class 1 of the Foreign Service Schedule and who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the period (within any applicable time in class limitation specified under section 641(a)) during which such members may be considered for entry into the Senior Foreign Service by selection boards.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Decisions by the Secretary on promotions into and retention in the Senior Foreign Service shall take into account the needs of the Service to plan for the continuing admission of new members and for effective career development and reliable promotional opportunities.

(c) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 603. SELECTION BOARDS.—The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members receiving salaries under the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a class on the basis of relative performance and may make recommendations for—

(1) promotions under section 601(b);

(2) awards of performance pay under section 441(c);

(3) offer or renewal of limited career extensions as described in section 641(b); and

(4) such other actions as the Secretary may prescribe by regulation.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 612. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, and general performance of members of the Service, including reports of Foreign Service inspectors, performance evaluation reports of supervisors, records of commendations, awards, reprimands, and other disciplinary actions, and (with respect to the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotion into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and/or highly developed functional and area expertise required for the Senior Foreign Service.

SEC. 613. CONFIDENTIALITY OF RECORDS.—The records described in section 612(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

President, the Secretary, such officers and employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 621. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATIONS.—Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by class or in rank order by specialization within a class. The Secretary shall make promotions and, with respect to the career Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards. However, in special circumstances set forth by regulation, the Secretary may remove an individual name from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 631. OTHER RECOMMENDATIONS FOR PROMOTION.—(a) The Secretary may, pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Coun-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

sel of the Merit Systems Protection Board, or pursuant to a decision of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service;

(2) promote a member of the Service; or

(3) grant to a member of the Service performance pay or a within-class salary increase.

(b) In special circumstances set forth by regulation, the Secretary may make retroactive promotions and grants of performance pay and within-class salary increases, and may recommend retroactive promotions by the President, under section 621 and subsection (a) of this section.

SEC. 641. RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a) The Secretary shall, by regulation, specify the maximum time during which—

(1) career members of the Senior Foreign Service,

(2) Foreign Service officers, and

(3) career members in such other Foreign Service personnel categories as may be designated by the Secretary who are paid salaries comparable to the salaries of Foreign Service officers,

may remain in class (or a combination of classes) without a promotion. The Secretary may, by regulation, increase or decrease such maximum time for a class (or a combination of classes) as the needs of the Service may require.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest class for their respective personnel categories, or

(2) while they are serving as members of the Senior Foreign Service in classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions shall not exceed five years in duration and may be granted and renewed by the Secretary in light of the recommendations of selection boards established under section 602 and the needs of the Service. Personnel serving under such limited career extensions shall continue to be considered career members of the Service.

(c) Any member of the Service who does not receive a promotion within an applicable time in class limitation specified under subsection (a), or whose limited career extension under subsection (b) is terminated or not renewed, shall be retired from the Service and receive benefits in accordance with section 643.

SEC. 642. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the member's performance. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 643.

SEC. 643. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) whose limited extension of a career appointment under section 641(b) is terminated or not renewed; or

(2) who is otherwise retired under section 641 or 642—

(A) after becoming eligible for voluntary retirement under section 835, or

(B) from the Senior Foreign Service or from class 1 of the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 821.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Any other member of the Service who is retired under section 641 or 642 shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund, in three equal installments on the first day of January following the member's retirement and on the two anniversaries of this date immediately following: *Provided,* That in special cases, the Secretary may accelerate or combine the installments; and

(2) a refund of the contributions made to the Foreign Service Retirement and Disability Fund as provided in section 841, except that in lieu of such refund a member who has at least five years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military or naval service) may elect to receive retirement benefits on reaching age sixty in accordance with section 821. In the event that a member has elected to receive retirement benefits and dies before reaching the age of sixty his or her death shall be considered a death in service within the meaning of section 832.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c) Notwithstanding section 3477 of the Revised Statutes (31 U.S.C. 203) or any other law, a member of the Service who is retired under section 641 or 642 shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him or her under subsection (b)(1). Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy thereof shall be deposited with the Secretary of the Treasury by the person executing the assignment.

SEC. 651. SEPARATION FOR CAUSE.—(a) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service. No member serving under a career appointment and paid a salary specified for the Senior Foreign Service or in the Foreign Service Schedule shall be so separated until he or she has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. This section shall also apply to any such member of the Service who is in a probationary status or whose appointment is limited or temporary, when separation is by reason of misconduct. The hearing provided under this subsection shall be in lieu of any other administrative procedure authorized or required by this or any other law.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Any participant in the Foreign Service Retirement and Disability System separated under subsection (a) shall be entitled to receive a refund of the contributions made by the participant to the Foreign Service Retirement and Disability Fund as provided in section 841. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least five years of service credit toward retirement under this System (excluding military or naval service) may elect, in lieu of such refund, to receive retirement benefits on reaching age sixty in accordance with section 821.

(c) Any member of the Service separated under subsection (a) who is not a participant in the Foreign Service Retirement and Disability System shall be entitled only to such benefit as shall accrue to him or her under the retirement system in which the member is a participant.

SEC. 661. TERMINATION OF LIMITED AND TEMPORARY APPOINTMENTS.—(a) Except as provided in subsection (b), and notwithstanding any other law, the Secretary may terminate at any time the services of any member of the Service who is paid a salary specified for the Senior Foreign Service or in the Foreign Service Schedule or is a family member serving under a local compensation plan, and who is serving under a limited or temporary appointment.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) The termination of a limited appointment described in subsection (a) because of misconduct shall be subject to the provisions of section 651.

SEC. 671. TERMINATION OF CONSULAR AGENTS AND FOREIGN NATIONAL PERSONNEL.—Notwithstanding any other law, the Secretary may terminate at any time the services of any consular agent or foreign national employee after giving due consideration to the criteria and procedures normally followed in the locality in similar circumstances.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary shall maintain and operate the Foreign Service Institute (hereinafter the "Institute") originally established under section 701 of the Foreign Service Act of 1946 (60 Stat. 1018), in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to personnel of the Service, and of the Department and other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary.

(b) The Secretary may, in addition, provide to members of the families of such personnel in anticipation of their assignment abroad or while abroad—

50-236 O - 80 - 4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 333.

(c) To the extent practicable, the Secretary shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary through the Institute and otherwise.

SEC. 702. FOREIGN LANGUAGE REQUIREMENTS.—The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that posts abroad will be staffed by personnel having a useful knowledge of the language or dialect common to the country where the post is located. The Secretary shall arrange for appropriate language training of members of the Service at the Institute or elsewhere in order to assist in meeting such requirements.

SEC. 703. TRAINING AUTHORITIES.—In the exercise of functions under this chapter, the Secretary may—

(1) provide for the general nature of the training and instruction to be furnished in the Institute, including functional and geographic area specializations;

(2) correlate training and instruction with courses given at other Government institutions and at private

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those in the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4) pay the tuition and other expenses of personnel assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(5) employ personnel in accordance with the civil service laws and regulations and chapter 51 and subchapter III of chapter 53 of title 5, United States Code, except that, when deemed necessary by the Secretary for the effective administration of this chapter, personnel may be employed without regard to the civil service laws and regulations and chapter 51 and subchapter III of chapter 53 of title 5, United States Code, at any of the rates specified in the General Schedule described in section 5104 of title 5, United States Code (including in the absence of suitably qualified United States citizens persons who are not citizens of the United States), by appointment on a full-time, part-time, or intermittent basis or by contract for services in the United States or abroad;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(6) provide special monetary or other incentives to encourage Foreign Service personnel to acquire or retain proficiency in esoteric foreign languages or special abilities needed in the Service; and

(7) acquire such real and personnel property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

SEC. 704. TRAINING AND ORIENTATION GRANTS.—(a) To facilitate orientation and language training provided to members of families of Government personnel under this chapter, the Secretary may make grants to family members attending approved orientation and language programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance and in no event may any such grant exceed $300 per month per individual. No individual may receive such a grant for more than six months in connection with any one assignment.

(b) If a member of the family of a member of the Service who is assigned abroad is unable to participate in language training provided by the Department at the Institute or else-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

where, the Secretary may compensate that family member for all or part of the costs of the language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide professional career counseling, advice, and placement assistance, by contract or otherwise, to members and former members of the Service other than those separated for cause.

(b) The Secretary may facilitate the employment of spouses of Foreign Service personnel by—

(1) providing regular career counseling for such spouses;

(2) maintaining a centralized system for cataloging their skills and the various governmental and nongovernmental overseas employment opportunities available to them; and

(3) otherwise assisting them in obtaining overseas employment.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION AND MAINTENANCE OF THE SYSTEM.—(a) In accordance with such regulations as the President may prescribe, the Secretary shall administer the Foreign Service Retirement and Disability System (here-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

inafter the "System"), originally established by section 18 of the Act of May 24, 1924 (43 Stat. 144).

(b) The Secretary of the Treasury shall maintain the special fund, known as the Foreign Service Retirement and Disability Fund (hereinafter the "Fund"), originally constituted by section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following persons (hereinafter "participants") shall be entitled to the benefits of the System:

(1) every person serving under a career appointment—

(A) in the Senior Foreign Service, or

(B) under the Foreign Service Schedule; and

(2) every chief of mission, not otherwise entitled to be a participant, who—

(A) has served as chief of mission for an aggregate period of twenty years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 811.

(b) Any otherwise eligible person who is appointed to a position by the President, by and with the advice and consent of the Senate or by the President alone, shall not by virtue of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the acceptance of such appointment cease to be eligible to participate in the System.

SEC. 804. DEFINITIONS.—When used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any person, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim therefor;

(2) "child" means—

(A) an unmarried child of a participant under the age of eighteen years (or an unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support) who is—

(i) an offspring, or adopted child of the participant,

(ii) a stepchild or recognized natural child, who received more than one-half support from the participant, or

(iii) a child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death; and

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(B) an unmarried student below age twenty-two (for this purpose a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student is deemed to have become twenty-two years of age on the first day of July after that birthday);

(3) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military service;

(4) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(5) "lump-sum credit" means the compulsory and special contributions to a participant's or former participant's credit in the Fund plus interest thereon at 4 per centum a year compounded annually to December 31, 1976, and after such date for a participant who separates from the Service after completing at least

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

one year of civilian service and before completing five years of such service, at the rate of 3 per centum per year to the date of separation. Interest shall not be paid for a fractional part of a month in the total service on or compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity;

(6) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(7) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university or comparable recognized educational institution (a child who is a stu-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

dent shall not be deemed to have ceased to be a student during any period between school years, semesters or terms if the period of nonattendance does not exceed five calendar months and if the child shows to the satisfaction of the Secretary that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(8) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is the parent of a child born of the marriage;

(9) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made in their behalf, plus

(B) the present value of Government payments to the Fund under section 865, plus

(C) the Fund balance as of the date the unfunded liability is determined.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 811. CONTRIBUTIONS TO THE FUND.—(a) Seven per centum of the basic salary received by each participant shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of the participant's salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund shall be deposited by the Department in the Fund.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

(c)(1) If a member of the Service under another retirement system for Government employees becomes a participant in the System by direct transfer, such member's total contributions and deposits that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the System.

(2) No member of the Service whose contributions are transferred to the Fund under paragraph (1) shall be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d) Any participant credited with civilian service after July 1, 1924—

(1) for which no retirement contributions, deductions, or deposits have been made, or

(2) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Service	Per centum of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Notwithstanding the foregoing, a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the above schedule multiplied by the percentage of such service that is creditable under section 851. Special contributions shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 per centum to December 31, 1976, and at 3 per centum thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary.

(e) No contributions shall be required for any period of military or naval service, or for any period for which credit is allowed to persons of Japanese ancestry under section 851 for periods of internment during World War II.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

SEC. 821. COMPUTATION OF ANNUITIES.—(a) The annuity of a participant shall be equal to 2 per centum of his or her average basic salary for the highest three consecutive years of service multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with sections 851 and 853. However, the highest three years of service shall be used in computing the annuity of any participant who serves as chief of mission and whose continuity of service as such is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 per centum of any special contribution described in section 811(d) due for service for which no contributions were made and remaining unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b)(1) Except as provided in paragraph (2), any married participant who retires shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse. Such a participant's annuity or any portion thereof designat-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ed in writing by the participant as the base for the survivor benefit shall be reduced by 2½ per centum of the first $3,600 plus 10 per centum of any amount over $3,600. If an annuitant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 per centum of the full amount of the participant's annuity computed under subsection (a), or by 55 per centum of any lesser amount the annuitant designated under paragraph (2) at the time of retirement as the base for the survivor benefit.

(2) A married participant may elect in writing at the time of retirement to waive or reduce the maximum survivor annuity for his or her spouse described in paragraph (1). In recognition of the special sacrifices made by spouses of Foreign Service personnel, whose opportunities to achieve economic independence and self-sufficiency are severely curtailed by the disruptions of frequent reassignment and by the inherent limitations of service abroad on employment and career development, such an election may be made only with the written concurrence of the participant's spouse if the spouse has resided with the participant on assignments in the Service, including assignments abroad, for an aggregate period of ten years or more.

(3) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and shall terminate on the last day of the month before the survivor's remarriage prior to attaining age sixty, or death. If a survivor annuity is so terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c)(1) If an annuitant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) $900, or

(B) $2,700 divided by the number of children.

(2) If an annuitant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) $1,080, or

(B) $3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 882(c)(3), and

(B) the minimum specified in subsection (1) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant may elect to receive a reduced annuity and to provide for an annuity equal to 55 per centum of the reduced annuity payable after his or her death to a beneficiary whose name shall be designated in writing to the Secretary. The annuity payable to a participant making such election shall be reduced by 10 per centum of an annuity computed as provided in subsection (a), and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the retiring participant, but such total reduction shall not exceed 40 per centum. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as pre-

50-236 O - 80 - 5

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

scribed by the Secretary. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the survivor's death. An annuity which is reduced under this subsection or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) An annuitant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing a reduced annuity with benefit to any surviving spouse who qualifies under section 804(8). Receipt by the Secretary of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined as if the election were made under subsection (b)(1). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

be entitled under this or any other retirement system for Government employees.

(i) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 871 shall, unless the annuitant elects in writing to the contrary at that time (subject to the same conditions as are specified in subsection (b)(2) of this section), have the supplemental annuity reduced by 10 per centum to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 per centum of the annuitant's supplemental annuity and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is the parent of a child born of the marriage.

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence), be recomputed and paid as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect during such marriage, in a signed writing received by the Secretary within one year after such remarriage, a reduction in annuity for the purpose of allowing an annuity for the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

annuitant's spouse in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage, and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity elected under subsection (b)(1).

(k) The Secretary shall, on an annual basis, inform each participant of his or her right of election under subsections (g) and (j).

(l)(1) The monthly rate of an annuity payable under this chapter to an annuitant, or to a survivor annuitant other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(3) This subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 822. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she reaches age sixty.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application therefor supported by such proof of eligibility as the Secretary may require. If such application or proof of eligibility is not submitted during an otherwise eligible person's lifetime, no annuity shall be due or payable to his or her estate.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 831. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has five years of service credit toward retirement under the System, excluding military or naval service, and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to the participant's vicious habits, intemperance, or willful conduct), shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 821. If the disabled or incapacitated participant has less than twenty years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had twenty years of service, but the additional service credit that may accrue

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to a participant under this subsection shall in no case exceed the difference between his or her age at the time of retirement and age sixty.

(b) In each case, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary to conduct examinations. Disability shall be determined by the Secretary on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached age sixty. If the Secretary determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within one year from the date recovery is determined. Upon application the Secretary shall reinstate such recovered disability annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reap-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

pointment in the Service, whichever is earlier. Fees for examinations under this section together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 834 as of the date of retirement for disability and shall, after the discontinuance of the disability annuity, be entitled to the benefit of that section or of section 841 except that he or she may elect voluntary retirement if eligible under section 835.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

nor any provision of such subchapter shall be so construed as to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other person.

(e) Notwithstanding any other law, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such person shall receive such annuity he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund. (Deductions from such

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he or she finds that the financial circumstances of the annuitant are such as to warrant deferred refunding.)

(f) A claim may be allowed under this section only if the application if filed with the Secretary before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

SEC. 832. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 841.

(b) If a participant who has at least eighteen months of civilian service credit toward retirement under the System dies before separation or retirement from the Service and is survived by a spouse, such surviving spouse shall be entitled to an annuity equal to 55 per centum of the annuity computed in accordance with subsection (e) of this section and section 821(a). If the participant had less than three years

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least eighteen months of civilian service credit toward retirement under the System dies before separation or retirement from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 821.

(d) If a participant who has at least eighteen months of civilian service credit toward retirement under the System dies before separation or retirement from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 821.

(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 821 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age sixty. In all cases arising under subsection (b),

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c), (d), or (e), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity dies in service after being recalled under section 324 and is survived by a spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the deceased's annuity had been resumed in accordance with section 871. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse, shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 821(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse may elect, in lieu of any other survivor benefit under this chapter, to have the annuitant's rights redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the annuitant's total service.

(g) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

with subsection (b)(2), (e), or (h) of section 821, as appropriate.

SEC. 834. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least five years of service credit toward retirement under the System, excluding military or naval service, may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 841, or to leave his or her contributions in the Fund and receive an annuity, computed as prescribed in section 821, commencing at age sixty.

SEC. 835. VOLUNTARY RETIREMENT.—Any participant who is at least fifty years of age and has rendered twenty years of creditable service, including service within the meaning of section 853, may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 821.

SEC. 836. MANDATORY RETIREMENT.—(a) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age sixty, and shall receive retirement benefits in accordance with section 821.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Any participant who reaches age sixty while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary shall determine it to be in the public interest, any participant who has reached age sixty may be retained on active service for a period not to exceed five years. Any participant who completes a period of service after reaching age sixty as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 837. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a member of the Service who is a participant in the Foreign Service Retirement and Disability System completes an assignment under section 302(b) in a position to which he or she was appointed by the President, and if within three months of the termination of such assignment (plus any period of authorized leave) has not been reassigned, the member shall be retired from the Service and receive retirement benefits in accordance with section 821.

SEC. 841. LUMP-SUM PAYMENTS.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 871, the annuitant's compulsory contributions to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned.

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in the order of precedence shown in subsection (f).

(d) If a participant or former participant dies and is not survived by a person eligible for an annuity under this chapter or by such a person or persons all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments authorized in subsections (c) through (e) shall be paid in the following order of precedence to such person or persons surviving the participant and alive on the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person—

(1) to the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing received by the Secretary prior to the participant's death, for which purpose a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect;

(2) if there be no such beneficiary, to the surviving wife or husband of such participant;

(3) if none of the above, to the child (without regard to the definition in section 804(2)) or children of such participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation;

(4) if none of the above, to the parents of such participant or the survivor of them;

(5) if none of the above, to the duly appointed executor or administrator of the estate of such participant or the survivor of them;

(6) if none of the above, to other next of kin of such participant as may be determined in the judgment of the Secretary to be legally entitled thereto, except

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

that no payment shall be made under this paragraph until after the expiration of thirty days from the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person: first, to the duly appointed executor or administrator of the estate of the survivor annuitant; second, if there is no such executor or administrator, to such person as may be determined by the Secretary (after the expiration of thirty days from the date of death of such survivor annuitant) to be entitled under the laws of the survivor annuitant's domicile at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section 811 from the beginning of the first pay period after the participant has completed thirty-five years of service computed under section 851, but excluding service credit for unused sick leave under section 851(b), together with interest on the amounts at the rate of 3 per centum a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 811(d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death

50-236 O - 80 - 6

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

in service, to a beneficiary in the order of precedence specified in subsection (f).

SEC. 851. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service and all other periods through the date of a participant's final separation from the Service that the Secretary determines would be creditable toward retirement under the Civil Service Retirement and Disability System (5 U.S.C. 8322), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes, without regard to the thirty-five-year limitation imposed by section 821(a), the days of unused sick leave to the participant's credit, except that these days will not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

within sixty days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving, before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate, and shall be computed in accordance with section 811. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to six-months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 811. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 811 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 841. However, the participant is deemed to be separated from the Service after the expiration of five years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligi-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ble under section 8332(l) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than thirty days after the date on which application for such recomputation is received by the Secretary.

(2) The Secretary shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited or annuity recomputed under this subsection, of their entitlement to such credit or recomputation.

(3) The Secretary shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other instrumentality of the United States information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other instrumentality of the United States shall, upon request, furnish to the Secretary any information it possesses with respect to the internment or other detention, as described in section 8332(l) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress of the United States shall continue to

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the participant's salary) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made pursuant to this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Federal staff retirement system.

SEC. 853. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one year and a half in computing the length of a participant's service for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who shall have been paid a differential under section 5925 of title 5, United States Code, for such service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 861. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of such funds at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding $5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 863. INVESTMENT OF FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in his or her judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 864. ATTACHMENT OF MONEYS.—(a) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary in his or her sole discretion considers appropriate.

(b)(1) Payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary to another person to the extent expressly provided for in

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made under this chapter after the date of receipt by the Secretary of written notice of such decree, order, or agreement, and such additional information and documentation as the Secretary may require.

(3) As used in this subsection "court" means any court of any State or the District of Columbia.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section or under section 643(c), or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 865. PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 882;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in thirty equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 811(a).

SEC. 866. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary estimates is attributable to credit allowed for military service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 865(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 871. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 324 shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 811. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 882 that became effective during the recall period.

(b) If the recall service lasts less than one year, the annuitant's contributions to the Fund during recall service shall be refunded in accordance with section 841. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 821 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

continues for at least five years, the annuitant may elect to have his or her annuity determined anew under section 821 in lieu of any other benefits under this section. Any annuitant who is recalled under section 324 may upon written application count as recall service any prior service that is creditable under section 851 that was performed after the separation upon which his or her annuity is based.

SEC. 872. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member was entitled to receive under this Act on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice to the Department of such reemployment, together with all pertinent infor-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

mation relating thereto, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 881. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts heretofore voluntarily contributed by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 per centum per year to date of separation from the Service or in case of a participant or former participant separated with entitlement to a deferred annuity to the date the voluntary contribution account in claimed, or to the commencing date fixed for the deferred annuity or to the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the participant's election, his or her account shall be—

(1) returned in a lump sum; or

(2) used to purchase an additional life annuity; or

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary by the participant; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary by the participant with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity, or at such time as a former participant dies or withdraws complusory contributions to the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Fund. In case of death, the account shall be paid in the order of precedence specified in section 841(g).

SEC. 882. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse of a deceased participant who dies in Service or who dies after being separated with benefits under section 643(b)(2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the com-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

mencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to a participant's or deceased participant's credit on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor, except a child entitled under section 821(c) or 832 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 821 (c) or (d) or 832 (c) or (d), the items $900, $1,080, $2,700, and $3,240 appearing in section 821(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the child's annuity becomes effective.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least $1.

(f) Effective from its commencing date, there shall be an increase of 10 per centum in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty while a member or family member is en route to or from a post of assignment;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(4) representational travel within a member's country of assignment or, when not more than one family member participates, outside the country of assignment;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care, without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses, including expenses for—

(A) an attendant or attendants for a member or family member who is too ill to travel unattended or is a family member too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at post;

(6) rest and recuperation travel of United States citizen members of the Service, and members of their families, while serving at posts specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which such personnel are serving, or

50-236 O - 80 - 7

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(B) to locations in the United States:

Provided, That unless the Secretary otherwise specifies in extraordinary circumstances such travel expenses shall be limited to the cost for a member of the Service and the member's family of one round trip during any continuous two-year tour unbroken by home leave, and two round trips during any continuous three-year tour unbroken by home leave;

(7) removal of the members of the family of a member of the Service, and the member's furniture and household and personal effects (including automobiles), from a post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions, or to such other post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) up to two round trips each year by members of the Service for purposes of family visitation in situations where the member's family is prevented by official order from accompanying the member to, or has been ordered from, the member's assigned post because of imminent danger due to the prevalence of disturbed conditions, except that, with respect to any such member whose family is located abroad, the Secretary

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

may authorize such additional trips, as deemed appropriate, not to exceed the equivalent cost of two round trips of less than first class to the District of Columbia;

(9) round-trip travel from a post abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to their designated homes in the United States or to a place not more distant, the remains of members of the Service and of the members of their families who may die abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service to successive posts of duty and, on the termination of service, to the place where the member will reside;

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service—

(A) when absent from post of assignment under orders, or when assigned to a post to which the member cannot take or at which the member is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(B) in connection with assignment or transfer to a new post, from the date of departure from his or her last post or from the date of departure from the member's place of residence in the case of a new member and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and

(C) in connection with separation of a member of the Service, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months of the member's furniture and household and personal effects;

(13) transporting, notwithstanding any other law, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination: *Provided,* That not more than one motor vehicle of any such member may be transported under authority of this paragraph during any four-year period, while the member is continuously serving

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

abroad, except as a replacement for such motor vehicle—

(A) determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) incident to a transfer when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned within the United States, including assignments under sections 3371–3376 of title 5, United States Code (notwithstanding section 3375(a) of title 5, United States Code), if an agreement similar to that required by section 3375(b) of title 5, United States Code, is executed by the member of the Service.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 911. REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order to the United States

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

on statutory leave of absence any member of the Service who is a citizen of the United States upon completion of eighteen months' continuous service abroad and shall so order as soon as possible after completion of three years of such service.

(b) While in the United States for leave of absence, the service of any member shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties will not be counted as leave.

SEC. 921. HEALTH CARE.—(a) The Secretary may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to overseas service) designated eligible personnel of the Department and other agencies, and members of their families.

(b) Any such health care program may include medical examinations for applicants for employment and for personnel of the Department or the Service who are citizens of the United States, and for members of their families; examinations necessary to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System; and inoculations or vaccinations for such personnel and the members of their families.

(c) The Secretary may establish health care facilities and provide for the services of physicians, nurses, or other

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

health care personnel at posts abroad at which, in the opinion of the Secretary, sufficient personnel are employed to warrant such facilities or services.

(d) In the event any person eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the person concerned is or has been located abroad.

(e) The Secretary is authorized to provide health care under this section beyond the date of separation of any eligible personnel, and to their families beyond the date of death of such personnel or dissolution of marriage.

(f) The Secretary shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary is authorized for such persons, locations, and conditions as may be deemed appropriate, to contract for health care pursuant to such arrangements as may be deemed appropriate.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 931. REPRESENTATION.—Notwithstanding the provisions of section 5536 of title 5, United States Code, the Secretary is authorized to provide for official receptions and entertainment and representational expenses to enable the Department and the Service to provide for the proper representation of the United States and its interests.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds—

(1) that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment;

(2) that the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

modern and progressive work practices to facilitate their improved performance and efficiency; and

(3) that the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service. Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter shall be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—For purposes of this chapter, the term—

(1) "Board" means the Foreign Service Labor Relations Board, established by section 1011;

(2) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representatives of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorpo-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

rating any collective-bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(3) "collective-bargaining agreement" means a signed agreement (which may be of a comprehensive and long-term nature) entered into as a result of collective bargaining under this chapter;

(4) "conditions of employment" means personnel policies, practices, and matters within the discretion of the Secretary affecting working conditions (established by rule, regulation, or otherwise), except that such term does not include policies, practices, or matters—

(A) relating to the designation or classification of any position,

(B) relating to prohibited political activities,

(C) specifically provided for by Federal statute,

(D) relating to Government-wide or multi-agency responsibilities of the Secretary affecting agencies other than those to which this chapter applies;

(5) "confidential employee" means an individual who assists, or otherwise acts in a confidential capacity to, a management official (except an individual who assists in a purely clerical capacity a management official

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

who is not engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department);

(6) "dues" means dues, fees, and assessments;

(7) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent or any person who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1031 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(8) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees;

(9) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a primary purpose dealing with the Department con-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

cerning grievances and conditions, of employment, but does not include—

(A) an organization which by its constitution, bylaws, or tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national orgin, sex, age, political affiliation, marital status, or handicapping conditions;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department or composed solely of management officials;

(D) an organization which participates in the conduct of a strike, work stoppage, or slowdown, or which imposes a duty or obligation to conduct, assist, or participate in such an action;

(10) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone; or

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in paragraph (A) or (B), above;

(D) is serving as a deputy to any of the above;

(E) is assigned as a Foreign Service inspector; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(11) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1014;

(12) "person" means an individual, a labor organization, or an agency.

SEC. 1003. APPLICATION.—(a) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) The Secretary may suspend temporarily any provision of this chapter with respect to any post, bureau, office, or activity, in the United States or abroad, when the Secretary determines in writing in emergency situations that such a temporary suspension is necessary in the national interest.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to represent the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by members of the Service under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Nothing in this chapter shall affect the authority of the Department, in accordance with applicable law and regulations—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) to determine the mission, budget, organization, and number of types and classes of employees and internal security practices of the Department;

(2) to hire, promote, assign, direct, lay off and retain employees, or to suspend or remove, or to take other disciplinary action against such employees;

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Department's operations shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies;

(6) to take whatever actions may be necessary to carry out the Department's mission during emergencies.

(b) Subsection (a) shall not preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(2) procedures which management officials of the Department will observe in exercising their functions; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section.

SEC. 1011. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established the Foreign Service Labor Relations Board. The Board shall be composed of three members, one of whom shall be the Chairman of the Federal Labor Relations Authority, who shall chair. The remaining two members shall be appointed by the Secretary from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, each agency and each exclusive representative whose agreement is required shall select two nominees and each such agency and exclusive representative, in an order determined by lot, shall in turn strike a name from a list of such nominees until only one remains.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Federal Labor Relations Authority. One of the two original members of the Board other than the Chairperson shall be appointed for a two-year term, and one for a three-year term. Thereafter, each member other

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

than the Chairperson shall be appointed for a period of three years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board. The Chairperson may at any time designate an alternate Chairperson from among the members of the Federal Labor Relations Authority.

(d) The members, other than the Chairperson, may not be employees of the Government, and shall receive compensation at the daily rate paid an individual at level V of the Federal Executive Salary Schedule (5 U.S.C. 5316) for each day they are performing their duties (including traveltime).

(e) The Secretary may remove a Board member, other than the Chairperson, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department. All expenses of the Board, including travel and travel-related expenses, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, officers and employees of the Department and members of the Service may be assigned

50-236 O - 80 - 8

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions.

SEC. 1012. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith; and

(4) take any action considered necessary to administer effectively the provisions of this chapter.

(b) In the exercise of its responsibilities, the Board shall give such consideration as it deems appropriate to the decisions of the Federal Labor Relations Authority under section 7105 of title 5, United States Code.

(c) In order to carry out its functions under this chapter, the Board may—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) adopt regulations concerning its organization, procedures, and functions under this chapter;

(2) conduct appropriate inquiries wherever persons subject to this chapter are located;

(3) hold hearings;

(4) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas; and

(5) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out this chapter.

(d) Except as provided in section 518 of title 28, United States Code, attorneys designated by the Board may appear for the Board and represent the Board in connection with any function carried out by the Board under this chapter or as otherwise authorized by law.

(e) The Board shall maintain a file on its proceedings and copies of all available agreements, and shall publish the texts of its decisions and the actions taken by the Panel under section 1014.

SEC. 1013. JUDICIAL REVIEW AND ENFORCEMENT OF BOARD ACTIONS.—(a) Except as provided in section 1024(d), any person aggrieved by a final order of the Board may, during the sixty-day period beginning on the date on which the order was issued, institute an action for judicial

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

review of the Board's order in the United States Court of Appeals for the District of Columbia, which shall conduct its review on the same basis as an appeal from a decision of a district court.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board and for appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to such review and enforcement of actions by the Federal Labor Relations Authority.

SEC. 1014. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) The Foreign Service Impasse Disputes Panel shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson of the Board shall designate the members of the Panel, who shall include two members of the Foreign Service (neither of whom shall be a management official, a confidential employee, or a labor organization official); one representative of the Department of Labor; one member of the Federal Service Impasse Panel; and one public member who is not an employee of the Government. The Chairperson of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members who are not employees of the Government shall receive compensation for each day they are performing their duties (including traveltime) at the daily rate paid an individual at grade 18 of the General Schedule described in section 5104 of title 5, United States Code.

(c) Upon the request of either the Department or an exclusive representative, the Panel shall promptly consider a negotiation impasse, and shall assist the parties in resolving the impasse through mediation.

(d) If the parties do not arrive at an agreement after assistance by the Panel under subsection (c), the Panel may—

(1) hold hearings (in the course of which it may administer oaths, and take the testimony or deposition of any person under oath); and

(2) take whatever action is necessary to resolve the impasse.

(e) Notice of any final action of the Panel under this section shall be served promptly upon the parties, and shall be binding during the term of the agreement, unless the parties agree otherwise, or the Secretary finds that the Panel's action is contrary to the best interests of the Service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 1021. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected in a secret ballot election by a majority of the employees who cast valid ballots.

(b) If a petition is filed with the Board by a person—

(1) alleging (with the support of 30 per centum of the employees in the unit)—

(A) that the employees are not represented and wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) that the exclusive representative is no longer the representative desired by the majority of the employees; or

(2) seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

then the Board shall review the petition, and if there is reasonable cause to believe that a question of representation exists, the Board shall provide an opportunity for a hearing after reasonable notice. If the Board finds that a question of representation exists, the Board shall supervise an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be con-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ducted if, in the preceding twelve calendar months, a valid election has been held.

(c) A labor organization which—

(1) has been designated by at least 10 per centum of the employees; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed under subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish rules governing such election, which shall include rules allowing employees who are eligible to vote the opportunity to choose—

(A) from any labor organizations on the ballot, that labor organization which the employees wish to represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the Board's rules shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles;

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 per centum of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition; or

(3) if a petition is filed within two years of the date a labor organization has been certified as the exclusive representative.

(g) Nothing in this section shall prohibit the waiver of hearings by stipulation for the purpose of a consent election in conformity with regulations or decisions of the Board.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 1022. EMPLOYEES REPRESENTED.—The Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) management officials and confidential employees;

(2) employees engaged in personnel work in other than a purely clerical capacity; and

(3) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1023. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective-bargaining agreements covering, all employees in the unit described in section 1022. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), con-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

cerning general conditions of employment, including general personnel policies and practices, unless the specific application of those conditions to the particular employees is the sole issue;

(B) any examination of an employee by a Department representative for purposes of an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation for cause or appeal proceeding; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(d) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) to approach the negotiations with a sincere resolve to reach a collective-bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on appropriate conditions of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish the exclusive representative, upon request, and to the extent not prohibited by law, data (other than information which constitutes guidance, advice, counsel, or training provided for management officials or confidential employees)—

(A) which is normally maintained by the Department in the regular course of business, and

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies to which this chapter applies, as determined by such agencies; and

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(6) if agreement is reached, to execute, upon the request of either party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(e)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within thirty days after it is executed unless the Secretary finds that the agreement is inconsistent with an applicable law, order, or regulation, or the requirements of national security or foreign policy.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after thirty days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(f) The Department shall consult with the exclusive representative with respect to multiagency or interagency matters affecting the rights, benefits, or obligations of employees which are not subject to collective bargaining solely because of section 1002(4)(D).

SEC. 1024. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

or a claim of breach of a collective-bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board to resolve the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by the Federal Labor Relations Authority under section 7122 of title 5, United States Code;

the Board may take such action and make such recommendations concerning the Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Grievance Board action is filed under subsection (b) within thirty days after such action is

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1031. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation which is in conflict with an applicable collective-bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or Service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department's operations, but informational picketing in the United States which does not interfere with such operations shall not be considered an unfair labor practice;

(B) to condone any activity described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the exclusive representative except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under

50-236 O - 80 - 9

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

section 1131(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure, issues which can be raised under section 1024 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1024 or chapter 11.

SEC. 1041. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with govern-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of interest or would otherwise be incompatible with law or with the official functions of the management official or confidential employee.

(f) If the Board finds that any labor organization has wilfully and intentionally violated section 1031(b)(7)(A) by omission or commission with regard to any strike, work stoppage, prohibited picketing or slowdown, the Board may—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action in addition to or in lieu of such revocation.

SEC. 1051. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any person a written assignment which authorizes the Department to deduct from the salary of that person amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) the dues-withholding agreement between the Department and the exclusive representative is terminated or ceases to be applicable to the individual; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1021(b)(1)(A) if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the pay of the employees who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective-bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee other-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

wise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a non-duty status.

(3) The Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act or condition subject to the control of the Department which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including but not limited to the following:

(1) involuntary separation of a member allegedly contrary to law or regulation, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial information in any part of the member's official personnel record;

(2) other alleged violation, misinterpretation, or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the member's employment or career status;

(3) allegedly wrongful disciplinary action against the member;

(4) dissatisfaction with respect to the member's physical working environment;

(5) alleged inaccuracy, error, omission, or falsely prejudicial information in the member's official personnel file which is or could be prejudicial to the member;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(6) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with the member's participation in procedures under this chapter;

(7) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable law or regulation.

(b) A grievance may not be filed under this chapter with respect to any of the following:

(1) an individual assignment or transfer of a member ordered in accordance with law and regulation;

(2) the judgment of a selection board established under section 603, a tenure board established under section 322(b), or any other equivalent body established by law or regulation which similarly evaluates the performance of members of the Service on a comparative basis;

(3) expiration of a limited or temporary appointment or termination of a limited or temporary appointment under section 661; or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1131(b).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c) The scope of grievances described in this section may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative of members of the Service under chapter 10 (hereinafter "the exclusive representative").

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations specified in section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may present a grievance with respect to allegations described in paragraph (7) of section 1101(a).

SEC. 1103. FREEDOM OF ACTION.—(a) Any person presenting or filing a grievance (hereinafter the "grievant"), and any witness or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) A grievant who is a member of the bargaining unit represented by an exclusive representative shall be represented at every stage of the proceedings only if represented by that exclusive representative (which may approve the participation in the proceedings by an additional person on the grievant's behalf). Such a grievant has the right to present a grievance on his or her own behalf; however, the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

exclusive representative shall have the right to be present during the grievance proceedings. Any grievant who is not a member of such a bargaining unit has the right at every stage of the proceedings to representation of the grievant's own choosing. The grievant and any representative who is a member of the Service or an officer or employee of the Department shall be granted reasonable periods of administrative leave to prepare and present the grievance, and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or an officer or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any such proceedings.

(d) The Foreign Service Grievance Board is authorized to assure that no record of—

(1) a determination by the Secretary to reject a Grievance Board recommendation,

(2) a finding by the Grievance Board against the grievant, or

(3) the fact that a proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other person connected with the grievance. The Department shall maintain records pertaining

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to grievances under appropriate safeguards to preserve confidentiality.

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to insure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred, unless it is presented within a period of three years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative.

(b) There shall be excluded from the computation of the three-year period specified in subsection (a) any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(c) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days of written presentation, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 1111. THE FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter the "Board"). The Board shall consist of not fewer than five members, all of whom shall be independent, distinguished citizens of the United States, well known for their integrity, who are not presently serving as officers, employees, or consultants of the Department or as members of the Service.

(b) The chairperson and other members of the Board shall be appointed by the Secretary, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) of employees in each such agency. Each member of the Board shall be appointed for a term of two years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each agency and each exclusive representative whose agreement is required shall select two nominees and each such agency and exclusive representative in an order determined by lot, shall in turn strike a name from a list of such nominees until only one remains.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(c) Members of the Board who are not employees of the Government shall receive compensation for each day they are performing their duties (including travetime) at the daily rate paid an individual at grade 18 of the General Schedule described in section 5104 of title 5, United States Code.

(d) The Secretary may remove a Board member upon written notice for corruption, neglect of duty, malfeasance or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

(e) The Board may obtain facilities, services and supplies through the general administrative services of the Department. All expenses of the Board, including necessary costs of a grievant's travel and travel-related expenses, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, officers and employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The members, officers, and employees so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such members, officers, and employees. The records of the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Board shall be maintained by the Board and shall be separate from all other records of the Department.

SEC. 1112. BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or a grievant's retirement from the Service under section 641 or 642, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the grievant's representatives, and the Department's representatives are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given by oath or affirmation which any Board member or person designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition, and to serve interrogatories upon another party

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses provided by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial or unduly repetitious evidence as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board holds no hearing, the Board shall offer to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to its decision. The Board decision shall be based exclusively on the record of proceedings.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(9) A grievant whose grievance is found not to be meritorious by the Board may obtain reconsideration by the Board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the Board, and then only upon approval of the Board.

SEC. 1113. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings, and in light of previous adjudications of similar issues under this chapter and under section 1024. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the Board's decision.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority, within the limitations of the Secretary's authority, to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate, erroneous, or falsely prejudicial;

(2) to reverse an administrative decision denying the grievant compensation or any other perquisite of employment authorized by law or regulation when the Board finds that such denial was arbitrary, capricious, or contrary to law or regulation;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant with back pay, under applicable law and regulations, where it is clearly established that the grievant's separation or suspension without pay was unjustified or unwarranted; and

(5) to take such other remedial action as may be appropriate in procedures agreed to by the Department and the exclusive representative.

(c) Orders of the Board under this chapter shall be final, subject only to judicial review as provided in section 1141, except as provided in subsection (d).

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided in this section, or if the Board finds that the evidence before it warrants disciplinary action against any officer or employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the Board's recommendation. A recommendation of the Board may be rejected in whole or in part if the recommendation would be contrary to law, would adversely affect the foreign policy or security of the United

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

States, or would substantially impair the efficiency of the Department or the Service. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the Secretary's decision, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the Board's proceedings. The Secretary shall, however, have access to the entire record of the Board's proceedings.

SEC. 1121. ACCESS TO RECORDS.—(a) In considering the validity of a grievance, the Board shall have access, to the extent permitted by law, to any agency record considered by the Board to be relevant to the grievant and the subject matter of the grievance.

(b) The Department shall, subject to applicable law, promptly furnish the grievant any Department record which the grievant requests to substantiate the grievance and which the Board determines is relevant and material to the proceedings. When deemed appropriate by the Board, a grievant may be supplied with only a summary or extract of classified material. If a request by a grievant for a document is denied prior to or during the Department's consideration of a grievance, such denial may be raised by the grievant as an integral part of the grievance before the Board.

(c) This chapter does not require disclosure of any agency record to the Board or a grievant where the head of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

agency or deputy determines in writing that such disclosure would adversely affect the foreign policy or national security of the United States.

(d) The grievant in any case decided by the Board shall have access to the Board's record of proceedings and decision.

SEC. 1131. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided, under another provision of law, regulation, or Executive order, and the matter has been carried to final decision thereunder on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Such an election of remedies shall be final upon the acceptance of jurisdiction by the Board.

SEC. 1141. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of regulations prescribed by the Secretary under this chapter and final action of the Secretary or the Board on any grievance in the district courts of the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CHAPTER 12—COMPATIBILITY OF PERSONNEL SYSTEMS

SEC. 1201. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of other agencies as the President shall determine, through appropriate mechanisms, in order to assure compatibility of the Service to the extent practicable with other Government personnel systems.

SEC. 1202. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System (subchapter III of chapter 83 of title 5, United States Code) and the Foreign Service Retirement and Disability System (chapter 8 of this Act), whenever a law of general applicability is enacted which—

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) affects current or former participants, annuitants or survivors under the Civil Service Retirement and Disability System; and

(2) alters substantially identical treatment existing immediately prior to the enactment of such law, under a corresponding provision of law affecting participants, former participants, annuitants or survivors under the Foreign Service Retirement and Disability System;

such provision of law shall be deemed to extend to the latter System so that it applies in like manner with respect to Foreign Service Retirement and Disability System participants, former participants, annuitants or survivors.

(b) The President is authorized by Executive order to prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of such provision for the Civil Service Retirement and Disability System. Any provisions of an Executive order issued under the authority of this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of the provision of such Executive order, and

(2) any prior provision of an Executive order issued under authority of this section.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 1203. COMPATIBILITY AMONG AGENCIES EMPLOYING FOREIGN SERVICE PERSONNEL.—The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system. To this end, the heads of such agencies shall consult regularly with the Secretary.

SEC. 1204. CONSOLIDATED AND UNIFORM ADMINISTRATION.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and (in accordance with section 23 of the Act of August 1, 1956 (22 U.S.C. 2695)), consolidation of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary shall encourage the development of uniform policies and procedures and consolidated personnel functions in consultation with such agencies.

SEC. 1205. EXCLUSIVE FUNCTIONS OF THE SECRETARY.—The Secretary alone among agency heads shall perform the following functions, on behalf of all concerned agencies as appropriate:

(1) designation of offices abroad as diplomatic in nature under section 102(3);

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(2) supervision and direction of the Director General under section 204 and the Inspector General under section 205;

(3) functions under section 206 regarding the Board of the Foreign Service;

(4) issuance of regulations under section 333(b) regarding employment of family members of Government personnel;

(5) recommendations to the President under section 341 that personnel of the Service serve under diplomatic or consular commissions;

(6) recommendations to the President under section 441(d) that members of the Senior Foreign Service be awarded grants of performance pay for especially meritorious or distinguished service;

(7) issuance of regulations under section 451(c) regarding local compensation plans;

(8) determinations under section 453(a) and issuance of regulations under section 453(d) regarding compensation for imprisoned foreign nationals;

(9) operation of the Foreign Service Institute under chapter 7;

(10) administration of the Foreign Service Retirement and Disability System under chapter 8;

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(11) administration of health care programs under section 921;

(12) appointment and removal of members of the Foreign Service Labor Relations Board and provision of facilities to such Board under section 1011; and

(13) appointment and removal of members of the Foreign Service Grievance Board and provision of facilities to such Board under section 1111.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, REPEALS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

SEC. 2101. CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) The Secretary of State (hereinafter "the Secretary") shall convert to the appropriate class in the Foreign Service Schedule established under section 421 of the Foreign Service Act of 1979 those members of the Foreign Service—

(1) who on the effective date of this Act are serving under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 or at any class in the schedule established under section 415 of such Act as—

(A) Foreign Service officers,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(B) Foreign Service Reserve officers with limited or unlimited tenure, or

(C) Foreign Service Staff officers or employees; and

(2) who (with respect to Reserve and Staff officers and employees) the Secretary determines are available for worldwide assignment.

(b) Those Reserve and Staff officers and employees who the Secretary determines are not available for worldwide availability shall also be converted to the appropriate class under such section 421 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they affirm in writing their obligation to accept worldwide availability for assignment as a condition of employment.

SEC. 2102. CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited and unlimited tenure who are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 on the effective date of this Act may at any time within one hundred and twenty days after such date elect in a written instrument submitted to the Secretary to request appointment to the Senior Foreign Service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) Except as provided in subsection (d), if a request under subsection (a) is submitted by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant a limited appointment of such officer to the appropriate class established under section 411 of the Foreign Service Act of 1979.

(c) Except as provided in subsection (d), if a request under subsection (a) is submitted by a Foreign Service officer or a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the appropriate class established under section 411 of the Foreign Service Act of 1979.

(d) If the Secretary determines that a Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer affirms in writing his or her obligation to accept worldwide availability for assignment as a condition of employment.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(e) If a request for appointment to the Senior Foreign Service as described in subsection (a) is submitted to the Secretary, but more than one hundred and twenty days after the effective date of this Act, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommended to the President a career appointment of the requesting officer to the appropriate class established under section 411 of the Foreign Service Act of 1979, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe in light of the provisions of the Foreign Service Act of 1979 relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit such a request within one hundred and twenty days after the effective date of this Act, or

(2) who submits such a request more than one hundred and twenty days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

may remain in the Foreign Service for not more than three years after the effective date of this Act. During such period, the officer shall be subject to the provisions of the Foreign Service Act of 1979 regarding members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 441 of such Act, and shall not be eligible for a limited career extension as described in section 641(b) of such Act. Upon separation, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of the Foreign Service Act of 1979.

SEC. 2103. CONVERSION TO THE CIVIL SERVICE.—(a) Members of the Foreign Service who are serving on the effective date of the Act in a personnel category described in section 2101(a)(1) or 2102(a) and who are not converted into an appropriate class in the Foreign Service Schedule under section 2101 or in the Senior Foreign Service under section 2102 because they do not meet the conditions specified in section 2101(b) or 2102(d) shall, not later than three years after the effective date of this Act, be converted to the appropriate grade in the General Schedule described in section 5104 of title 5, United States Code, notwithstanding any other law, except that such members who meet the eligibility requirements for the Senior Executive Service and who elect

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to join that Service shall be converted to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b)(1) This section shall not apply prior to July 1, 1981, to personnel of the International Communication Agency who are covered by an existing agreement with the exclusive representative of those personnel. Prior to that date, members of the Service exempted from conversion by this subsection may elect to remain in the Foreign Service and, notwithstanding any other provision of law, the status, promotion, class, and tenure of such personnel shall continue to be governed by the Foreign Service Act of 1946 and Public Law 90–494 (as those Acts were in effect immediately prior to the effective date of this Act). The Foreign Service Act of 1979 (except sections 411, 421, 431, 441, and 531) shall also apply to such members of the Service, and such personnel shall be considered personnel of the Service for purposes of sections 103, 442, 511, 521, 651, and 803 of this Act.

(2) The President shall prescribe salary rates for the personnel who are temporarily excepted from conversion under this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such personnel shall be adjusted at the same time as rates of basic pay are adjusted

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

for the General Schedule and in such manner as to preserve without prejudice the comparable rates of pay for each class.

SEC. 2104. PRESERVATION OF STATUS AND BENEFITS.—(a)(1) Every member of the Foreign Service who is converted to a different personnel system or category under this chapter shall be converted, notwithstanding any other law, to the class or grade and salary rate that most closely corresponds to the class and step at which the member was serving prior to conversion, except that no conversion shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary: *Provided,* That until such conversions are made the affected personnel shall receive basic salary and allowances as if they had been converted under section 2101 or 2102, as appropriate, on the effective date of this Act.

(2) Conversions of members of the Foreign Service to new salary schedules under sections 2101 and 2102 shall in each case be to a class and step determined, in accordance with regulations prescribed under section 2105 to correspond to the class and step under which the member was serving immediately prior to conversion. Such regulations shall assure that no such conversion shall cause any individual to incur a reduction in salary.

(b) Any participant in the Foreign Service Retirement and Disability System who would normally participate in the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Civil Service Retirement and Disability System by virtue of the enactment of this Act or conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for one hundred and twenty days after participation in such system would otherwise cease. During such one hundred and twenty-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System. If such an election is not made, the individual will then be transferred to the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund will be transferred to the Civil Service Retirement and Disability Fund.

(c) Members of the Foreign Service who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion: *Provided,* That no conversion shall operate to extend the duration of any limited appointment or previously applicable time in class. Any member of the Service who is converted to the Civil Service under this chapter shall be deemed to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

50-236 O - 80 - 11

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(d) Any person who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service, or

(2) in any other office or position continued by this Act,

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Section 642 of the Foreign Service Act of 1979 shall become applicable effective five years after the effective date of this Act to members of the Foreign Service—

(1) who are serving under career appointments on the date of enactment of this Act, and

(2) who were not subject to section 633(a)(2) of the Foreign Service Act of 1946 immediately prior to the effective date of this Act.

SEC. 2105. REGULATIONS.—Under the direction of the President, the Secretary is authorized to prescribe regulations for the implementation of this chapter.

SEC. 2106. AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which employs Foreign Service personnel are authorized to perform any of the functions vested in the Secretary by this chapter with respect to personnel of the Service in their respective

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

agencies. Such agency heads shall consult with the Secretary in the exercise of such functions.

CHAPTER 2—AMENDMENTS TO OTHER LAWS

SEC. 2201. BASIC AUTHORITY.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2684 et seq.) is amended by adding at the end thereof the following new sections:

"SEC. 24. GIFTS.—(a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State including the Foreign Service or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any income thereof unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted pursuant to the authority granted in subsection (a), the net proceeds from the liquidation pursuant to subsection (c) or (d) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State including the Foreign Service, and the Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Department of State including the Foreign Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by Congress.

"(c) The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to subsection (a), shall be deposited with the Secretary of the Treasury, who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department including the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditures as provided in subsection (b).

"(d) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a), and shall permit such property to

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

be used for the operation of the Department including the Service and the performance of its functions, or may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in subsection (b). The income from any such real property or tangible personal property shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Department including the Service or the performance of its functions may be liquidated by the Secretary, and the proceeds thereof deposited with the Secretary of the Treasury whenever in the Secretary's judgment the purposes of the gift will be served thereby.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"SEC. 25. AUTHORIZATION TO RETAIN ATTORNEYS.—The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the inter-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ests of the Government or to enable a member of the Service to carry on the member's work efficiently.

"SEC. 26. EMPLOYMENT OPPORTUNITIES FOR FAMILY MEMBERS.—(a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of Foreign Service personnel may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the Chief of the United States Diplomatic Mission in such country, damage the interests of the United States.

"SEC. 27. USE OF VEHICLES.—Notwithstanding the provisions of section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), the Secretary of State may authorize any principal officer to approve the use of Government-owned or leased vehicles located at the principal officer's post for transportation of United States Government employees and their families when public transportation is unsafe or not available.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

"SEC. 28. EDUCATIONAL FACILITIES.—Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of American citizens stationed outside the United States engaged in carrying out Government activities, he is authorized, in such manner as he deems appropriate and under such regulations as he may prescribe, to establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, or to make grants of funds for such purposes, or otherwise provide for such educational facilities. The provisions of the Foreign Service Buildings Act, 1926, as amended, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Assistance may include, but shall not be limited to, hiring, transporting, and payment of teachers and other necessary personnel.

"SEC. 29. MALPRACTICE PROTECTION.—(a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 of the United States Code and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 of the United States Code and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28 of the United States Code shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the rem-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

edies of third persons against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States Ambassador or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"SEC. 30. POST EMPLOYEE SERVICES.—(a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act of 1926 (22 U.S.C. 292–300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where in the Secretary's judgment, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds: *Provided*, That an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized, or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.".

(b) The authorities conferred upon the Secretary of State by sections 24 and 25 of such Act shall continue to be

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

available to the Director of the International Communication Agency and the Director of the International Development Cooperation Agency.

SEC. 2202. CONFORMING AMENDMENTS.—(a) The Peace Corps Act (22 U.S.C. 2501 et seq.) is amended as follows:

(1) in section 5(f)(1)(A), strike out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1))" and insert in lieu thereof "section 851(a) of the Foreign Service Act of 1979";

(2) in section 5(h)—

(A) strike out "section 1091 of the Foreign Service Act of 1946" and insert in lieu thereof "section 31 of the Act entitled 'An Act to provide certain basic authority for the Department of State', approved August 1, 1956 (22 U.S.C. 2684 et seq.)"; and

(B) strike out "Director of Action" and insert in lieu thereof "President";

(3) in section 7(a)(1)—

(A) strike out "the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and insert

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

in lieu thereof "the Foreign Service under the Foreign Service Act of 1979";

(B) strike out "section 528" and insert in lieu thereof "section 332";

(C) strike out the word "Reserve" the last place it appears and all that follows and insert in lieu thereof a period;

(4) section 7(a)(2) is amended to read as follows:

"(2) The President may utilize such authority contained in the Foreign Service Act of 1979 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

"(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

"(B) no person whose Foreign Service appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to that person's preceding tour of duty.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Such provisions of that Act as the President deems appropriate shall apply to persons appointed or assigned under this paragraph, including in all cases, the provisions of section 332 of that Act: *Provided, however,* That the President may by regulation make exceptions to the application of section 332 in cases in which the period of the appointment or assignment exceeds thirty months: *Provided further,* That members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe: *Provided further,* That under such regulations as the President may prescribe persons who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service at the lowest class may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class.";

(5) in section 14(b), strike out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and insert in lieu thereof "section 931 of the Foreign Service Act of 1979".

(b) The Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended as follows:

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(1) section 625(d)(1) (22 U.S.C. 2385(d)) is amended to read as follows:

"(1) employ or assign persons, or authorize the employment or assignment of officers or employees by agencies of the United States Government, who shall receive compensation at any of the rates provided for under section 411 or section 421 of the Foreign Service Act of 1979, together with allowances and benefits under that Act; and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 332 of that Act for persons appointed to the Foreign Service.";

(2) section 631(b) (22 U.S.C. 2391) is amended by striking out the second sentence and inserting in lieu thereof "Such chief shall be entitled to receive such compensation and allowances as provided for in the Foreign Service Act of 1979, not to exceed those authorized for a chief of mission (within the meaning of that Act), as the President shall determine to be appropriate.";

(3) section 631(c) is amended by striking out the second sentence and inserting in lieu thereof "Such

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

person may receive such compensation and allowances as are authorized by the Foreign Service Act, not to exceed those authorized for a chief of mission (within the meaning of that Act), as the President shall determine to be appropriate.".

(c) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

"FOREIGN SERVICE PERSONNEL

"SEC. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency the following authority:

(1) the authority available to the Secretary of State under the Foreign Service Act of 1979, and

(2) the authority available to the Secretary under any other provisions of law pertaining specifically or generally applicable to such members.

"(b) Limited appointments of Foreign Service personnel for the Agency may be extended or renewed, notwithstanding section 331 of the Foreign Service Act of 1979, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.".

50-236 O - 80 - 12

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SEC. 2203. SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding at the end thereof:

"(24) Ambassadors at Large.".

SEC. 2204. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) by amending paragraph (1)(A)(ii) by inserting immediately after "chapter 71 of this title," the words "or under chapter 11 of the Foreign Service Act of 1979,";

(2) by amending paragraph (3)—

(A) by inserting immediately after "section 7103 of this title" the words "and (with respect to Foreign Service personnel) in sections 1002 and 1101 of the Foreign Service Act of 1979"; and

(B) by inserting immediately after "section 7116 of this title" the words "and (with respect to Foreign Service personnel) in section 1031 of the Foreign Service Act of 1979".

SEC. 2205. LEAVE FOR SENIOR FOREIGN SERVICE.—Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(2) by adding at the end thereof the following new subsection:

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

CHAPTER 3—REPEALS

SEC. 2301. REPEALED PROVISIONS.—There are repealed—

(1) the Foreign Service Act of 1946 (22 U.S.C. 801–817, 821, 822, 826, 827, 841–843, 846, 861, 866–873, 876, 877, 881, 882, 886, 889, 890, 896, 900–902, 906–915, 921–924, 926–932, 936–939, 946, 947, 951, 961–966, 968, 981, 986, 987, 991–996, 1001–1009, 1016, 1017, 1021, 1022, 1026–1028, 1031, 1036, 1037–1037c, 1041–1048, 1061–1065, 1071, 1076–1079s, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103, 1106, 1111, 1112, 1116, 1121, 1131, 1136–1138a, 1139, 1148–1151, and 1156–1160);

(2) sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 981, 986);

(3) section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857);

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(4) sections 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846);

(5) section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452);

(6) the Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps, approved August 20, 1968 (22 U.S.C. 929–932, 1221–1232);

(7) paragraph (2) of subsection (d) and subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (d)(2), (e), (g), (j), and (k)), except that the effective date of the repeal of subsection (k) shall be January 1, 1982;

(8) section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)); and

(9) section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

CHAPTER 4—SEVERABILITY, SAVING PROVISION, REPORTS, AND EFFECTIVE DATE

SEC. 2401. SEVERABILITY.—If any provision of this Act or the application thereof to any person or circumstance

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

SEC. 2402. SAVING PROVISION.—All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act. References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

SEC. 2403. REPORTS.—Not later than eighteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing the steps taken in furtherance of this Act's objective (as set out in sections 101(b)(9) and 1203 of the Foreign Service Act of 1979) of achieving maximum compatibility among the agencies utilizing the Foreign Service

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

personnel system and including such recommendations as the Secretary believes will assist in achieving that objective. The Secretary shall keep the Congress informed on a continuing basis on progress made in pursuit of the goal of maximum compatibility.

SEC. 2404. EFFECTIVE DATE.—This Act shall take effect on January 1, 1980.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Senator PELL. The witnesses today will highlight the major features of this bill, and there will be further hearings to examine more fully all facets of this legislation and to allow the various employee unions an opportunity to comment on its provisions.

In this regard, I recall this work being started in the previous administration by Larry Eagleberger and Carol Laise. I think the broad outlines set forth then are being fine-tuned and improved, and will be the first overall change of this sort that has been made since the Foreign Service Act of 1946, of which we all had great hopes but which was never really fully implemented.

We are very honored that our first witness today is the Secretary of State, Cyrus Vance, who is accompanied by the Deputy Under Secretary of State, Ben Read.

STATEMENT OF HON. CYRUS R. VANCE, SECRETARY OF STATE; ACCOMPANIED BY BEN H. READ, DEPUTY UNDER SECRETARY OF STATE FOR MANAGEMENT

Secretary VANCE. Thank you, Mr. Chairman.

First, may I say how much I appreciate your early scheduling of these hearings on the proposed new Foreign Service Act to which we, and I personally, attach great importance.

Senator PELL. I must apologize; it was my amendment that changed your title from Deputy Under Secretary to Under Secretary. Excuse me, Mr. Vance.

Secretary VANCE. Not at all.

No one has a more profound appreciation of the necessity for a vital Foreign Service, and no one has a deeper personal obligation than I to maintain its vitality. From my tenure as Secretary of State and earlier Government experience, I know the country and its leaders depend upon a strong and a vigorous Foreign Service. And I believe a strong Foreign Service needs this act.

ROGERS ACT OF 1924, FOREIGN SERVICE ACT OF 1946

The Rogers Act of 1924 which created the modern Foreign Service, and the Foreign Service Act of 1946, to which the chairman just referred, which established its present form, were landmarks in their present time. They served us well. The 1946 Act created the personnel system which now supplies three-fourths of our ambassadors. This administration, as have all administrations since World War II, depends on it for the people who represent our international interests—from the most sensitive missions down to the simplest, yet essential, day-to-day tasks.

TIMES HAVE CHANGED SINCE 1946

But times have changed since 1946. We must be sensitive to the shifts which have taken place in the environment that affect the Foreign Service career, and we must look ahead to the challenges of our Foreign Service, the challenges they will face in the future.

Diplomacy has always been a risky trade. From the days of Benjamin Franklin and the Committees of Correspondence, our diplomats

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

have quite literally risked their lives in the service of their country. At no time since 1946 has service been more difficult than it is in so many posts today, or as dangerous—as the senseless deaths of able officers in the last few tragically demonstrate.

The 1946 Act gave us a Foreign Service that answered the demands of the day. But today's circumstances are significantly changed. The number of independent governments has more than doubled during that period, and the range of multilateral institutions and efforts in which we are engaged has grown enormously. Our international commerce has vastly expanded and the international dimension of economic issues has become increasingly central. Major new areas of concern, such as nuclear nonproliferation, narcotics control, environmental protection, and science and technology have emerged. And new emphasis has been given to traditional concerns of American foreign policy, such as the advancement of human rights. Americans are traveling abroad in record numbers, with a commensurate increase in the demands for consular services.

The Foreign Service has had to respond to these increasing demands with roughly the same number of people as it had 20 years ago.

At the same time, personnel management is influenced now in ways that were hardly foreseen in 1946. Formal employee-management relationships only emerged in the State Department within the last 10 years. A change has also taken place in the perceived advantages of overseas service. The quality of life in many foreign capitals has deteriorated while the threat to personal safety has increased. The declining value of the dollar and high inflation in many nations have made our task more difficult. Moreover, with a growing number of families in which both spouses are pursuing professional careers, there is understandable increasing family reluctance to leave the United States for foreign posts.

All of these foreign developments underscore the obvious fact that the Foreign Service is confronted by dramatically different circumstances than prevailed a third of a century ago. The Service must adapt to these new conditions if it is to meet new responsibilities, now and in the years ahead. And yet, the structure of the Service has not kept pace. Obsolete, cumbersome, and frequently anomalous organizational arrangements and personnel distinctions have tended to sap its traditional strength and hinder its performance.

We need a personnel system which takes account of new realities. We need the discipline and the incentives that will preserve, strengthen, and prepare our Foreign Service for the complex challenges ahead.

CIVIL SERVICE REFORM ACT

The Civil Service Reform Act passed by the Congress last year strengthens and modernizes the conditions of employment as well as the management efficiency of the Civil Service in all departments and agencies, including the Department of State and the foreign affairs agencies. In recognition of the fundamentally different mission and conditions of the Foreign Service, however, it was exempted from many of the basic provisions of that act.

This has given us a rare opportunity to draw from the features of the 1978 Civil Service Reform Act where they are adaptable to the unique requirements of the Foreign Service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

COMPREHENSIVE PLAN TO IMPROVE, SIMPLIFY PERSONNEL ARRANGEMENTS

The bill we are proposing for your consideration today is directly responsive to a 1976 congressional request initiated by you, Mr. Chairman, calling on the Department to submit a "comprehensive plan" to improve and simplify our personnel arrangements. The proposal represents 3 years of studies, suspended only during congressional consideration of the Civil Service legislation last year, but resumed and intensified during the last 7 months. It represents extensive consultation within the executive branch and with interested members and staff on the Hill. I have devoted many hours to this process and am confident that we are submitting a bill which will substantially strengthen the Foreign Service.

Let me summarize the major features of the bill.

MAJOR FEATURES OF BILL

First and foremost, it links the granting of career tenure, promotions, compensation and performance pay, as well as retention in the Service more closely to the quality of performance.

The bill would require all persons seeking career status to pass a rigorous testing process before being awarded such status.

It restores an effective "up or out" policy essential to attracting and keeping the most qualified people and assuring them the opportunity to move through the ranks at a rate which reflects their ability.

Some procedures, such as selection out for substandard performance, would be applicable for the first time to all Foreign Service personnel, from the highest to the lowest ranks.

Other procedures, such as limited career extensions for persons at the highest ranks of their occupational categories, are new. They would be administered on the recommendations of annual selection boards and would provide greater flexibility in assuring that the Service retains the ablest people and the essential skills it needs.

Present voluntary and mandatory retirement features, both essential for an effective Service, are retained without change.

The bill would create a new Senior Foreign Service, with rigorous new entry criteria for the highest three ranks. Membership in the Senior Foreign Service would involve greater benefits and risks based on performance. With adaptations, the incentive provisions are modeled on the Senior Executive Service provisions of the 1978 law.

Second, the bill recognizes the clear distinction between the Foreign Service and the Civil Service. It clearly limits Foreign Service career status only to those people who accept the discipline of service overseas.

Today, there are several hunderd members of the Foreign Service in the Department alone who have entered the Service without any real expectation that they would have to serve abroad, and who have not served abroad. The bill would convert these persons to Civil Service or Senior Executive Service status, with pay and benefits preserved.

Third, it improves the management and efficiency of the Service by reducing the number of personnel categories from more than a dozen to two. There would be a single pay scale for both. In general, our personnel laws would be consolidated, rationalized, and codified to meet current demand.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Fourth, it places employee-management relations on a firmer and a more equitable statutory basis, establishing a new Foreign Service Labor Relations Board and a Foreign Service Impasse Disputes Panel.

Fifth, it would underscore our commitment to mitigating the special hardships and strains on Foreign Service families, and advancing equal employment opportunity and fair and equitable treatment for all without regard to race, national origin, sex, handicap, or other such considerations.

Sixth, it would improve the economy and efficiency of government by promoting maximum compatibility and interchange among the agencies authorized to use Foreign Service personnel. It would also foster greater compatibility between the Foreign Service and the Civil Service.

There are many other features of this bill, Mr. Chairman, which will be described in more detail by others who follow me, including USICA [International Communication Agency] Director Reinhardt, Acting AID [Agency for International Development] Director Nooter, and Director of OPM [Office of Personnel Management], Scotty Campbell.

FOREIGN SERVICE MISSION COMPLEX AND DIFFICULT

The Mission of the Foreign Service, in the years ahead will be complex and difficult. It will face great demands, both physical and emotional. But freed by this new proposed charter from the organizational obstacles to which I have alluded, I am confident that it will be able to do its essential work for the Nation with distinction, for the vast majority of its members at all levels are people of uncommon professional ability, experience, and dedication.

I know you share my view that the country needs a strong Foreign Service. I believe that when you have completed your examination of this proposed legislation you will share my view that a strong Foreign Service needs this act.

Senator PELL. Thank you very much, Mr. Secretary, for your statement. Also, I recognize and have high regard for the interest you have taken in this project yourself. It is not a very "sexy" issue, as shown by the fact that usually the press corps are quite multitudinous when you appear before a congressional committee, and we have exactly one occupant at the press table here.

But it is a highly significant piece of legislation, and I think that it can have a very real effect on the conduct of our diplomacy and the status of our country in the world in the years to come.

Secretary VANCE. Mr. Chairman, could I just make a point on that?

Senator PELL. Please.

Secretary VANCE. I wholeheartedly share what you have just said. This is a matter of, I think, great importance to the Foreign Service and to its effectiveness in the years that lie ahead. I think it is also a matter of great urgency. I think it is a matter that needs attention at this time and prompt action by the Congress.

So, I repeat as I did at the outset of my statement, my thanks for the willingness of this committee to schedule this early hearing so that we can get on with the business of reviewing this bill and enacting it into law.

Senator PELL. Thank you. Speaking personally, it is of particular interest because my father passed the old diplomatic exam and I was

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

in the Foreign Service myself some years back. So, I am really personally very interested in this project as well, and as you pointed out, it is in the national interest.

FOREIGN SERVICE CAREERS INVOLVE DANGER

I thought you touched on one very important point, and that is that careers in the Foreign Service involve danger. I think it is a fact that is lost sight of except in time of war when the military or the civilian population suffers; but in time of peace there is no more dangerous situation than the Foreign Service. You and I have both discussed in the past the fact that four of our chiefs of mission in a certain part of the world were killed, and this continues to go on. So, they need certain incentives, rewards, and a different spirit—with all respect to Mr. Campbell who will be following you—from the Civil Service. The Civil Service is, I think, more of a "nine-to-five" approach except in its higher regions when they are, Lord knows, exceptionally conscientious.

FOREIGN SERVICE, CIVIL SERVICE COMPARABILITY

When you talk about greater comparability to civil service, I think that is perhaps the wrong line, it ought to have a greater comparability with the military service where you have promotion and selection out; where you have the element of danger; where you have the discipline and the free assignments. I would have thought your thinking would be more in that direction rather than making it more comparable with the civil service.

Secretary VANCE. I think it is clearly comparable in many ways to the military because of the overseas service; because of the risks and hardships that are incurred by our personnel serving overseas and their families, including wives and children, I wholeheartedly agree with you on that. However, I think that there are many who during their tours of duty obviously are going to be serving at home in the United States, and where there can be comparability, then we should have comparable treatment and we should have comparable pay.

PERFORMANCE PAY

That is one of the reasons I believe we should have performance pay in connection with the Senior Foreign Service, which I know is a subject you will want to discuss with me.

Senator PELL. You are right, that is one point of difference in view, very much the same view that made me feel that young officers should not have differences in pay. Just like in the military service, you do not pay extra to the watch officer when he cons the ship at night; nor do I think that you would pay more for Senior Foreign Service officers. That is like saying that a brigadier general, or major general, gets more money when he does a good job, less if he does a bad job, rather than keeping the incentives of "motion up," retention, or selection out, which really are adequate stimuli, I would have thought.

Why is it that you feel those stimuli are not adequate?

Secretary VANCE. As all of us know, last year the Congress overwhelmingly decided during its consideration of the Civil Service Re-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

form Act that it was appropriate for senior career officials of the Government to have the opportunity to earn pay which was more like that of individuals in the private sector, with comparable responsibilities. This additional compensation, it was decided, should not be automatic; it should be awarded only to those performing at the higher level. Now, these two principles were applied and the principle of performance pay has been enacted into law for the Senior Executive Service.

I believe that it is right and appropriate that the people in the Senior Foreign Service should have similar treatment and similar compensation. I think it is correct when there is outstanding performance that people should be compensated for outstanding performance as they are in private life. I think it is also important from the standpoint of the Foreign Service. They should not find themselves in a category where they are being compensated at a rate less than their colleagues in the civil service who are working at home.

Senator PELL. Have you ever discussed that thought with Secretary of Defense Brown that under exactly the same analogy perhaps the four-star general who has a responsibility that is really tremendous from a managerial viewpoint, or a two-star general, doing his job well, should get more money than one who does it badly? I do not see the difference.

Secretary VANCE. I think that the principle is a sound principle. I think the principle of rewarding people for good performance is a sound one. I do not see any reason why that should not apply to the military as well as this case.

Senator PELL. But do you not think that the incentives I mentioned, the possibility of a command, or a job, retention in the service or selection out, that those are pretty strong stimuli right there?

Secretary VANCE. They are stimuli, I would not disagree on that. However, I think in the modern world with the costs which are entailed in raising a family—whether it be in the United States or overseas—that it is important that the principle of compensation for performance should apply, as well as the other stimuli which we already know exist.

Senator PELL. I do not want to overburden this dialog, but I think there is another difference here. There is no promotion, really, in the civil service because you get to higher rank only by changing a job, which is just the opposite from the military and the Foreign Service concept where the rank goes with the individual. Therefore, for example, a GS–16 ought to get performance pay if he really does an extra good job since he cannot get to a GS–17 slot except by changing jobs. I think there is a very real difference in this regard.

What would be your reaction to that thought?

Secretary VANCE. I look at this thing in a very practical way. My judgement is, unless you provide performance pay, you are going to find that the Senior Foreign Service will not be compensated at the same level as those in the civil service. Therefore, I feel that it is essential that we put this in law on a comparable basis so that we can assure that the people in the Foreign Service are going to receive the same kind of compensation in terms of amounts, which is possible under the civil service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

FOREIGN SERVICE/CIVIL SERVICE COMPARABILITY

Senator PELL. I guess our point of difference is, you come back to the idea that there should be comparability with the civil service, and I think the less comparability the better, it should be comparable with the military service.

Secretary VANCE. It is required by law.

Senator PELL. In what way, sir?

Secretary VANCE. The Pay Act of 1962.

Senator PELL. That would apply to military service, too, then; would it not?

Secretary VANCE. I do not know whether it applies to the military or not.

Senator PELL. If it applies to the Foreign Service, I would imagine it applies to the military service as well.

Secretary VANCE. I do not know. Scotty could perhaps answer that.

Senator PELL. What is the answer?

Mr. CAMPBELL. There is a simple tie between the military and civil service pay under which the former are adjusted by the same overall percent as the latter.

Senator PELL. Under the same theory, then, should we have major generals get different pays, depending on how well they do their jobs?

Mr. CAMPBELL. As far as I am concerned, the use of bonus pay for performance could well apply in the military. I do not know Secretary Brown's views, but Secretary Brown very strongly supported the Civil Service Reform Act and the use of performance pay.

Senator PELL. I do not want to take too much of the Secretary's time on this point. I think except for this one feature, much of the rest of the bill is altogether excellent.

PROMOTION/SELECTION OUT PROCESS

Another question that came up the other day is that if you have what I might call the noncommissioned officers, the support staff, the secretary who has been in for 10 years and is not being promoted up within the time frame, would she be compelled to retire, or is there a grandfather clause in the bill to take care of situations such as this?

Secretary VANCE. With respect only to selection-out for relative performance, after 5 years they will be treated in a similar fashion to others. My recollection is, as a result of our consultations on this, we have found that the majority would agree that this is something they could support.

Senator PELL. But for 5 years the grandfather clause would apply?

Secretary VANCE. Yes.

LONG-TERM COST OF BILL TO GOVERNMENT

Senator PELL. I have come across secretaries who spoke vigorously on this subject.

What will be the long-term cost of the bill to the Government, comparatively speaking?

Secretary VANCE. There will be very slight no additional cost directly resulting from the passage of the bill. However, if we move to performance pay—which I hope very strongly we will—at that time

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

there obviously would, in my judgment, be additional costs. I cannot give you an estimate at this time as to what they would be, this would have to be taken care of in connection with the annual budgetary process. Therefore, it would be only a guess on my part. I might point out that the passage of the bill will not result in any automatic promotions or demotions, and that the pay comparability study which was mandated by the Congress, and which has been just completed and submitted to you, I believe, on June 20, will be implemented separately. Its cost will be part of the regular authorization and appropriation process.

On that I might just mention that you have the results of the study by Hay Associates which, again, I think, came about as a result of a request that you made, Mr. Chairman. It is a very interesting study. It is also being reviewed within the executive branch at this time by a group consisting of the interested agencies and elements within the Government. We hope to complete our review of that study by the end of August, and hope by that time to have an administration position which we would submit to you, reflecting the views of the administration, based upon that study and its interrelationship to pay scales.

Senator PELL. As you know, I believe very strongly that our Foreign Service officers should be compensated at as high a rate as possible, and that would not worry me at all. I particularly believe the junior ones should, with the responsibilities they have.

I guess where we part company is whether you would have the incentive pay in addition to the possibilities of promotion.

Secretary VANCE. Let me say on that, I took a look during the process of my study and review of the bill as it developed on whether or not we should seek to have incentive or merit pay at the lower levels as well. I concluded that would be a mistake because it would be very hard to administer at that level. Indeed, I think it might end up with a sort of negative effect because if the Congress saw at that level that there was incentive or merit pay available, they might not give the necessary authorizations for cost-of-living increases, and employees might end up, on balance, worse off than otherwise.

I do not think the same thing applies at the three senior grades which would be contained in the Senior Foreign Service.

Senator PELL. I think it was Napoleon who once said that a man will give up his life for a piece of little red ribbon. I thought that incentives were along those lines, the awards and medals that you give. I do not think that a really dedicated Foreign Service officer is going to do a better job or a worse job if he gets more money for it. I think it is almost demeaning to him in that position. That is where we differ.

Secretary VANCE. We really do part. I really do not think it is demeaning, Mr. Chairman. I think that it is important to reward superior performance, outstanding achievement by the medals and awards that are made. But I do not think that precludes giving adequate compensation to our people, which is comparable to what others, who are doing similar or even less demanding jobs, are getting.

Senator PELL. I cannot imagine a more conscientious, hard-working and able Secretary of State than you are. Yet, I question whether you

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

would do a better job if you got a little more pay than one of your colleagues in the Cabinet.

Secretary VANCE. I am not suggesting it for Cabinet officers.

Senator PELL. All right. Senator Lugar?

Senator LUGAR. Thank you very much, Mr. Chairman.

COMMENDATION OF WITNESS

Mr. Secretary, I would add my appreciation to that which the chairman has already expressed for your appearance here this morning. I think this is a tremendously important bill and it highlights an important role for a Secretary of State. Most of your appearances here and elsewhere are about major issues involving our international relations, and that is the essence of your job in many ways; but from my limited visits to embassies abroad and visits with the Foreign Service personnel I know how important it is to each one of them—not only our Ambassadors but the rank and file—to know of your personnel interest in their careers. It is tremendously important to them. On the trip I took with Secretary Blumenthal to the Middle East last year we had occasion to visit some relatively embattled positions with the people who are, if not risking their lives—and they certainly were in Iran when we were there in November—are at least located in somewhat remote places where families have very great difficulty in coming and going. They are, I think, good examples of some of the people you described in your testimony today. This Service is interesting and exciting, but it is sacrificial in many ways.

On those frontiers we ought to be well represented. We need to have quality people who are genuinely excited about Foreign Service, as opposed to persons—whether they are in the Navy or in the Foreign Service—who really would prefer "shore duty" permanently.

From conversation with the CNO [Chief of Naval Operations] the other evening, I learned that in the Navy the problems of recruitment are clearly the two you pointed to today, compensation and the problem of "shore duty" as opposed to sea duty. American life has evolved in ways in which a higher material standard of living is desired. I do not want to denigrate the motives of Foreign Service officers, but failure to take heed of this, it seems to me, is courting disaster.

PERFORMANCE PAY IMPLEMENTATION

I agree enthusiastically with your idea of performance pay, particularly for those who have considerable responsibility. I think it is a courageous thing to implement. Clearly, in the whole realm of public life, whether it be schoolteachers or fire or police service or the Foreign Service, the trend has been down for a long time. They have been sort of lost in the herd.

Now, it seems to me, this legislation offers a chance for a breakthrough. The Foreign Service is made up of first-class personnel attained through both recruitment and the screening out process. They deserve to be paid better. I think they ought to be paid very well. If the right people are there, they will make money and good will for our country many times over. This is an aggressive posture that I think is exciting.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

FOREIGN SERVICE VIEWS CONCERNING LEGISLATION

What I ask you—and you have touched upon this briefly—is what is the general feeling in the Foreign Service when members take a look at this legislation? Is this going to have a boost for morale for those that are presently there, quite apart from the ones that will be coming along? What sort of comment can you make about that?

Secretary VANCE. Thank you very much, Senator. I would welcome the opportunity to respond to that question.

First, let me say that there is a broad consensus in favor of many of the principles that are contained in the bill. First is the affirmation of the essential role of the Foreign Service.

Second, the provisions which provide for conversion to civil service status of Foreign Service personnel obligated and needed only for domestic service.

Third, the principles which are involved in the statutory employee-management relation which are contained in this bill.

Fourth, the single Foreign Service pay scale.

Fifth, the consolidation of multiple Foreign Service personnel categories and subcategories from the many that exist now, into two.

Sixth, the new procedures to assure "up or out" principles which make attrition and promotion more predictable and reliable, and link promotion and retention more closely to performance.

On all of those there is a broad consensus. There are differences with respect to other aspects of the bill. I am pleased that as people learn more about the bill, as we are able to discuss the bill now that we have it completed and out on the table with the people in the Foreign Service, both at home and abroad, there is an increasing enthusiasm for the bill. That is not saying that everybody agrees with all the provisions of the bill because they do not. You will hear from some of those who will be coming before you of provisions that they would like to see changed.

BOARD OF FOREIGN SERVICE ENDORSEMENT OF BILL

I think it is important to note that the Board of Foreign Service has endorsed the bill. On the 20th of June it adopted a statement asserting, "The Board believes that the bill represents a well-considered effort to meet existing anomalies in the present Foreign Service personnel structure and should be supported." That is a broadly based group. I think that their support and endorsement is important.

As to the other elements of the Foreign Service community, I think they really should speak for themselves. You will hear from John Reinhardt and Bob Nooter who will be following on after me; they can tell you the views of themselves and their agencies with respect to the bill. I think it is fair to say that they generally endorse the bill, but they have spoken and will speak for themselves.

SAFEGUARDS FOR "RISK TAKERS"

Senator LUGAR. Mr. Secretary, in making these evaluations—and I suppose this is always one of the difficulties of a merit pay system, even in the best of all worlds—the people who make these evaluations must be fair-minded and make the right sort of choice. What sort of "fall-back position" is there to protect and to promote people who are con-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

spicuous in their work in various countries? These people might be called in the business world "risk takers," people who are self-starters and who have a great deal of initiative. I do not mean by this that they are busy taking policy into their own hands or that they are serving as alternate Secretaries of State or preempting the Congress, but that they are really "live-wire" people who make a big difference in how this country's mission is accomplished.

Such people frequently engender opposition. Such is the nature of this kind of person. In fact, they may become controversial and at the very time we are attempting to get a merit pay system in the Foreign Service, they become known as people who rock the boat and cause trouble.

What sorts of safeguards are there for the system so that these sorts of people in fact are rewarded? Is there some type of review by the Secretary, or if not by you, by someone in the system who says, "Now, let us take a look at this, Mr. X or Mrs. X in that situation really is somebody who is doing a good job. I appreciate all the rumbles and the ripples that are coming along here, but at the same time, let us take another look at it."

Can you make any broad comments to this sort of general question?

Secretary VANCE. Let me say first of all, I believe it is very important that we have people who are, as you described them, risk takers: people who are willing to come forward and put their neck out on the line by making suggestions which are innovative and which may contain elements of risk, but should be surfaced and should be considered by those at higher levels, as well as those on the ground where these people are actually working.

I think it is important that it be known that is encouraged. I think that performance pay is something which can be used to give a signal that this is the kind of thing we are looking for, that capable people who are willing to take risks will be rewarded.

Second, getting down to the more nitty-gritty level of this there are dissent channels which people can use if they feel that they are being stifled in their efforts to come forward with ideas which are being blocked. Certainly, as far as the Selection Boards are concerned, we make very clear to them that this kind of initiative is not to be penalized, it is to be looked at which favor rather than in a negative way.

I certainly try to make it clear in my dealings with my colleagues in the Department that this is the kind of thing I welcome and encourage. I hope, to an increasing extent, this will be understood and become known throughout the Department.

Ben, do you want to add anything?

Mr. READ. No. The essential protection is the selection boards, Senator Lugar, and they are completely independent of management. The precepts which they follow are very carefully structured, and are based on dialog between management and the labor representatives. The precepts instruct the Selection Boards to reward initiative; reward leadership; reward the qualities that you have well defined. We have no sense that the Boards do otherwise in practice.

Secretary VANCE. I might go back. I faced the same question when I was working in the Defense Department, when I was Secretary of the Army. I remember the best way that I could get at it was to make this clear in the precept to the selection boards. I would often bring

50-236—80——13

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

in the selection boards and talk to them, and convey to them my strong feelings that this kind of initiative was something to be welcomed, rather than be frowned upon. I found that it worked—not always, but it did have a beneficial effect.

ENTRANCE REQUIREMENTS FOR FOREIGN SERVICE OFFICERS

Senator LUGAR. Let me ask you this question, Mr. Secretary. Clearly, the problems of the Foreign Service officer grow, as they do for each person in public service, whether in the executive or legislative branch, in terms of subject matter areas for which we are responsible, even though this may not be our area of talent.

One of the problems that I have noted as a member of the Agriculture Committee, for example, is that there have been considerable problems at various levels in our Embassies in understanding agriculture problems, both from the standpoint of marketing our products and opening up new channels in which production occurs in various countries. In the past this may have been consigned to something that agriculture people do, as opposed to real politics and the problems of state that other people do. I think now we all see that these things are closely intertwined: food and nutrition issues, population issues and a whole realm of technical and scientific issues are important for statecraft.

How can the entry situation be structured in such a way that there are not impossible requirements to qualify, but that it very clearly is inculcated that Foreign Service officers need to be broad gaged and sensitive to implementing the foreign agricultural acts that we have been passing in recent years.

Secretary VANCE. I would like to ask Ben Read to answer that initially, and then I might want to add a word.

Mr. READ. The economic and commercial officers in the Foreign Service, Senator Lugar, are sensitized to the agricultural opportunities in a variety of ways in their training, in the directives they receive from the Department, and by the fact that, in the major embassies, they work with foreign agricultural service specialists from the Department of Agriculture who are very much part of the country mission, country team.

As you know, this last year the Congress passed the Agricultural Trade Act, and in year one of that act we are in the process of setting up six agricultural trade offices which will be integrated with our missions abroad and which I hope will lead to an even stronger emphasis of integration of effort along the lines you suggested.

Senator LUGAR. Did you have something to add, Mr. Secretary?

Secretary VANCE. No.

INTELLIGENCE PERSONNEL INTEGRATION INTO OVERSEAS PROGRAMS

Senator LUGAR. Finally, I have one more question, and it relates to my view that we must do better with regard to intelligence personnel and their integration into our overseas programs.

Now, this will not be solved this morning or even in this act, but there are very real problems. I know from visits to Embassies—I have tried to be interested in several sorts of issues at one time—how strained and how difficult the intelligence role can become, and how

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

vulnerable on occasion, I think, our intelligence people may be due to lack of sensitivity or simply because the rules do not allow sensitivity.

While we are taking a look at setting up new ways of classification, l'esprit de corps, and all this, I would think it a shame if we reinforced this longstanding problem because we assumed it was insoluble. For our national interest we really need to do so a great deal better.

I wonder if you have any comment on that.

Secretary VANCE. Yes; I do have some comment. I have from the outset been working with my colleagues in other branches of the Government on how to integrate better the intelligence functions and their relationship to the work of the Ambassador as the mission head in a given country. I have worked very closely with Stan Turner to try and improve the relationships between the Department of State and others involved on intelligence matters. I think we are making some progress. I watched this very closely over the last year and a half or so, and I think if you would ask them, you would get the same answer that I have given.

Second, I think it is very important that we continue to strive to increase the quality of our political reporting which is of vital importance to us back here in making judgments as to actions to take in connection with the activities that are reported to us from the field. We have embarked on a number of actions to strengthen the political reporting, including adding additional persons in certain missions where it is important to strengthen that organization in that particular post; where the task becomes too difficult, to bring in additional people; to send in people to work with them and help in developing better quality in the reporting from a particular post.

As a result of it, again, I think I see progress in the product that is beginning to come out. We have to keep working at it. It is a continuing task that we all have, but I think it is one which we clearly recognize and give high attention to.

Senator LUGAR. Thank you very much, Mr. Secretary.

SUPPORT FOR S. 1450

Mr. Chairman. I appreciate this chance of dialog with the Secretary and your calling this hearing; and likewise—although I will not be able to stay for his testimony—seeing Scottie Campbell here who has, I think, accomplished so much in the whole civil service reform.

I just would want to be associated with you and with others, I am certain, on the committee, who will advocate this legislation and try to push it along.

Senator PELL. Thank you very much indeed, Senator.

Going back for a second to this question of pay. I want the record to show clearly that I support and recognize the fact that pay is a very strong incentive, but where we part company is that I think the incentive should be promotion, and that now you reach a situation where a class II officer may be receiving just about the same amount of money as a class I officer. I think that is wrong. I will do anything I can to try to change that.

Where we differ is to say that within the class itself one should pick and choose. I think when you are in a very highly responsible job, you are at the top of the Foreign Service, top of the heap, then the incen-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tive is to be promoted which you still can be, and leave your name in history.

This is a subject we can talk about later. Except for this, I am in general support of this legislation. I congratulate you and thank you for all the hard work you have put into this, Mr. Secretary.

Secretary VANCE. Thank you very much, Mr. Chairman.

Senator PELL. Thank you.

Our next witness will be Mr. Campbell, Director of the Office of Personnel Management.

Mr. Campbell, we welcome you here, and I join in saying what an excellent job you have done and are doing in your tough assignment. We look forward to your testimony.

STATEMENT OF HON. ALAN K. CAMPBELL, DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Mr. CAMPBELL. Thank you very much, Mr. Chairman.

I do have a brief formal statement that I would like to make, and then I will be pleased to respond to any questions you may have.

OPM INTEREST, ACTIVITIES RELATING TO FOREIGN SERVICE PERSONNEL SYSTEM

The Office of Personnel Management's interest and activities in relation to the Foreign Service personnel system are substantial. Through Executive Order 11434, we have significant responsibilities for advising the Secretary of State and the Director of the ICA. In addition, we are represented on the Board of the Foreign Service and the Board of Examiners for the Foreign Service. These contacts have meant that the staff of the Civil Service Commission, now the Office of Personnel Management [OPM], participated in the earliest formative stages of the plan to reorganize the State Department's personnel system. OPM has been consulted frequently in the final stages of development. We have provided comments and assistance to those working on the plan, and we believe the proposed legislation before you represents not only significant change but a major step forward for the Foreign Service.

FOREIGN SERVICE/CIVIL SERVICE REFORM ACT COMPARABILITY

The Foreign Service Act of 1979, in many respects—and we believe appropriately—parallels the Civil Service Reform Act. Certainly the impact on the Service will be comparable to the impact that the Civil Service Reform Act is having and will have on the civil service. Those who have preceded me today, the Secretary of State, and those who will follow, have and will provide some details. I will concentrate, therefore, on those features that we are particularly pleased to see in this proposal and on those about which we have some questions.

NEED FOR CONTINUING, STABLE CIVIL SERVICE COMPONENT

First, the Department of State, AID, and ICA have recognized the need for a continuing and stable civil service component. The eventual savings, which will be brought about by clearly distinguishing between

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

employees whose duties do not include overseas service and those whose duties do require it, will be significant.

The Foreign Service personnel system is designed to give flexibilities and benefits to a worldwide Service requiring mobility and hardship assignments and, as such, has a unique and important place in the array of Federal personnel systems. The attempt to adapt that system to jobs that did not carry the same requirements produced both difficulties and inequities.

The proposed legislation requires conversion of employees who do not serve overseas and allows a painless transition by providing for no loss in pay or benefits as a result of conversion. We give our full support to the Department in its wish to make a clean start and support the Department in seeking authority to allow retention of Foreign Service benefits for those converted to the civil service.

SECTION 2104(b) CLARIFICATION

We believe an addition should be made to section 2104(b) to clarify that the retention of coverage under the Foreign Service retirement system shall not extend to employees after transfer to another agency. We recognize that this was open to interpretation after the bill cleared the executive branch. However, without this limitation, those converted would be advantaged over those who had not converted by being able to transfer to a nonforeign affairs agency while staying in the Foreign Service retirement system.

SENIOR FOREIGN SERVICE ESTABLISHMENT

The Foreign Service was specifically excluded from the Senior Executive Service in the Civil Service Reform Act. We therefore warmly endorse the Department's proposal to establish a Senior Foreign Service which has many features that parallel those of the Senior Executive Service. We particularly note that the Senior Foreign Service proposal will hold members accountable for their performance, and reward those whose performance is outstanding.

We recognize that there are special conditions that affect personnel who have to serve overseas, and that therefore it may not be practical to establish a Senior Foreign Service fully comparable to the Senior Executive Service which, incidentally, became operational on July 13. We see the two systems as complementary, however, and as being able to work together.

INTERAGENCY COORDINATION IMPROVEMENT EMPHASIS

There is a strong emphasis in the bill on the improvement of interagency coordination, as for example through greater consultation among the foreign affairs agencies. We have long recognized a need for closer ties between the personnel regulations of the foreign affairs agencies. We have noted differences in the approaches between agencies that are both justified and unjustified. We therefore view it as a major goal to bring the personnel policies of the various foreign service agencies into closer conformity so that neither management nor the members of the Service will be disadvantaged by the existence of unwarranted differences.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

BOARD OF FOREIGN SERVICE ADVISORY ROLE

Bringing compatibility to the personnel systems of the three foreign affairs agencies is one of the most important advisory roles of the Board of the Foreign Service, which will be established in statute with representation by the Office of Personnel Management. The Board of Foreign Service has worked toward this end on many occasions in the past. The Board allows executive line management to influence personnel policy and, thus, is in step with the objectives of civil service reform.

INCLUSION OF SUPERVISORS IN COLLECTIVE BARGAINING UNIT

Having touched on these points where we are in complete agreement, I should note that we have had some concern about the inclusion of supervisors in the collective bargaining unit. In this sense title X differs from title VII of the Civil Service Reform Act, which states that a unit does not appropriately include—with a few exceptions—any management officials or supervisors. We have generally thought it inappropriate to have any managers or supervisors within the bargaining unit. I recognize, however, that there are historical differences in the Foreign Service situation that the Congress may wish to take into account. I simply would not want action in this field to be regarded as indicative of the Congress views on other Federal personnel systems where the exclusion of managers from bargaining units is a well-established policy.

EMPLOYMENT OF FAMILY MEMBERS ABROAD

Another problem that we have had with the proposal relates to the employment of family members abroad. The authority of the Secretary in section 333(c), to "prescribe regulations for the guidance of all agencies regarding the employment at posts aboard of family members of Government personnel" goes beyond the Foreign Service.

We believe OPM should retain regulatory authority in this area for employment in agencies such as DOD [Department of Defense]. We realize that the sectional analysis states that these regulations shall be advisory and designed to set forth uniform standards and criteria. However, the draft language does not make clear that the regulations are "advisory," nor does it recognize the legitimate role of the Office of Personnel Management in regulating employment outside of the Foreign Service.

At the July 17 hearing on the House side, Chairman Fascell of the Subcommittee on Foreign Operations explained that this provision had been drafted by the subcommittee and it was not its intention to have the Department regulating other agencies. We have been assured that this language will be corrected in the House subcommittee.

Section 701(b) of the draft bill provides authority for functional training to family members in anticipation of their assignment abroad or while abroad. We read this authority as extending to family members of employees of non-Foreign Service agencies. We therefore endorse the provision with the understanding that family members of employees of all Federal agencies operating overseas will have access to available functional training in order to avoid favoring family

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

members of one agency over those of others. I have been assured by the State Department that they share my interpretation of this provision.

OPM SUPPORT FOR LEGISLATION

I do wish to make it clear, Mr. Chairman, that this legislation has my strong support. I think it will contribute materially to the conduct of foreign affairs while according proper consideration to the needs of employees. Its following of some of the basic principles of the Civil Service Reform Act is, of course, a matter of considerable satisfaction to those of us who worked on that.

That completes my prepared statement, Mr. Chairman, and I stand ready to answer any questions you may have.

Senator PELL. Thank you, Mr. Campbell.

SECTION 2104(b) CLARIFICATION

In connection with your testimony I want to be sure I understand one point where you say, "We believe an addition should be made to section 2104(b) to clarify that the retention of coverage under the Foreign Service retirement system shall not extend to employees after transfer to another agency." Does that mean to another agency of the Government?

Mr. CAMPBELL. Yes.

Senator PELL. In other words, to the Commerce Department.

Mr. CAMPBELL. To non-foreign affairs agencies.

Senator PELL. Not in the State Department.

Mr. CAMPBELL. Not in the State Department, right.

Senator PELL. Then, moving on, the provision in the paragraph you are talking about, the top of that page, should there not be one boss, even if people are working under another agency, under Agriculture or Interior? Should there not be one boss, the Ambassador, to set the rules?

Mr. CAMPBELL. I do not have any problem with that if the person is assigned to work in the Embassy. Our concern here is about employees of the Defense Department, for example, who are serving overseas. We simply think it inappropriate that the State Department would make rules and regulations related to employees of other departments and agencies. This is a responsibility that the central personnel agency of the Federal Government has always had.

Senator PELL. If for political reasons the Ambassador to, let us say, Hungary, did decide that he really did not want to see the wives of the Defense attachés getting a job in the local economy for one reason or another, or did not want them to be schoolteachers, something of that sort because of political reasons. In his judgment it would not be wise for the interest of the United States. Should he not have the right to tell the Defense attaché, "I really would prefer it if your wife did not work in the local economy"?

Mr. CAMPBELL. Well, if the attaché is responsible to the Ambassador then, indeed, the Ambassador would have that kind of control.

Your example raises some difficulties in relation to affirmative action and equal employment opportunity, and the like. But, leaving that aside, I am not talking about people who work in the Embassy, I am talking about people who work in other U.S. activities abroad.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Senator PELL. That is exactly what I am talking about. I am talking about a Defense attaché's wife.

Mr. CAMPBELL. Yes; but the Defense attaché is in the Embassy and thereby works for the Ambassador.

Senator PELL. All right, what about a Treasury Department employee?

Mr. CAMPBELL. I think if you had a Treasury Department employee who was not working in the Embassy, who had some other assignment overseas, that the general rules and regulations for people serving overseas should apply to that person, rather than rules and regulations made by the State Department for State Department employees.

Senator PELL. Would you give me an example of one or two categories of employees you are thinking about?

Mr. CAMPBELL. Well, the largest group and probably over 90 percent of those are civilians working for the Defense Department.

Senator PELL. Do you not think that; for example, our Ambassador to Germany should be able to set the rules? That in a period of tension he might decide that he does not want wives of Defense Department personnel working in the local economy?

Mr. CAMPBELL. I would think that should be done only after consultation with the Secretary of Defense.

Senator PELL. I see your point. I am not sure I agree with you. I wanted to be sure I understood it.

SHOULD THERE BE "PARACHUTE CLAUSE"?

Now, do you think that there should be a so-called parachute clause similar to that contained in the Civil Service Reform Act for a person who fails to come up to the required standard in the Senior Executives Service, that he should be permitted to fall back?

Mr. CAMPBELL. The Foreign Service system is a different one because of the "up or out" provisions.

Senator PELL. Right.

Mr. CAMPBELL. Therefore, it seems to me that the parachute system is less relevant to that kind of personnel system than it is to the regular civil service system.

Senator PELL. So it should not have a parachute system?

Mr. CAMPBELL. I do not want to answer that in a final way because there may be some situations where that did make sense, and quite frankly, I am not certain how the legislation deals with that.

FOREIGN SERVICE, CIVIL SERVICE PAY COMPARABILITY

Senator PELL. Do you think that Foreign Service officers in general are paid about on a comparable basis now with civil service?

Mr. CAMPBELL. Well, there are points of tie between the General Schedule pay and the Foreign Service pay. The effort has been to try to make those ties at points of approximately equal responsibility and equal obligation. Whether those are correct at this time is a matter that is being considered in the task force the Secretary of State mentioned in terms of the study that has been done of the pay levels of the Foreign Service. Until that group has reviewed that study and, as the Secretary of State said, until the administration has had an opportu-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

nity to reach a position on that, I am not prepared to say whether there ought to be some changes.

I would point out that the Office of Personnel Management is very much involved with that task force, is a part of it, and we are trying very hard to make the system as fair and equitable as we can on both sides. We do believe there needs to continue to be a tie between the two pay systems.

PHYSICAL DANGER FACTOR

Senator PELL. You speak of obligations. How do you crank into your judgment the physical danger of assassination that does not affect the civil service?

Mr. CAMPBELL. Well, I would say only that, first, it does affect some members of the civil service, whether they are people involved in the protective services or the like. So, it is not a matter that is exclusively related to the Foreign Service. I would, in addition, say that that factor obviously is taken into account by those in the decision as to whether to join the Service or not. Obviously, you cannot put a price on it.

Senator PELL. For example, do not the Treasury Department, Secret Service, or FBI [Federal Bureau of Investigation] get a slightly higher salary because of the risk element in their job?

Mr. CAMPBELL. They get privileges in relation to early retirement. But, in relationship to the risk involved, it is not a matter of special pay for that, except to the degree to which that matter is taken into very broad account in doing a position analysis. But, basically, for those protective services, it is the early retirement which is the privilege.

LEGISLATIVE IMPACT OF PERFORMANCE PAY REMOVAL

Senator PELL. In connection with the upper level Foreign Service officers, if the performance pay was removed but you kept the rest of the concept as fairly as you could there, what would be the impact of the legislation? What, in your view, would be the effect?

Mr. CAMPBELL. If I understand the question, I think that it would considerably undermine one of the important elements in the legislation in its emphasis throughout on performance; on performance as it relates to promotion, retention, and, in the case of the upper level, to the opportunity of earning bonuses. As you know, this matter was very carefully considered in the Civil Service Reform Act. I would point out in relation to the questions and comments you made in your dialog you had with the Secretary of State, that in fact the Senior Executive Service is not a position-based system now, but is a rank-in-person system and in that sense is like the Foreign Service and the military, rather than being like the old civil service system.

It is our judgment that the opportunity of earning bonuses—and I would point out that they can be substantial, up to 20 percent of base salary, and there are in addition Presidential awards to which 5 percent may receive in any given year $10,000; 1 percent, $20,000. So, we are talking about what we believe to be appropriate awards for outstanding performance. Quite frankly, I do think that is more helpful to those in those top senior positions than receiving plaques or other

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

kinds of awards of that kind, which has been traditional practice in the public service.

Senator PELL. Recalling our dialog on that same subject, you say you would advocate this for the military, too.

Mr. CAMPBELL. I would have absolutely no problem with it being used in the military. Obviously, I would want to go through the process of considering that and talking to the military people to determine their views on it. But I see nothing inconsistent with military service and the opportunity of earning bonuses for outstanding performance.

Senator PELL. If this is the philosophy and the viewpoint of the administration, then it ought to be carried to its logical conclusion, which would be the Cabinet.

Mr. CAMPBELL. Well, it does seem to me that you reach a point at the top of the system where the service itself and the distinction that goes with that service provides a nonmaterial reward. On the other hand, I would personally have no problem with a Presidential performance appraisal system that would indeed make judgments about quality of performance of those in the Cabinet. I must say that I think the alternative to bad performance should not be no bonus, but perhaps should be relief from responsibility.

Senator PELL. Do you not think when you go to the top three proposed grades in the Foreign Service, that is the top of the system, too. You are an Ambassador, you are a career Minister—what is the third grade?

Mr. CAMPBELL. Counselor.

Senator PELL. That does not make sense because you have many people who are consuls who are class IV now.

Mr. CAMPBELL. I am going to have to ask.

FOREIGN SERVICE TERMINOLOGY

Senator PELL. So, a man could be a consul at class IV, but would not be a consul under the present terminology, the in-house consul until he has reached class I.

Out of curiosity, why do we use the phrase "consul" when so many people become consul at a much lower rank; why not use the phrase "Minister, Minister-Consul, and Ambassador"? I can see confusion in people's minds. "Oh, Joe Jones has just made consul and is still class IV," calling a man a general when he is still a major. That would be a little confusing.

Mr. CAMPBELL. I defer to the State Department on the terminology question.

PERFORMANCE PAY, SELECTION OUT QUESTIONS

If I may add, Mr. Chairman, just one word in relation to the performance pay issue, and following up on the comments you just made. I think performance pay does serve the purpose of promoting outstanding performance, but equally I see it as an appropriate reward; in other words, it is an opportunity for people in the top levels of the Government to receive bonuses in real money as a way of appropriately rewarding them for outstanding service. I believe that the public sector should have that kind of reward system. I think the fact we do not have it is one of the reasons we have some of the bureaucratic characteristics the system does have.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Senator PELL. In the 9-to-5 syndrome?

Mr. CAMPBELL. Yes.

Senator PELL. I am wondering now if the selection out for "time in class" can sometimes result in the Foreign Service losing its most highly qualified members first since they get to the highest grade the quickest. In other words, a young man will rise like a meteor and then out because he has risen so quickly and still cannot meet the competition at that top grade.

Mr. CAMPBELL. I again would defer to people from the State Department who are more expert on the system than I am. I would only suggest that with that kind of rise, it seems to me, that the possibility of being selected out would be relatively small.

Mr. READ. Could I add something, Mr. Chairman?

Senator PELL. Please, Mr. Secretary.

Mr. READ. One of the new features of the bill is a renewable limited career extension, that would take care of it.

PAY FOR FOREIGN SERVICE WIVES

Senator PELL. Does this bill look into the question at all of pay for Foreign Service wives? I happen not to agree with their proposal, but I know it is of great interest in the service. Is there anything in the bill that speaks to that question?

Mr. CAMPBELL. No.

AFFIRMATIVE ACTION PROVISION

Senator PELL. And how will the bill affect Affirmative Action efforts, and how does the affirmative action provision compare with the civil service's?

Mr. CAMPBELL. The affirmative action provisions are very similar to the civil service side. In addition to that, the State Department has developed a route into the system that attempts to emphasize the affirmative action character of the appointments. What the legislation does is to strongly reaffirm the Department's commitment to and obligation in the affirmative action area.

DESIRABILITY OF SEPARATE FOREIGN SERVICE

Senator PELL. What is your own view with regard to the desirability of a separate Foreign Service?

Mr. CAMPBELL. I do not have any attachment to uniformity. I believe that the character of the obligations, the fact of overseas service, and the very fact of the history of the Service argues very strongly in favor of a separate Foreign Service.

FOREIGN SERVICE KINSHIP TO MILITARY SERVICE

Senator PELL. Do you see what I keep driving at, that there is a greater kinship of the Foreign Service to the military service than civil service? If you had a scale, do you feel it leans more in the direction of civil service or the military?

Mr. CAMPBELL. I think that one has to talk about that in relation to different aspects of the system. We tended in the dialog here this

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

morning to emphasize heavily the top part of the system. I would say in relation to the Senior Foreign Service and the top military officers, and the Senior Executive Service [SES], that what we are seeing first in the Civil Service Reform Act, and now in the Foreign Service Act of 1979, is a coming together in which in many ways the SES moves in the direction of the Foreign Service rather than the Foreign Service in this instance moving in the direction of the civil service.

What we try to do is to capture some of that esprit of the top managers of the system through the Senior Executive Service. So, in that sense, I would argue that we have moved at the top of the system in the direction of the Foreign Service and the top military officers in the armed services.

Senator PELL. But very often in the Foreign Service you get a young man who will be assigned to be in charge of a small Embassy or assigned to a consulate where he will be on his own because the consul general has not come, with very real responsibilities and very real crises turning up. It seems to me that those would be more akin to what a young captain or major might face, than what a GS-8 would probably face in his life.

What would be your view?

Mr. CAMPBELL. It depends a little bit on the level of the rank.

Senator PELL. I may have gotten my numbers wrong; a 35-year-old, let me put it that way.

Mr. CAMPBELL. Certainly, within the career service there are 35-year-olds in grades 13, 14, and 15, particularly those who serve outside of Washington, where 85 percent of the career service is, who have very heavy responsibilities and carry very significant assignments; and can indeed end up in crisis situations. One need only point to Three Mile Island as an example.

Therefore, I would not—perhaps because of where I sit—draw the sharp distinction that you have been drawing today between the two career services, the Foreign Service and the civil service.

Senator PELL. I must say, I applaud you for the dedication and enthusiasm, and the strength you have brought to the civil service. I like your idea of rather than bringing the Foreign Service to the civil service, bring the civil service toward the Foreign Service. I applaud you in that regard.

Thank you very much for being with us this morning.

Mr. CAMPBELL. Thank you very much, Mr. Chairman.

Senator PELL. Our next witness is John Reinhardt, Director of the International Communication Agency.

STATEMENT OF HON. JOHN E. REINHARDT, DIRECTOR, U.S. INTERNATIONAL COMMUNICATION AGENCY

Mr. REINHARDT. Mr. Chairman, if it is agreeable with you, we will simply put the whole statement in the record.

For the record, I support the general principles of the legislation that has been submitted to the Congress. The statement makes this clear in some detail. I am prepared to respond to your questions.

Senator PELL. I had an opportunity to go over this statement, and it will be entered in full in the record.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

[Mr. Reinhardt's prepared statement follows:]

PREPARED STATEMENT OF HON. JOHN E. REINHARDT

Mr. Chairman, members of the committee, I am pleased to appear before you today to discuss an issue of great importance and interest: The proposed Foreign Service Act of 1979.

Proposals for changing personnel policies deserve the closest scrutiny and the most careful consideration because they go to the very heart of the morale, efficiency, and effectiveness of any career service. Experience has made us fully aware of this fact in the Foreign Service, and it has weighed on our minds at every step of our deliberations about the proposed bill. We have consulted with representatives of our union, Local 1812 of the American Federation of Government Employees, who have had considerable influence on the development of the Agency's position. We have consulted members of the Service, both at home and abroad, who have studied the various proposals and have shared their concerns.

We have worked closely with the Department of State in drafting the proposed legislation and have been encouraged by the cooperation we have received. We have met with Secretary Vance, Under Secretary Read, Director General Barnes and other officials of the Department. Our lawyers and personnel staffs have been in regular contact with their counterparts at State as the bill was drafted.

The proposed Act reaffirms the need for a professional Foreign Service with its own personnel system. The purposes of the bill have already been described in the testimony and supplementary material presented by the Department of State. I associate myself fully with those purposes and urge the Committe to report favorably on the bill as rapidly as may be possible.

There are a few major provisions which would have a significant impact on USICA and which I would like to address.

(1) the bill creates a Senior Foreign Service comparable to the Senior Executive Service in the Civil Service. I support the proposed Senior Foreign Service. I see it as a positive personnel management proposal, well adapted to promote the best opportunities and incentives for our ablest senior officers. I believe the Senior Foreign Service system will contribute to enhanced productivity in the public service. At the present time, Foreign Service Officers do not enjoy many of the incentives which will be available to their counterparts in the Senior Executive Service. The Senior Foreign Service proposal would put the two career services on a par and make available to senior Foreign Service Officers the incentives and rewards which are now available only to senior Civil Service employees. In return, it is reasonable to set the highest, most stringent standards of performance, as this bill does.

(2) The bill provides a single Foreign Service salary schedule for American personnel. The new schedule will supersede the two overlapping schedules that now exist for officers and staff employees. This will enable us to achieve the long sought objective of having a uniform pay scale for all Foreign Service personnel, including Foreign Service Information Officers, Foreign Service staff employees, and Foreign Service Reserve Officers who are available for worldwide Reserve Officers who are available for worldwide assignment.

(3) The bill will provide a useful statutory basis for labor-management relations, which has been lacking heretofore.

(4) Consistent with Reorganization Plan No. 2 of 1977, which established USICA, the bill provides the Director with all authority necessary to manage USICA's personnel systems. While seeking the maximum compatibility in personnel policies and practices among the foreign affairs agencies, it allows for differences necessary for the accomplishment of separate Agency missions.

(5) Finally, under the proposed bill, the Foreign Service "domestic specialist" personnel category is eliminated by the provision that all such personnel shall be converted mandatorily to the Civil Service not later than three years after the effective date of the Act.

We concur with the need to consolidate the personnel systems which have evolved over the years, clearly sorting them into two systems—foreign and domestic. Only in that way will all employees know clearly where they stand in terms of work requirements, pay scales and assignment obligations.

ICA has taken a number of steps toward this end in recent years. We have stopped the practice of appointing officers to positions in USICA under any Foreign Service personnel system unless they are available for assignment overseas.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Further, we have implemented a regulation which severely limits the length of domestic tours for our Foreign Service Information Officers.

Nevertheless, we have over 900 Agency employees classified as Foreign Service "domestic specialists" (known as FAS employees). They work as VOA technicians and broadcasters, magazine editors, exhibit designers, and in many of the positions essential to the support of our missions overseas. Experience has shown that the features of the Civil Service personnel system are more suitable for this class of employees than are the procedures of the Foreign Service system. For example, promotions for a domestic complement can be made more equitably under the rank-in-job system than under the rank-in-man system. For these reasons, we have moved in recent years toward the use of Civil Service procedures for domestic personnel, regardless of whether they are categorized as Foreign Service or Civil Service.

In 1977 we entered into an agreement with Local 1812 of the American Federation of Government Employees, the exclusive bargaining representative of our Foreign Service personnel. That agreement provides that USICA's Foreign Service "domestic specialists" would not be subject to mandatory conversion to Civil Service, though they have the option, through June 30, 1981, of converting voluntarily. Under the agreement, those who do not exercise this option would remain in the Foreign Service. A corollary provision states that no new domestic specialists would be brought into USICA's Foreign Service.

The ultimate objective of a clear distinction between Foreign Service and Civil Service within USICA would be achieved in time, through attrition and the application of new hiring policies. However, while the present arrangements go far toward meeting management needs and safeguarding employee benefits, they fall short of the clear-cut distinction between Foreign Service and Civil Service systems that is made in the proposed new Foreign Service Act of 1979. Under the proposed Act, domestic employees will be converted to the Civil Service so that all operational features of that system can be employed in day-to-day management. This will facilitate the administration of domestic personnel and will treat in the same fashion all employees who serve only in the United States.

At the same time we were and are convinced that employees who were granted Foreign Service retirement benefits when they were appointed in the Foreign Service system should retain those benefits. These benefits, which were conferred upon employees who earlier were encouraged by management to join the Foreign Service, will be preserved.

Because of USICA's agreement with AFGE, special provision is made in the proposed Act (Sec. 2103(b)) for the temporary exemption of USICA "domestic specialist" employees from mandatory conversion until July 1, 1981, the period allowed for voluntary conversion under the contract. Thus, the proposed legislation endeavors to preserve the essential thrust of the agreement with AFGE, while providing better personnel management and following the policy and procedures proposed for other foreign affairs agencies.

However, I must be candid in stating that in the discussions regarding the preparation of this bill, and in view of the agreement with AFGE, I have opposed the application of this provision to our employees. Many of the affected employees have expressed objection to mandatory conversion. I am sure you will hear the testimony of their representatives.

SUMMARY

In summary, Mr. Chairman, I reiterate our full support for a revised, updated and consolidated Foreign Service personnel system. The revised Act can serve to clarify many aspects of our present patchwork personnel system, to correct inequities which have evolved over the years, to consolidate the many branches of the Foreign Service into a single career service, to obtain greater comparability of pay between the Foreign Service and the Civil Service, and to convey to all members of the Service our appreciation for the changing requirements and challenges they face.

I shall be happy to respond to questions.

FSIO, FSO AMALGAMATION

Senator PELL. I am particularly concerned with how ICA would fare under the proposed bill. There would be certain changes. I would

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

like to get to a fundamental question of the FSIO's [Foreign Service information officers] that, as you know, came out proposed by Congressman Hays and myself some years ago to create the separate service. My thought at that time was that it was a very good idea to create a separate information service and also to use it as a device quite honestly, to get rid of—through the promotion, selection out, features, that was part of the concept at the time—of some of the people who had perhaps been in who were not performing as they should.

As the years have gone by I have come to the conclusion that I may have made an error. Perhaps we would be better off with Foreign Service officers in "fifth cone" structure. I recognize that the Foreign Service no longer has that structure of economical, political, and consular, and my thought would be to add information to it. We theoretically got rid of the cone structure, but in fact it still continues to exist.

What is your view with regard to a complete amalgamation of the FSIO Corps with the FSO Corps.

Mr. REINHARDT. The last time, Mr. Chairman, that I had the privilege of appearing before your subcommittee you raised the same question. I have thought about it a great deal since that time and have concluded that what we are talking about is not a separate Foreign Service. What you are calling the FSIO cone is not a separate Foreign Service, and this bill would not make it a separate Foreign Service. If the bill is passed, there would be a great measure of compatibility between the personnel service of the Department of State and the personnel service of USICA, and the personnel service of AID. That is, the general rules, or the general regulations for recruiting; for promotion; for selection out; for assignment, would be compatible.

At the same time, each of these three Foreign Service agencies would administer its own personnel system. It seems to me that since these systems are different. Since the functions are different; since the recruitment process, for example, is entirely different; since the examination process is different.

The personnel systems should be administered in a different way, but in accordance with general compatible principles of personnel administration.

FSIO, FSO ADMISSION PROCESS

Senator PELL. I think the difficulty of admission into the FSIO Corps is just as tough as into the FSO Corps; is that correct?

Mr. REINHARDT. They follow the same general procedures, a written examination and an oral examination. But it is a different examination, sir.

Senator PELL. This, I understand.

IMPACT OF PROPOSED BILL ON ICA

What, in essence, would be its impact of this proposed bill on your agency, if it was passed?

Mr. REINHARDT. It would make even more rigid the compatibility of regulations, rules, and legislation governing the personnel system.

Senator PELL. It would make what even more rigid?

Mr. REINHARDT. The compatibility. That is, each system would recruit, would promote, would assign, would dismiss or select out in accordance with a compatible system.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Senator PELL. What is the impact of this bill on your service specifically, does it change any of your present procedures?

Mr. REINHARDT. The Senior Foreign Service provisions of the bill would be applicable to our service, for example. This would be quite different from our present practices.

ICA EMPLOYEE CONVERSION PROBLEM

Senator PELL. How would you handle the problem of the conversion of some of your employees who, I think, are covered by an existing union agreement? Would that not provide a complication here?

Mr. REINHARDT. I made that clear in the prepared statement, and I will be happy to discuss it briefly for you, sir.

We have a category of personnel in our system, so does the Department of State, for that matter, called FAS, a category that was established some years ago. It never worked as it was envisioned. In 1977, within this so-called FAS we had personnel——

Senator PELL. Excuse me, what is FAS?

Mr. REINHARDT. Foreign affairs specialist is the exact designation. This is a category of personnel who receive the general benefits of the Foreign Service, the retirement provisions, for example. But these people have not by and large served overseas; and by and large have no intention of serving overseas. Nevertheless, they were brought together in this single category.

In 1977 in USICA we, with the agreement of our union, moved to abolish the FAS service over a period of time. From 1977 until 1981, persons in that category called FAS could choose between the civil service or the Foreign Service. There are approximately 900 persons in this category. Some of them have already exercised the option either to enter the civil service or to remain in the Foreign Service; some have not exercised this option yet.

The legislation now before the Congress deals with this category called FAS in the Department of State and in USICA. We endorse the principle of two separate personnel categories, one for the civil service and one for the Foreign Service, as this bill is intended to do. Nevertheless, it gives us a problem within our own agency because of this prior agreement with the union.

Senator PELL. I think generally I recognize the problem at the higher levels. Now, I think, both the State Department and the ICA have top-heavy senior levels. Are not the present legislative authorities, administrative practices, really sufficient to deal with this problem, or do you need new legislation?

Mr. REINHARDT. It is less of a problem in USICA than I understand it is in the Department of State. In the category of class I officers, for example, we have approximately 44 officers now. This is approximately what we need at that level. We have a few more than we actually need at the class 2 level. Thus, the impact of this problem on us is not nearly as severe as it is in the Department of State. We are a smaller agency. The Department of State has far more people than we do, far more Foreign Service officers than we do, and naturally would have a greater problem at their upper levels.

In short, under existing legislation we have been able to deal with this problem of seniority in our own agency.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

COMPARABILITY WITH OTHER NATIONS' FOREIGN AFFAIRS AGENCIES

Senator PELL. In devising this legislation—I direct this question also to Secretary Read—have you drawn at all on the experiences of other nations, the French, Italian, British, and German Foreign Services because it seems to me it goes a different line than other services; that is not necessarily meaning that it is better or worse, but I would like to get first Mr. Read's reaction and also Mr. Reinhardt's for his specific agency.

Mr. READ. We had rather detailed discussions, Senator Pell, with our counterparts in Canada and the United Kingdom, and at different times with the Federal Republic of Germany, but only in certain very discrete aspects have we found applicability and transferability of ideas.

Senator PELL. Mr. Reinhardt?

Mr. REINHARDT. At the time of the reorganization of our agency 2 years ago we looked into this question to a great extent. We studied the information, cultural and educational activities of foreign affairs agencies of several major governments—all governments that had one—and we drew from their experience. We looked upon our own experiences over the last 30 years and believe that we dealt responsibly with this question at the time of reorganization. We have not studied it in connection with the proposed legislation.

Senator PELL. Without saying what services you think are poor but thinking of those services which are good, would you agree Mr. Read, that probably the French, Italian, and British Foreign Services, with their wealth of experience are really very, very effective in promoting their countries' interests? Just as our own service is very effective. And yet, they start from a very different premise. They start from a highly competitive, even more competitive, entrance than we have. Then, once in, without pay incentives or anything else, they are reasonably sure, just because of the incentive and interest of the job, the desire for promotion, to stay in.

Why is that not a good idea?

Mr. READ. That creates an accurate picture as I understand it, and I agree with the characterization.

I do think the other systems, as I know them, are much more self-contained than our system. I believe here we have a certain number of infusion of political appointments with new administrations. In-and-out movement among agencies of government is a healthy thing, and I think it works very well.

LIMITATION ON POLITICAL APPOINTEES

Senator PELL. I guess one of the greatest factors for morale in the Foreign Service, competition in improvement of performance, would be if we had a limitation of 5 percent on political appointees. Was this discussed at all in drawing up this legislation? I think I had a proposal a couple years ago for 15 percent.

Mr. READ. Yes, and on the senior positions there is precisely a 5-percent noncareer provision which would be for the first time a limitation on politization.

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Senator PELL. Could you carry that thought one step further and say nobody would be an Ambassador unless he is a member of the Senior Foreign Service?

Mr. READ. No; I think that would inhibit the constitutional powers of the President. There is now, in fact, a 3-to-1 ratio.

Senator PELL. I know in the years that I have been in the Senate, under six Presidents, that ratio has always stayed about the same, somewhere around 30 percent. What is it now?

Mr. READ. Seventy-five to twenty-five. We are very conscientious in keeping it at that ratio. That is a considerably higher career percentage than in years prior.

RETENTION OF FSIO CORPS

Senator PELL. Mr. Reinhardt, do you believe that the FSIO Corps should be retained, then?

Mr. REINHARDT. I do, sir.

Senator PELL. All right. Thank you very much. I have enjoyed reading your testimony, I appreciate it very much.

Mr. REINHARDT. Thank you, sir.

Senator PELL. Thank you.

Mr. Nooter, the Acting Administrator for the Agency of International Development.

STATEMENT OF HON. ROBERT H. NOOTER, ACTING ADMINISTRATOR, AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. NOOTER. Mr. Chairman, with your permission I will submit my statement for the record and move right into any questions you might have. We do think the proposal has desirable features for our agency.

Senator PELL. Thank you very much, indeed. Your testimony will be put in full into the record. I had a chance to go through it last night.

[Mr. Nooter's prepared statement follows:]

PREPARED STATEMENT OF HON. ROBERT H. NOOTER

Mr. Chairman and members of the committee: I am pleased to appear before you to testify in favor of the legislation proposed by the President, the Foreign Service Act of 1979.

We at A.I.D. regard this proposed bill as a long overdue effort to update the Foreign Service Act of 1946. The Secretary of State is to be commended for his leadership in guiding this bill, in all its complexities, through the Executive Branch and to the Congress for your consideration because it is a well-written, well-organized document that updates and revises the old law, and adds several new provisions that are consistent with the Administration's reform of the personnel laws governing domestic U.S. Government employees.

The proposed new Foreign Service Act is designed to provide the basic personnel authority for the employees who serve abroad for each of the foreign affairs agencies. These agencies include the Department of State, the United States International Communication Agency (USICA), the proposed new International Development Cooperation Agency (IDCA), and, to a more limited extent, the Peace Corps and the Arms Control and Disarmament Agency.

We support the concept of a single, comprehensive statute as the basic set of authorities for the personnel systems of all foreign affairs agencies. At present, A.I.D. utilizes the Foreign Service Act as the basic legislation governing its Foreign Service personnel. As one of the component agencies of IDCA, A.I.D. would be included within the coverage of the new law.

We believe that the basic concepts of the Foreign Service as enunciated in the proposed new statute are entirely appropriate for A.I.D. These include the basic rank-in-person concept that is essential to a mobile Foreign Service; the com-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

mitment of Foreign Service employees to worldwide availability; the use of panels and boards for selection, evaluation, and assignment; and the strongly held principle that merit and performance, fairly evaluated, are the basis for selection, advancement and tenure in the Service.

A shared set of legal authorities will help A.I.D., the State Department, and ICA to collaborate—and to achieve the efficiencies that result from uniformity—in a number of areas in which, despite the diversity in the work of our several agencies, our needs and interests are similar. We now have joint regulations in a number of areas. We would expect that, operating under a new umbrella statute, this collaboration will continue.

We would expect, for example, to continue to have joint regulations covering travel, overseas allowances and benefits, and the transportation of people and their effects to posts abroad. We expect that language training and area specialty training will continue to be offered by the Foreign Service Institute for personnel of all foreign affairs agencies, and that State will continue to manage the Foreign Service retirement system for participants from all foreign affairs agencies. There will continue to be a single Foreign Service Grievance Board to act on the grievances from employees of all foreign service agencies.

We are also pleased with the provisions in the bill for a single, simplified pay schedule for all Foreign Service personnel. This change will, in the first place, simplify and rationalize the pay system by bringing Foreign Service staff employees within the same pay schedule as other Foreign Service employees and eliminating the artificial distinction that now exists between Foreign Service staff employees and other Foreign Service employees.

It is particularly important for A.I.D. that there be a maximum compatibility in the rules governing its Foreign Service and Civil Service employees. These two groups of employees are, in fact, interrelated and function—or should function—as a single unit. It is the Agency's intention to encourage unified management of the Agency's personnel.

The proposed new Foreign Service Act would not conflict with the "Obey Amendment" (Section 401 of last year's A.I.D. authorization act), or the regulations that the President submitted to the Congress on May 1 of this year to implement Section 401. Pursuant to the directive of the amendment that A.I.D. adopt a "unified" personnel system, the regulations call for the designation of certain positions in A.I.D. for incumbency by Foreign Service personnel, and encourages Civil Service employees who meet the standards for entry into the Foreign Service to convert to the Foreign Service. This bill does not alter A.I.D.'s commitment to the policy underlying Section 401. A.I.D. will follow the regulations promulgated under Section 401 in filling positions.

In conclusion, A.I.D. supports the bill and believes it to be an excellent set of authorities to enable us to employ our Foreign Service personnel in ways which can best achieve the objectives of our administration of the Foreign Assistance Act.

I will be happy to answer any questions you may have.

Senator PELL. As you know, your agency has been "buffeted" an awful lot in these last few years. I do not mean to burden you with my own views, you are probably familiar with my resolution which would dismantle it completely—not with regard to any individuals in it, but from the viewpoint of the execution of the mission for the United States. Those functions—just so the record is clear—would still be carried on, but they would be carried on by private voluntary agencies, international agencies, or where necessary by the Bureau within the State Department for political reasons.

I recognize that is not a very popular view and in all likelihood will not prevail.

S. 1450 IMPACT ON AID

Now, in order to help you do your job as best you can, would you tell me how this bill impacts on your agency?

Mr. NOOTER. Yes. There will be three ways in which it will have an effect on us. One will be the establishment of the Senior Foreign Service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Senator PELL. Will that affect your Agency? Will your top men overseas, your AID chiefs, be members of that Senior Foreign Service Corps?

Mr. NOOTER. That is correct. The same rules would apply to our service in the senior ranks.

Senator PELL. Would those chiefs be drawn from the State Department, or ICA, or would they be drawn from your own agency?

Mr. NOOTER. They would be drawn from our own career service, except to the extent that the 5 percent noncareer provision might be applied. But we would essentially have people coming up through our system in the same way, on a career basis, to fill the Senior Foreign Service, as would be true of the other two services.

SKIPPING FROM AGENCY TO AGENCY

Senator PELL. Is there an opportunity—and this question I would direct to Secretary Read—for people to skip back and forth a bit so a man who might be interested in USIA work or AID work could spend 5 years of his career in one of those agencies, and then come back.

Mr. READ. We hope that will be facilitated.

Mr. NOOTER. We do now, and Mr. Read and I have had conversations about how to expand the amount which goes on. One of the ways this is done is simply by detailing a person from one agency to another while not changing his personnel status. He is on loan to the other agency, but he retains his rights and his standing in his own organization. On other occasions a person may actually transfer on a permanent basis, as has happened from time to time over the years one way or the other.

BENEFITS FOR FOREIGN SERVICE PEOPLE

If I could add to the dialog that took place before about the Senior Foreign Service, I think one of the important aspects is that our Foreign Service people be able to qualify for benefits comparable to those of the civil service. I know your views on this, but I would say while our employees are extraordinarily dedicated, particularly our technical people, the temptation to transfer to an agency that has more potential for pay would be very great. We would risk, in that case, losing what might usually be our better people who would be tempted to make the transfer to a civil service job if they had the chance for a performance bonus there where they did not have it in our system.

I therefore think there is a defensive aspect that is very important in the creation of the Senior Foreign Service, as well as the more positive aspect of creating incentives.

ELIMINATION OF FSS CATEGORY

The other impact on our system would be the elimination of the FSS category which we think is desirable. That category may have been useful in the past, but now it is an obstacle to upward mobility for women, particularly secretaries, and its elimination would eliminate an artificial barrier to job progression.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

REVISED PAY SCALE

Third, the bill will provide the basis for a revised pay scale. Our interest here is in a pay scale which is more compatible with that of the civil service. I think for us, perhaps even more than the other agencies, some transferability between the civil service and the Foreign Service for our personnel is very important—hopefully with more transfers into the Foreign Service where we have a need for midcareer officers in the technical ranks to meet our needs.

Those are the three ways, I think, that would affect us the most. We do not have the conversion problems of some of the other agencies because we now give Foreign Service limited appointments only to people with Foreign Service availability. The other possible impact would be the applicability of some of the new rules upon our system, such as time in class and selection out; but that would depend on how decisions were made and on how the rules would be implemented.

BILL IMPACT ON EXISTING STATE-AID RELATIONSHIP

Senator PELL. Would there be any change in the existing State-AID relationship caused by the enactment of this bill, or would it be the same?

Mr. NOOTER. Only in the sense that our rules would be more closely alined with each other, but the intention of the bill as drafted is that each of the three agencies would then carry out those rules in ways that are consistent with their own individual needs. Nevertheless, some of the differences that exist in personnel categories would be eliminated, so that our systems would be more compatible than they are now.

UNIFIED PERSONNEL SYSTEM WITHIN AID

Senator PELL. It is our understanding that in some of the bureaus in AID, such as policy planning, approximately 70 percent of the slots will be designated as GS instead of as Foreign Service. Why would that be?

Mr. NOOTER. Well, we have another exercise going on within AID that is not applicable to the other two agencies, but in fact really is moving us in the direction which State now uses. The provisions of section 401 call for a "unified personnel system" within AID. We have submitted regulations to the Congress, and if they are put into effect on October 1, they will result in a larger number of Foreign Service people administering our programs and policies in Washington. The exact number of those positions to be designated only for Foreign Service appointments is not fully decided. Some parts of the Congress have expressed the view that it should be a larger instead of smaller number, and we are heeding that invocation.

Senator PELL. Thank you very, very much indeed, Mr. Nooter. If there are any further questions we will submit them. We wanted to get this hearing out of the way prior to the recess period so that the legislation can be discussed, and we all hopefully will have more crystallized views on its merits when we come back in the fall.

I recognize full well the tremendous amount of work that Secretary Read has put into this for a long time. Obviously, legislation is the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

passage of the possible and there will have to be compromises. I would hope that those who are interested will not dig their feet in too much—whether it is the Foreign Service Association or other different groups. In general, I think, the legislation is good.

Except some of the concerns which I expressed today, about which I feel strongly, I see no other wrinkles in it. But I, too, want to have a chance to go through it in greater detail and will do so in the coming weeks.

I want to congratulate the Department for finally coming forward with this very real opus which has been under way for a long time. The real credit for it goes to Secretary Read, who pursued this vigorously right from the very beginning.

I am very conscious of the importance the administration attaches to it, with Secretary Vance's willingness to come up today and take the leading role in putting it forward.

Thank you, Mr. Nooter for being with us. The meeting is adjourned.

[Whereupon, at 11:50 a.m., the committee adjourned, subject to call of the Chair.]

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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FOREIGN SERVICE ACT OF 1979

FRIDAY, DECEMBER 14, 1979

UNITED STATES SENATE,
SUBCOMMITTEE ON ARMS CONTROL, OCEANS,
INTERNATIONAL OPERATIONS AND ENVIRONMENT,
OF THE COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 4221, Dirksen Senate Office Building, Hon. Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senators Pell and Javits.

The CHAIRMAN. The subcommittee will continue its hearings on S. 1450, the Foreign Service Act of 1979. This legislation, which runs parallel with the 1978 Civil Service Reform Act, is designed to revise, simplify, and consolidate in one place all the legislation concerning the administration of the Foreign Services.

I would adhere my own view that the Department of State should not be too intent on having the Foreign Service and the civil service run in parallel lines. They are different services and they should emphasize their differences and not try to secure the greatest similarity possible between them.

Today's witnesses consist of retired career ministers, ambassadors, Foreign Service officers, as well as representatives of various employee unions and minority groups.

I am looking forward to hearing their views on this bill very much indeed.

Next Wednesday, I will be holding another hearing to provide the administration with an opportunity to respond to any criticisms or points brought out in today's testimony.

The first witness today is Martin Herz, former Ambassador to Bulgaria, a very old friend of the chairman. We entered the Foreign Service practically the same day, if my recollection is correct, and served in the same part of the world at different times.

So, welcome, Ambassador. We are delighted you are here. As you know, I am familiar with some of your ideas and look forward to hearing them articulated here.

I would like to add that we have quite a large number of witnesses; so I would hope that the witnesses would hold themselves to a maximum of 10 minutes. Full statements will appear in each case in full in the record. And, if they can do it in less than 10 minutes, in 5 minutes, even better, giving more opportunity for questions and comments.

Ambassador Herz.

[Ambassador Herz's biography follows:]

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

BIOGRAPHY OF AMBASSADOR MARTIN F. HERZ

Born 1917 in New York; educated in Vienna, Austria; Oxford; and in New York (Columbia University). Active in business before entering federal service. Drafted in 1941, rose from private to major in World War II, specializing in psychological warfare (combat propaganda) addressed to German troops. Specialist in surrender, capture, and desertion.

Entered the Foreign Service by examination at the bottom grade (unclassified-C) in 1946. Political officer, Vienna, Austria (1946–48); in charge of Austrian information and cultural affairs, Department of State (1948–50); political officer, Paris, France (1950–54); political officer, Phnom Penh, Cambodia (1955–57); political officer, Tokyo, Japan (1957–59).

Department of State, African affairs (1960–62); Senior Seminar in Foreign Policy (1962–63); counselor for political affairs, Tehran, Iran (1963–67); director for Laos/Cambodian affairs, Department of State (1967–68); minister-counselor for political affairs, Saigon, Vietnam (1968–70); Senior Deputy Assistant Secretary of State for International Organization Affairs, Department of State (1970–74); ambassador to People's Republic of Bulgaria (1974–77); assigned to Georgetown University (1977–79); retired from federal service 1979.

Presently Director of Studies of the Institute for the Study of Diplomacy, Georgetown University, Washington, D.C., also adjunct professor of diplomacy and senior research fellow of the university's Ethics and Public Policy Center. Author of the following books: The Golden Ladle (1944); A Short History of Cambodia (1958); Beginnings of the Cold War (1966); How the Cold War Is Taught (1978); Decline of the West? George Kennan and His Critics (1978).

Awards and decorations: Purple Heart (1944), Bronze Star (1945), Commendable Service Award, Department of State (1960), Superior Honor Award, Department of State (1970), Medal of Honor with Silver Star, Austria (1973); Horseman of Madara, Bulgaria (1977).

STATEMENT OF HON. MARTIN F. HERZ, FORMER AMBASSADOR TO BULGARIA

Ambassador HERZ. Thank you, Mr. Chairman. With your permission, I would like to request that the annexes to my statement be incorporated in the record.

The CHAIRMAN. Without objection, your entire statement, including annexes will be included after your oral statement.

Ambassador HERZ. I will abbreviate my statement in the interest of saving time.

The CHAIRMAN. Thank you.

Ambassador HERZ. I also would appreciate it if my letter to Senator Church dated October 24, which also summarizes some points of my position, could be incorporated in the record.

The CHAIRMAN. Without objection.

[The information referred to follows:]

MARTIN F. HERZ,
Washington, D.C., October 24, 1979.

Hon. FRANK CHURCH,
Chairman, Foreign Relations Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR: I am writing with respect to H.R. 4674, the "Foreign Service Act of 1979" on which I have testified before the House Subcommittee on September 7. I am sorry that I was notified too late about the dates of hearings by your Committee, but hope that the following observations in writing may be circulated to the Senators who are studying the bill.

My comments are based on experience of over 32 years in the Foreign Service, which culminated in the position of American Ambassador to Bulgaria—probably the least important position that I held during my career, in terms of the influence I had on American policy, but indicating that I am commenting as someone who started at the bottom and made it to the top of the profession. I am now

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

retired, and there is no possible personal interest that I can have in seeing my recommendations adopted, I make them strictly as a citizen interested in seeing that our country has the best possible people in its first line of defense.

I see serious deficiencies in the proposed bill, in the power that it would give a future Secretary of State to make arbitrary dismissals of Senior Foreign Service officers because they do not inspire him with confidence that they will execute his policies with the enthusiasms he seeks in his subordinates. Unfortunately such enthusiasm also entails one-sidedness, and I believe a healthy diversity of views in the Foreign Service, especially among its top officers, is a national asset.

As I testified before the House, I have perhaps a longer memory than my younger colleagues in the Foreign Service, and perhaps even than some of the members of the Committee. There is no merit in this, for it is entirely a function of age. But I lived through a period in our history when an Administration tried to purge the Foreign Service of officers, especially senior officers, who had "lost China" or did not display enough "positive loyalty" to the Administration then in office. I do not predict that such a period will come again—but I strongly urge that your Committee modify the bill to make certain that if such a period comes again, the new Foreign Service Act cannot be used to "decapitate" the Foreign Service. As now written, a future Secretary of State could do so very easily.

Take, for instance, the phrasing of Section 612(a) which says that recommendations and rankings by selection boards shall be based on records of character, ability, conduct, quality of work, industry, experience, etc. * * * and records of current and prospective assignments." How can there be a "record of a prospective assignment" except in the sense that the file could contain a notation to the effect that "no assignment is in prospect" for the officer in question? At the time of Senator McCarthy, when his friend Scott McLeod was in charge of the administration of the State Department, if it had been possible to make wholesale changes in the top ranks of the Foreign Service by simply noting in their personnel records that no "prospective assignments" were available for them—you may be sure that the then administration would have taken ample advantage of such a provision.

The provision is unnecessary, subject to abuse, and should be dropped.

Or take Section 641(b) which says that Members of the Service whose maximum time in class * * * expires * * * may continue under limited extensions [which] may be granted and renewed by the Secretary in light of the recommendations of selection boards * * * and the needs of the Service." What does this imply? It implies that renewal of a member of the Senior Foreign Service will not be in accordance with the rank-ordering established by selection boards but by the way any Secretary of State construes "the needs of the Service" not just in terms of numbers but also in terms of people. At least, such a construction is possible under this provision as it is now drafted.

The phrase "and the needs of the Service" should be dropped, or else provisions written into the law so that retention of members of the Senior Foreign Service will not be at the caprice of a Secretary of State but in accordance with merit as determined by the selection boards.

I hope it is understood that I am not accusing or suspecting the present Administration of any capricious or underhanded approach toward the Senior Foreign Service. I am sure there is no intention to politicize it by weeding out nonconformists or people lacking enthusiasm for certain policies. But a future Administration could do just that, and could do it with great ease if provisions of this kind are retained in the bill.

I understand that former Secretary Kissinger has testified favorably about the provisions for the Senior Foreign Service on the basis of his experience that bright, vigorous senior FSO's enthusiastic for what he was trying to accomplish, weren't always available. An Administration embarked single-mindedly on a certain policy will always wish to surround itself with career officers who are devoted with equal single-mindedness to such policies. Such an Administration—and one doesn't have to go back to the dim past to see this—will always complain that senior FSO's are too conservative or too liberal or too cautious or too much encumbered by the past. But what they see as a liability I believe to be a national asset that we should be careful to preserve.

Virtually every new Administration comes into office with an intense suspicion of the Foreign Service, and especially of the senior officers who have served the previous Administration, and wishing to make sure that their "own people", or people full of enthusiasm for the new policies, are put as high as possible into the Service. Very often they realize that this has been a mistake, that senior

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

FSO's who hold somewhat different opinions, who represent an institutional memory, who know how and why similar attempts in the past come to grief, are really great assets to have around; and even if they did not realize this, the Senate Foreign Relations Committee should make sure that such senior officers cannot be simply discarded from the system. Their asking of inconvenient questions, their bringing up things from their experience which may not be otherwise known or understood, all this is something very precious for the policy formulation process and we should be very careful not to deprive ourselves of it.

Even the provisions of Section 602(b), that Decisions of the Secretary on promotions into and retention in the Senior Foreign Service shall take into account "the needs of the Service to plan for the continuing admission of new members and for effective career development and reliable promotional opportunities" could be abused. I am not saying, again, that this particular Administration has any such plans. But chucking out older and more experienced officers to make room at the top for younger ones entails a price. Certainly it should take place in a reasonable and orderly way. But there are no safeguards, in the bill as it is present written, that it will be in a reasonable and orderly way—such language could be used to get rid of very large numbers of senior officers because they are, or are believed to be, inconvenient to have around, perhaps lacking in the "positive loyalty" that John Foster Dulles sought in his subordinates, to the lasting impoverishment of the policy formulation process during those years.

My citing of examples from among conservatives is incidental, I can visualize the same bias, or even fanaticism, coming from the other side. My point is that we should be careful not to politicize the Senior Foreign Service by calling for the limited appointments. Tenure at the top should be precarious, that is fine, but it should not be politically precarious, in the sense that a new Administration could come in and bring about a Gleichschaltung of the top ranks of our Foreign Service. [Gleichschaltung=assuring conformity by eliminating people who do not conform, term used in connection with the Nazi-fication of post-Anschluss Austria.]

I know that there are some members of both Houses who will welcome the idea of allowing a new Administration to assure conformity through the provisions of the new Foreign Service Act. But I do not think that thoughtful members of your Committee will wish to accommodate such inclinations if they exist, for we need diversity at the top of our professional Foreign Service.

Senator Church, I have been a member of the American Foreign Service Association for as long as I can remember. I was an officer twice, and at one time was Vice Chairman of its Board. I am devoted to its principal purpose, which is the enhancement and protection of professionalism in foreign affairs. But I do not believe that AFSA can validly speak to the matter that I am raising, because it represents a lot more junior and middle-grade officers than senior officers. Many senior members of AFSA share my views, but those views were not reflected in the testimony that AFSA has given to the House. I am not blaming AFSA for this, they naturally have to respond to the needs of the largest numbers of their members. But I warn against taking their views as representative of those of senior officers.

During my testimony before the House sub-committee. I was asked if I didn't agree that a certain precariousness of the position of a Senior officer, having him put the predictable part of his career behind him and accept the risks that go with higher responsibility, is desirable. At that time I had not, perhaps, given that question sufficient thought so that my response to its was inadequate. If I were asked the same question now, I would answer as follows—and I believe the Committee itself should answer the same way:

Applying more stringent criteria of performance and stature and ability to people at the top of the Foreign Service pyramid is a healthy and constructive idea. There is nothing wrong with it if what one is seeking is ever-higher standards of professionalism. But is that really what we are seeking? Or are some of the proponents of that aspect of the reform not perhaps secretly seeking to give every Administration an opportunity to surround itself with top Foreign Service officers who are politically congenial to it? If we try to make this possible, we gain something—greater homogeneity near the top—but we also lose something, namely the unpolitical nature of our Foreign Service.

We should be very careful before we opt, consciously, for such a Senior Foreign Service, for that means wholesale changes at the top every four or eight years, with a tremendous loss and waste of experience—and or moral courage near the top, where it is especially necessary. When the top career rewards go to those

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

who make themselves most agreeable to a new Administration, when the penalties fall wholesale on those who are or are suspected of not being imbued with the desired enthusiasm, then you have politicized the Senior Foreign Service. At the price of greater homogeneity you will have sacrificed a reservoir of experience, willingness to dissent, to ask the inconvenient question at a time of crisis, that represent a very important asset to our Nation.

I am not against the idea of a Senior Foreign Service. Such a service is not necessary, but properly administered it might perhaps do some good. But I warn against a political Senior Foreign Service. I recommend changes in the bill which will make merit, and not politics, the criteria for retention in the Senior Foreign Service.

My full testimony before the House subcommittee should be available in a couple of weeks or so. I hope that members who read this letter will supplement it with a reading of that testimony. Again—I have nothing to gain by writing this letter or testifying. My career is behind me. I am not in any way bitter. I have had a good career. But because I have seen how the Service can be well or ill used, with good or disastrous consequences for our foreign policies and our national security, I warn against politicizing the Senior Foreign Service, however unintentionally it might be.

Sincerely yours,

MARTIN F. HERZ.

Ambassador HERZ. In expressing my appreciation to your committee for allowing me to testify about one aspect of the proposed Foreign Service Act of 1979, I wish to stress that I speak for no one but myself. I do not represent an organization. But, the ideas that I shall submit to you coincide with those of a number of senior officers of the Foreign Service who are still on active duty. I myself retired this year after 37 years of Government service, 5 of them in the Armed Forces and over 32 in the Foreign Service.

I entered the Foreign Service at the bottom, in 1946, by the examination route, and advanced step by step to class 1, which I reached after 21 years. The most important position I attained was that of Senior Deputy Assistant Secretary of State. The most prestigious was that of Ambassador to Bulgaria. The most unpleasant, though not unrewarding to the inner man, was that of Minister-Counselor at the American Embassy in Saigon, after the Tet offensive in 1968.

I was not, incidentally, the first choice for that unpleasant position. I was offered it, and accepted, after one or two others had turned it down. I was amazed then, and am even more amazed now, that it should be possible in a disciplined career service to turn down a responsible position just because it is extremely difficult or unpleasant.

Mr. Chairman, I have perhaps a longer memory than my younger colleagues in the Foreign Service, and perhaps, even than some of the members of this committee. There is no merit in this, for it is entirely a function of age. I happen to have lived through a period in our history when there was a sort of open season against Senior Foreign Service officers.

I am concerned that the proposed legislation will not only not guard against a repetition of those dangerous days—dangerous not just to the Foreign Service, but to the country—but, that it will make it easier for a future Secretary of State to "decapitate" the Foreign Service through mass retirements of its most experienced and most valuable members.

This is not a fantasy of mine. I have been there. I have seen it going on all around me. I have seen friends and colleagues hounded out of the service. I have seen loyal Foreign Service officers, who had been cleared again and again and again by the most rigorous security pro-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

cedures, dismissed from the service because the Secretary of State, and those whom he had brought into the Department with him, did not share their views and their outlook, and because those politically appointed officials were subservient to others who would make the Foreign Service a scapegoat for our misfortunes and failures abroad.

The CHAIRMAN. I cannot help but interpolate. I was a Foreign Service agent at that time. I remember being a security officer in the EE security office or whatever it was called at the time. And nobody thinks that John Foster Dulles or President Eisenhower were evil men, yet very evil things happened with the best of intentions at the time. And, the same thing could very easily happen again.

I appreciate the remarks that you are making.

Ambassador HERZ. Thank you, sir. It may be said that McCarthy was an isolated phenomenon that is not likely to be repeated. To this, I would reply that it is a misreading of history to associate McCarthyism with only one man. There were a number of Senators and Representatives who shared his attitudes and who outlived him and who continued to do damage to the service and whose views were given very much weight in the executive branch.

It is, thus, not fanciful for me to look at the proposed legislation from the point of view whether a future Secretary of State would be more, or less, able to root out of the service people whom he might not like, whose political views, real or imagined, he might not share, or whose presence in the service might be an embarrassment to him in his relations with powerful Members of the Congress.

I find that there is serious ground for concern because the provision for limited appointments to the Senior Foreign Service is tailormade for unscrupulous use against senior officers suspected of holding views divergent from those of an incoming new administration.

It should be understood that I am not attributing to this administration, certainly not to the present Secretary of State, also not to the excellent career officers who have worked on this legislation, any intention to open the way to some future inquisition or bloodbath of the Senior Foreign Service.

These are all honorable men, inspired by the highest motives. What I question is the wisdom of enacting legislation which could be abused in a way that the framers of the legislation had not intended or envisaged. This involves a question of public policy—whether it is wise, even if some benefits would flow from a certain measure, to open the doors to possible abuse of those measures.

I am proceeding in my testimony from the assumption that the wise course of action is to forgo some minor advantages if there is a major danger that the purposes of the legislation could be perverted some time in the future under circumstances that we cannot, at present, foretell.

At this point, I would like to make a short digression—it is only a seeming digression. You who have devoted so much time to the Foreign Service and its problems and to this pending legislation, are, of course, aware of the weaknesses of a career diplomatic service in our political environment. Even when there are no accusations of disloyalty, or even treason, as occurred in the late forties and early fifties, it is fair to say, I think, that the Foreign Service does not enjoy a good press, that there are people, perhaps also in this House, who feel that there is

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

something wrong with it, and that somehow the service is "unrepresentative" of the United States.

From this attitude, which I submit is quite widespread or at least in our society, it is not a very long way to distrusting the Foreign Service and associating it with policies that one does not like. It is no secret, I think that both the Kennedy and Nixon administrations came into office with a determination to place "their own men" at the top of the Department and into key positions abroad, because they distrusted the views and attitudes and orientation of the professionals.

What one Secretary of State called "positive loyalty," which he demanded from the Foreign Service, others would call conformity. And, I submit, conformity in the Foreign Service is a very dangerous thing because it is from the Foreign Service that the questions come that need to be asked, that the collective memory of our diplomacy can assert itself, that the inconvenient counterargument needs to originate.

We need, in other words, a free play of ideas in the Department of State and the Foreign Service. Thank God we have it now. We have not always had it, and there is no reason to believe that it is foreordained that we shall always have it. We may lose it if we aren't careful. We have lost it before. The proposed legislation does not protect it, on the contrary, it endangers that free flow of ideas, which, of course, includes ideas of a contrary nature that another administration might not cherish.

I believe that section 602, which makes retention in the Senior Foreign Service a matter of the Secretary's appreciation of the "needs of the service to plan for the continuing admission of new members" and section 641, which allows the Secretary, by regulation, "to increase or decrease such maximum time for a class * * * at the needs of the service may require" opens the way to mass dismissals of Senior Foreign Service officers by some new administration that might be convinced that they all "lost China" or "lost Africa" or were "pinks" or "fascists" or otherwise uncongenial.

What would Mr. Scott McLeod, whom Mr. Dulles brought into the State Department as his head of administration and security, and who was a friend and confidant of Senator McCarthy, have made of such a wide latitude given to a Secretary of State? He would have reveled in it. He would have exploited it to the utmost to get rid of Foreign Service officers who were suspected not of being Communists, but of being left-leaning, excessively liberal, wooly-minded, do-gooders who didn't understand the reality of the threat.

What might be the future policy in whose name another open season might be declared? Perhaps it might be on the opposite end of the political spectrum. But, whatever end of the spectrum it might come from, it would be bad news for the country, for the freedom to express unpopular ideas, and for the principle that a professional career service is, in any case, the servant and not the master of foreign policy.

Let me make clear what I meant by the last remark. I believe that it is, and was, profoundly mistaken to believe that Foreign Service officers represent political parties or political tendencies. The paranoid attitude, for instance, of Mr. Ehrlichman, who saw the Nixon administration's foreign policy sapped by disloyal career public servants, was not justified.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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The Foreign Service loyally implemented Mr. Nixon's policies just as it had implemented those of his predecessor and his successors. It is a non-political service. But, that is precisely what makes it so suspect in the eyes of some of the political chieftains in the White House.

"Positive loyalty" is not, after all, so very far removed from the performance checks that have recently been ordered in the White House and which require loyalty, once more, to be checked out. It is only a relatively small step from getting someone's loyalty to evaluating his usefulness according to how much he or she agrees, or enthusiastically supports, certain policies.

In other words, the danger is always present. It is only a matter of degree. So, it is not so far-fetched to imagine that some future administration might want to make a clean sweep of the Senior Foreign Service because it is associated, or the minds of the new, incoming administration, with failures and idiocies or total benightedness, or worse—sympathy with our enemies, or inveterate blindness toward something that is particularly important to such an administration.

With your permission, I will skip the section of my testimony dealing with George Kennan, which, I think, is wise and pertinent, but can be read in the written record.

It will not have escaped you that the desirable characteristics that Kennan saw in a Foreign Service officer, come from "long pursuit" of the career. In other words, I am not at all sure that they are fully developed in the younger and more vigorous and less skeptical and more ambitious officers who so often strike the political leaders as more with it, as sharing their own ideas more visibly and articulately, as being, in other words, in step with the times.

This is precisely what I am warning against, and I think it is not an excessive extrapolation from the remarks of Kennan that I have just cited to say that he, too, sees merit in experience, in the acquisition of that skeptical detachment which does not come readily to younger people.

Section 612 of the proposed legislation would make one of the criteria for promotion or retention in the Senior Foreign Service not only the usual performance evaluation reports, commendations, awards, reprimands, and so forth, but also records of current and prospective assignments. What a strange expression—records of prospective assignments. How can there be a record of prospective assignments, except a notation that Mr. or Ms. X is in line for a new job, and that Mr. or Ms. Y does not have a job in prospect?

What could not Mr. Scott McLeod, the agent of Senator Joe McCarthy in the State Department, have made with such a provision as it applied to, say, Mr. John Stewart Service or Mr. John Paton Davies who were accused of having lost China.

Lest you believe that no such cases occurred in more recent years, I may recall that there was also a man in the early sixties who was suspected or accused of having lost Cuba and for whom the American Foreign Service Associations—of which I was a member of the board of directors—unsuccessfully intervened because the administration did not want to give him any prominent assignment for fear of flak from hostile Senators and Congressmen.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

It could have been easily certified for such a man that there was no prospective assignment for him—and out he would go. He, and others in his category, would be on an escalator to the guillotine, but it would not be his value to his country that would decide whether the blade would fall, but a political judgment whether he was controversial or an embarrassment.

That, I submit, is coming very close to politicizing the senior ranks of the Foreign Service. Fearlessness at the bottom of the career pyramid is easy. Fearlessness at the top is sometimes also easy, particularly when you approach retirement.

But, fearlessness near the top, seeing how the heads roll of those who do not know how to make themselves agreeable to a new administration, could be a very dangerous thing to a diplomatic career and is likely to give way to conformity.

We need, and always need, a variety of Senior Foreign Service officers, with widely divergent viewpoints. We need people who ask the inconvenient questions, who recall the things that others have forgotten or cannot remember because they haven't experienced them as a senior diplomat has.

Mr. Chairman, at this point, I would ask to put in a comment that comes to mind from testimony before a House committee by former Secretary of State, Henry Kissinger, a man for whom I have high respect. He endorsed the provision for the Senior Foreign Service. He endorsed wholeheartedly the idea that people would be on probation at the top. And, I have no doubt that he did so because he felt that he was surrounded occasionally, when he was in the White House and on other occasions when he was in the State Department, by senior officers of the Foreign Service who did not share his enthusiasm for a particular policy, experienced officers, who did ask the inconvenient question, people who were the repository of things that had gone wrong in the past and brought these up as counter-arguments.

Now, I do not say that a Secretary of State needs to surround himself with people uncongenial to him. Neither, however, should he be in a position to penalize such officers for views that they express.

And, I think there is a natural tendency of a Secretary of State, of an administration, of a President embarked on some major enterprise—let us say, the war in Vietnam—a major enterprise that is very controversial, there is a natural tendency for these policy officers to surround themselves with people who are congenial to him, who are with it, who are young, who are enthusiastic, who really understand, and who don't ask those inconvenient questions.

That is why I say, and I also perhaps put this more strongly in my letter to Senator Church, that such senior officers are a national asset which could be too easily discarded if the bill were enacted as it is presently written.

I now come to the final portion of my testimony.

Theoretically, by shortening the time in grade at the top and certifying to the non-availability of onward assignments, by letting terms of able senior officers expire simply because they aren't showing enough positive loyalty, it would not take much time for some future Secretary of State, perhaps one who might be well-intentioned, but only weak and inclined to yield to pressure from Capitol Hill or the press or the White House, to decimate, indeed to decapitate the Senior Foreign

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Service. This is an abuse that should not be allowed, that should be carefully guarded against in the legislation.

Perhaps I may be permitted to add one final observation. I am, myself, a member of the American Foreign Service Association. As already remarked, I was a member of its board of directors. At one time, I was even its vice chairman.

I write frequently for the Foreign Service Association's organ, the Foreign Service Journal. I am in full sympathy with its principal goal, the protection and enhancement of professionalism in our diplomacy. But, I do not regard it presently as fully representative of the Foreign Service, if only for demographic reasons: It has more young members than old ones. This is not a criticism, it is a statement of fact.

Older officers, who now almost seem to be ashamed of being older and more experienced, are an endangered species in today's Foreign Service. Their percentage is constantly going down. But, it is a fact of life that to the younger officers, there are always too many older ones holding positions of responsibility.

I felt the same way when I was young. I am not criticizing it. All I am saying is that the virtues of having a corps, a good proportion, of seasoned older officers available and on hand to make their input into the policy-formulation process and its execution—the virtues of that are not normally perceived by younger people or not perceived to the same extent by older people, I should say.

That, I think, is why I have been encouraged by a number of older officers to come forward and make these observations about the proposed legislation which, coming from them, would seem self-serving. My career in the Foreign Service is behind me. It has been a good career. I think today's Service is excellent and should be protected against some future ravages by irresponsible politicians.

If my testimony has sensitized you to that danger, if I have been able to point out that the danger is not fanciful, then I have, perhaps, rendered a service not only to your committee, but also the Foreign Service that I love, including the younger officers who may be inclined to worry about testimony such as mine because it turns out to be in favor of lengthening the escalator to the guillotine.

Thank you, Mr. Chairman.

[Ambassador Herz's prepared statement follows:]

PREPARED STATEMENT OF HON. MARTIN F. HERZ

In expressing my appreciation to your committee for allowing me to testify about one aspect of the proposed Foreign Service Act of 1979, I wish to stress that I speak for no one but myself. I do not represent an organization. But the ideas that I shall submit to you coincide with those of a number of senior officers of the Foreign Service who are still on active duty. I myself retired this year after 37 years of government service, five of them in the armed forces and over 32 in the Foreign Service.

I entered the Foreign Service at the bottom, in 1946, by the examination route, and advanced step by step to Class 1, which I reached after 21 years. The most important position I attained was that of senior deputy assistant secretary of state. The most prestigious was that of ambassador to Bulgaria. The most unpleasant, though not unrewarding to the inner man, was that of Minister-Counselor at the American embassy in Saigon, after the Tet offensive in 1968. I was not, incidentally, the first choice for that unpleasant position. I was offered it, and accepted, after one or two others had turned it down. I was amazed then, and am even more amazed now, that it should be possible in a disciplined

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career service to turn down a responsible position just because it is extremely difficult or unpleasant.

Mr. Chairman, I have perhaps a longer memory than my younger colleagues in the Foreign Service, and perhaps even than some of the members of this committee. There is no merit in this, for it is entirely a function of age. I happen to have lived through a period in our history when there was a sort of open season against senior Foreign Service officers. I am concerned that the proposed legislation will not only guard against a repetition of those dangerous days—dangerous not just to the Foreign Service but to the country—but that it will make it easier for a future Secretary of State to "decapitate" the Foreign Service through mass retirements of its most experienced and most valuable members.

This is not a fantasy of mine. I have been there. I have seen it going on all around. I have seen friends and colleagues hounded out of the Service. I have seen loyal Foreign Service officers, who had been cleared again and again and again by the most rigorous security procedures, dismissed from the Service because the Secretary of State, and those whom he had brought into the Department with him, did not share their views and their outlook, and because those politically appointed officials were subservient to others who would make the Foreign Service a scapegoat for our misfortunes and failures abroad.

You may say that McCarthy was an isolated phenomenon that is not likely to be repeated. To this I would reply that it is a misreading of history to associate McCarthyism with only one man. There were a number of senators and representatives who shared his attitudes and who outlived him and who continued to do damage to the Service and whose views were given very much weight in the Executive Branch. It is thus not fanciful for me to look at the proposed legislation from the point of view whether a future Secretary of State would be more, or less, able to root out of the Service people whom he might not like, whose political views (real or imagined) he might not share, or whose presence in the Service might be an embarrassment to him in his relations with powerful members of the Congress.

I find that there is serious ground for concern because the provision for limited appointments to the Senior Foreign Service is tailor-made for unscrupulous use against senior officers suspected of holding views divergent from those of an incoming new administration.

It should be understood that I am not attributing to this Administration, certainly not to the present Secretary of State, also not to the excellent career officers who have worked on this legislation, any intention to open the way to some future inquisition or bloodbath of the senior Foreign Service. These are all honorable men, inspired by the highest motives. What I question is the wisdom of enacting legislation which could be abused in a way that the framers of the legislation had not intended or envisaged. This involves a question of public policy—whether it is wise, even if some benefits would flow from a certain measure, to open the doors to possible abuse of those measures. I am proceeding in my testimony from the assumption that the wise course of action is to forego some minor advantages if there is a major danger that the purposes of the legislation could be perverted some time in the future under circumstances that we cannot at present foretell.

At this point I would like to make a short digression—it is only a seeming digression. You who have devoted so much time to the Foreign Service and its problems and to this pending legislation, are of course aware of the weaknesses of a career diplomatic service in our political environment. Even when there are no accusations of disloyalty, or even treason, as occurred in the late forties and early fifties, it is fair to say, I think, that the Foreign Service does not enjoy a good press, that there are people, perhaps also in this House, who feel that there is something wrong with it, and that somehow the Service is "unrepresentative" of the United States.

From this attitude, which I submit is quite widespread or at least latent in our society, it is not a very long way to distrusting the Foreign Service and associating it with policies that one does not like. It is no secret, I think, that both the Kennedy and Nixon administrations came into office with a determination to place "their own men" at the top of the Department and into key positions abroad, because they distrusted the views and attitudes and orientation of the professionals. What our Secretary of State called "positive loyalty", which he demanded from the Foreign Service, others would call conformity. And, I submit, conformity in the Foreign Service is a very dangerous thing because it is from the Foreign Service that the questions come that need to be asked, that the collective memory

50-236—80——15

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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We need, in other words, a free play of ideas in the Department of State and the Foreign Service. Thank God we have it now. We have not always had it, and there is no reason to believe that it is foreordained that we shall always have it. We may lose it if we aren't careful. We have lost it before. The proposed legislation does not protect it, on the contrary it endangers that free flow of ideas, which of course includes ideas of a contrary nature that another administration might not cherish.

I believe that Section 602, which makes retention in the Senior Foreign Service a matter of the Secretary's appreciation of the "needs of the Service to plan for the continuing admission of new members" and Section 641, which allows the Secretary, by regulation, "to increase or decrease such maximum time for a class... as the needs of the Service may require" opens the way to mass dismissals of Senior Foreign Service officers by some new administration that might be convinced that they all "lost China" or "lost Africa" or were "pinks" or "fascists" or otherwise uncongenial.

What would Mr. Scott McLeod, whom Mr. Dulles brought into the State Department as his head of administration and security, and who was a friend and confidant of Senator McCarthy, have made of such a wide latitude given to a Secretary of State! He would have reveled in it. He would have exploited it to the utmost to get rid of Foreign Service officers who were suspected not of being Communists but of being left-leaning, excessively liberal, wooly-minded do-gooders who didn't understand the reality of the threat. What might be the future policy in whose name another open season might be declared? Perhaps it might be on the opposite end of the political spectrum. But whatever end of the spectrum it might come from, it would be bad news for the country, for the freedom to express unpopular ideas, and for the principle that a professional career service is in any case the servant and not the master of foreign policy.

Let me make clear what I meant by the last remark. I believe that it is, and was, profoundly mistaken to believe that Foreign Service officers represent political parties or political tendencies. The paranoid attitude, for instance of Mr. Ehrlichman, who saw the Nixon administration's foreign policy sapped by disloyal career public servants, was not justified. The Foreign Service loyally implemented Mr. Nixon's policies just as it had implemented those of his predecessor and his successors. It is a non-political service. But that is precisely what makes it so suspect in the eyes of some of the political chieftains in the White House. "Positive loyalty" is not, after all, so very far removed from the performance checks that have recently been ordered in the White House and which require loyalty, once more, to be checked out. It is only a relatively small step from getting someone's loyalty to evaluating his usefulness according to how much he or she agrees, or enthusiastically supports, certain policies. In other words, the danger is always present. It is only a matter of degree. So it is not so far-fetched to imagine that some future administration might want to make a clean sweep of the Senior Foreign Service because it is associated, in the minds of that new, incoming administration, with failures and idiocies or total benightedness, or worse—sympathy with our enemies, or inveterate blindness toward something that is particularly important to such an administration.

George F. Kennan, in remarks that I request permission to include in the printed version of my testimony, stated the problem of the diplomat in a democratic society in terms that are both insightful and graphic. He noted that "this diplomat has to recognize that he is himself something of an anomaly within the traditional structure of American government—something for which there is not, and could not be, any fully natural and accepted place. He is not politically appointed—a circumstance which is sometimes a source of irritation, one suspects, for politicians, who see him as preempting positions and salaries that might otherwise be used to reward political supporters."

Moreover, as Kennan points out, the very qualities that make a diplomat effective in a foreign environment involve features of his appearance and manners and even thinking processes which are perceived as alien by his own society. "To many people in journalistic and political life," wrote Kennan, "this habitude du monde is particularly disturbing, because it seems to imply on the part of the professional diplomat a certain deliberate self-distancing from those great currents of mass reaction and emotion to which American society is uniquely vulnerable and by which journalists and politicians, above all others,

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are carried, of which they are the spokesmen, and in the reflection of which they find their inner security."

In an earlier interview, of which I would also ask your permission to insert longer excerpts into the record, Kennan observed that journalists and legislators frequently "expect the FSO to be a sort of foreign exhibit of American virtues and mannerisms, as they themselves conceive them. They expect him to cultivate popularity and to use this popularity for the 'selling' of American outlooks (rather than policies) to other peoples. They do not realize that his main tasks normally have to do with other governments rather than with peoples; that his function is really that of an effective and unobtrusive intermediary, assuring the accuracy and usefulness of communication among governments; that he needs sometimes to take on something of the personal coloration, not just linguistically but in manners and way of thinking, of those with whom he has to communicate; that a strident and expansive Americanism is often an impediment in this respect; and that in his quality as an effective intermediary he is bound, if he is to be useful, to acquire a certain inner detachment towards both sides, which does not imply any disloyalty to his own. I would submit that no one can long pursue the Foreign Service profession without acquiring a certain critical detachment towards the behavior and policies of all governments—including his own—a detachment which respects the prejudices and limitations of vision by which that behavior and those policies are often inspired, but does not necessarily share them."

"Congress and the American public must ultimately choose," Kennan says in this passage of the interview, "either they want effective intermediaries, effective executors of American policies abroad, and effective observers as well, in which case they have to tolerate a certain amount of cosmopolitanism in the personal make-up of these people, or they must be prepared to forego the advantages of a highly effective diplomatic arm."

It will not have escaped you that the desirable characteristics that Kennan saw in a Foreign Service officer, come from "long pursuit" of the career. In other words, I am not at all sure that they are fully developed in the younger and more vigorous and less skeptical and more ambitious officers who so often strike the political leaders as more "with it," as sharing their own ideas more visibly and articulately, as being, in other words, "in step with the times." This is precisely what I am warning against, and I think it is not an excessive extrapolation from the remarks of Kennan that I have just read to you to say that he, too, sees merit in experience, in the acquisition of that skeptical detachment which does not come readily to younger people.

Section 612 of the proposed legislation would make one of the criteria for promotion or retention in the Senior Foreign Service not only the usual performance evaluation reports, commendations, awards, reprimands, etc., but also "records of current and prospective assignments." What a strange expression—records of prospective assignments. How can there be a record of a prospective assignment, except a notation that Mr. or Ms. X is in line for a new job, and that Mr. or Ms. Y does not have a job in prospect.

What could not Mr. Scott McLeod, the agent of Senator Joe McCarthy in the State Department, have made with such a provision as it applied to, say, Mr. John Stewart Service or Mr. John Paton Davies who were accused of having "lost China." Lest you believe that no such cases occurred in more recent years, I may recall that there was also a man in the early sixties who was suspected or accused of having "lost Cuba" and for whom the American Foreign Service Association (of which I was then a member of the board of directors) unsuccessfully intervened because the Administration did not want to give him any prominent assignment for fear of flak from hostile Senators and Congressmen. It could have been easily certified for such a man that there was no prospective assignment for him—and out he would go. He, and others in his category, would be on an escalator to the guillotine, but it would not be his value to his country that would decide whether the blade would fall, but a political judgment whether he was "controversial" or an embarrassment.

That, I submit, is coming very close to politicizing the senior ranks of the Foreign Service. Fearlessness at the bottom of the career pyramid is easy. Fearlessness at the top is sometimes also easy, particularly when you approach retirement. But fearlessness near the top, seeing how the heads roll of those who do not know how to make themselves agreeable to a new administration, could be a very dangerous thing to a diplomatic career and is likely to give way to conformity. We need, and will always need, a variety of senior Foreign

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Service officers, with widely divergent viewpoints. We need people who ask the inconvenient questions, who recall the things that others have forgotten or cannot remember because they haven't experienced them as a senior diplomat has.

Thoretically, by shortening the time in grade at the top and certifying to the non-availability of onward assignments, by letting terms of able senior officers expire simply because they aren't showing enough "positive loyalty", it would not take much time for some future Secretary of State, perhaps one who might be well-intentioned but only weak and inclined to yield to pressure from Capitol Hill or the press or the White House, to decimate, indeed to decapitate the Foreign Service. This is an abuse that should not be allowed, that should be carefully guarded against in the legislation.

Perhaps I may be permitted to add one final observation. I am myself a member of the American Foreign Service Association. As already remarked, I was a member of its Board of Directors. At one time I was even its Vice Chairman. I write frequently for the Foreign Service Association's organ, the Foreign Service Journal. I am in full sympathy with its principal goal, the protection and enhancement of professionalism in our diplomacy. But I do not regard it presently as fully representative of the Foreign Service, if only for demographic reasons: It has more young members than old ones. This is not a criticism, it is a statement of fact.

Older officers, who now almost seem to be ashamed of being older and more experienced, are an endangered species in today's Foreign Service. Their percentage is constantly going down. But it is a fact of life that to the younger officers, there are always too many older ones holding positions of responsibility. I felt the same way when I was young. I am not criticizing it. All I am saying is that the virtues of having a corps, a goodly proportion, of seasoned older officers available and on hand to make their input into the policy-formulation process and its execution—the virtues of that are not normally perceived by younger people.

That, I think, is why I have been encouraged by a number of older officers to come forward and make these observations about the proposed legislation which, coming from them, would seem self-serving. My career in the Foreign Service is behind me. It has been a good career. I think today's service is excellent and should be protected against some future ravages by irresponsible politicians. If my testimony has sentitized you to that danger, if I have been able to point out that the danger is not fanciful, then I have, perhaps, rendered a service not only to your committee but also the Foreign Service that I love, including the younger officers who may be inclined to worry about testimony such as mine because it tends to be in favor of lengthening the escalator to the guillotine.

EXCERPT FROM "FOREIGN POLICY AND THE PROFESSIONAL DIPLOMAT" BY GEORGE F. KENNAN, IN THE WILSON QUARTERLY, WINTER 1977

[Secondly], this diplomat has to recognize that he is himself something of an anomaly within the traditional structure of American government—something for which there is not, and could not be, any fully natural and accepted place. He is not politically appointed—a circumstance which is sometimes a source of irritation, one suspects, for politicians, who see him as preempting positions and salaries that might otherwise be used to reward political supporters. But he is also not, or at least should not be, a member of that great body of lower-level serving personnel known as the civil service, which constitutes the overwhelming majority of those, other than the political appointees, who serve the government. But between these two categories of people who work for the government—the political appointees and the domestic civil servants—there is no third category, familiar to American politicians and to public opinion generally, to which the Foreign Service could be assigned.

With minor exceptions the United States has no tradition at all of a self-administered career service within the civilian (as distinct from the military) sector of government. To the extent, therefore, that the American Foreign Service remains a career service, immune to political appointment and resistant to control by the domestic civil service, it tends to become an object of bewilderment and suspicion in the eyes of Congress, of the political parties, and of much of the press. And yet the legislators and the party politicians, in particular, are precisely the people on whom the Foreign Service is of course dependent for its appropriations, its salaries, and the physical premises and facilities with which it has to work.

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Underlying this organizational isolation, and in part explaining and reinforcing it, is an even more widespread and serious Foreign Service burden—namely, a deeply ingrained prejudice against people who give their lives professionally to diplomatic work. This prejudice operates within the political establishment in the first instance but also with much of the press and portions of the public.

The late French ambassador, Jules Cambon, in the celebrated series of lectures he once delivered before the French Académie (published in 1926 under the title of Le Diplomate), observed that "democracies will always have ambassadors and ministers; it remains to be seen whether they will have diplomats * * * [Diplomacy] is a profession that requires of those who practice it some cultivation and a certain habitude du monde [roughly: sophisticated view of the world]." But, he went on, to find people with these qualities, and to bring them together in a professional service, requires a certain process of selection; and this, he thought, would always be disagreeable to democratic tastes because "democracies have a difficult time tolerating anything that resembles selection."

However true these words might be with respect to other countries, they could not be more true of the United States, particularly at this time. We live, as we all know, in an age when egalitarianism is the prevailing passion, at least in many intellectual and political circles. We seem to stand in the face of a widespread belief that there is no function of public life that could not best be performed by a random assemblage of gray mediocrity. For people of selecting people for any governmental function on the basis of their natural suitability for that sort of work must be rejected; because to admit that some people might be more suitable than others would be an elitist thought—hense inadmissible.

And not only is selection per se distasteful to many Americans, but the particular qualities that would have to underlie any proper selection for professional diplomacy are especially odious. The very idea of this habitude du monde of which Cambon spoke is repugnant to many because the experience essential to its acquisition is one that cannot be obtained within our society; it can be obtained only by residence and work outside it.

To many people in journalistic and political life this habitude du monde is particularly disturbing, because it seems to imply on the part of the professional diplomat a certain deliberate self-distancing from those great currents of mass reaction and emotion to which American society is uniquely vulnerable and by which journalists and politicians, above all others, are carried, of which they are the spokesmen, and in the reflection of which they find their inner security. To them, the outlook of the diplomatic professional is a challenge—all the more provoking because it is one they cannot meet on its own ground. And the result of this is that the diplomat comes only too easily to be viewed as a species of snobbish and conceited elitist, dépaysé, estranged from its own country and countrymen, giving himself airs, looking down upon his fellow citizens, fancying himself superior to them by virtue of his claim to an esoteric knowledge and expertise and which by the very fact of its foreign origin challenges the soundness and adequacy of their world of thought.

And in this way there emerges, and finds partial acceptance. the familiar stereotype of the American diplomat as a somewhat effeminate, rather Anglicized figure (the British are usually made victims of our inferiority complexes), as a person addicted to the false attractions of an elegent European social life, usually to be found at parties, attired in striped pants, balancing a teacup, and nursing feelings of superiority towards his own country as he attempts to ingratiate himself with the hostesses and the officials of another one. The fact that there is no substance for this stereotype—the fact that what little substance it might once have had passed out of our lives decades ago, the fact that this particular professional dedication involves today a great deal of hard work, much discomfort, much loneliness, a dedication to the service of the nation far beyond what most people at home are ever asked to manifest, and, last but not least, in many instances no small amount of danger—all this is of no avail. The stereotype exists. It persists. It is gratifying to many egos. It will not soon be eradicated.

The multiplicity of critics and detractors of the American Foreign Service would not be so serious, perhaps, if it were balanced by any considerable body of defenders; but this, unhappily, is not the case. The Department of State, which theoretically controls the Service and ought properly to defend it, has neither the ability nor the will to act very effectively in this direction. The ability is lacking because, of all the departments and agencies of the United States, the Department of State is perhaps the only one that has no domestic constituency—no sizable body of the citizenry, that is, which understands its

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

functions and is concerned for it, no special interest groups who stand to profit by its activity and are ready to bring pressure to bear on Congress on its behalf. Lacking these things, it has little domestic influence. And the State Department's own will to defend the Service is also often lacking, because the Department is normally headed and administered by people without foreign-service experience—sometimes even by people who share the very prejudices and failures of understanding just referred to.

EXCERPT FROM "AN INTERVIEW WITH GEORGE F. KENNAN" BY JOHN F. CAMPBELL, IN FOREIGN SERVICE JOURNAL, AUGUST, 1970.

Question. When men like the late Senator Joseph McCarthy attack the Foreign Service for "disloyalty", isn't their main objection really that the Service is something of an intellectual elite and its members pick up eccentric and "un-American" habits from spending most of their lives mixing with foreigners and living abroad? Isn't this the real reason many congressmen can't stand the State Department?

KENNAN. Yes, I think there is, most unfortunately, a conflict between the qualities of character and personality that are most effective in the Foreign Service and those that most commend themselves to some people in Congress and, in general, to the American press.

In part, this arises from a suspicion on the part of congressmen and journalists that people so subtly different from themselves cannot fully respect them and must in some way be looking down on them. But there is also the fact that very few people in our domestic life—almost none, in fact, even among the most experienced journalists and legislators—have any proper understanding of the real function and requirements of the Foreign Service. They expect the FSO to be a sort of foreign exhibit of the American virtues and mannerisms, as they themselves conceive them. They expect him to cultivate popularity and to use this popularity for the "selling" of American outlooks (rather than policies) to other peoples. They do not realize that his main tasks normally have to do with other governments rather than with peoples; that his function is really that of an effective and unobtrusive intermediary, assuring the accuracy and usefulness of communication among governments; that he needs sometimes to take on something of the personal coloration, not just linguistically but in manners and way of thinking, of those with whom he has to communicate; that a strident and expansive Americanism is often an impediment in this respect; and that in his quality of an intermediary he is bound, if he is to be useful, to acquire a certain inner detachment towards both sides, which does not imply any disloyalty to his own. I would submit that no one can long pursue the Foreign Service profession without acquiring a certain critical detachment towards the behavior and policies of all governments—including his own—a detachment which respects the prejudices and limitations of vision by which that behavior and those policies are often inspired, but does not necessarily share them. Congress and the American public must ultimately choose, either they want effective intermediaries, effective executors of American policies abroad, and effective observers as well, in which case they have to tolerate a certain amount of cosmopolitanism in the personal make-up of these people, or they must be prepared to forgo the advantages of a highly effective diplomatic arm.

It is a great pity that this touch of cosmopolitanism (it is generally very slight) is so often taken for effeminacy or lack of affection for one's own country. It is a poor sort of manliness that has to document itself by expansive and boisterous behavior; this latter, in fact, is usually the mark of inner insecurity and uncertainty. And the variety of patriotism which has never known exposure to the challenge of different ways of thought and behavior is not necessarily the strongest form of patriotism. One thinks, here, of Milton's words (from the Areopagitica):

"I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary, but slinks out of the race where that immortal garland is to be run for, not without dust and heat."

I am afraid that before many Americans can hope to have a really effective Foreign Service, they will have to overcome certain forms of narrowness and provincialism in their own attitude towards the tasks and requirements of Foreign Service work.

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Question. Franklin Roosevelt seemed to have very little use for the Foreign Service. American diplomats were not consulted about most of the major wartime decisions, and Roosevelt traveled to Casablanca and Yalta without senior State Department advisers. He once wrote in a memorandum that the successful diplomat is "a man who is loyal to the Service, who does not offend people and who does not get intoxicated at public functions." Was it Roosevelt's personal temperament that made him avoid diplomatic advice, or was it the feeling that a President can never be sure of receiving from professional diplomats the kind of intense loyalty he gets from his political supporters?

KENNAN. I am not sure of that answer to this question. Sometimes the reluctance to recognize any virtue in the Foreign Service officer's expertise conceals a painful awareness of one's own lack of it. In FDR's case, I think there was something personal, as well. He disliked social prominence and pretension; and he probably associated these things with the Foreign Service. He had little or no understanding for a disciplined, hierarchical organization. He had a highly personal view of diplomacy, imported from his domestic political triumphs, and great confidence in his personal ability to wheedle anybody into anything. His approach to problems of foreign policy was basically histrionic, with the American political public as his audience. Foreign Service officers were of little use to him in this respect. His taste was for the dilettante, and he liked boldness in the people around him. He disliked cautious, experienced men; and it is true that a Foreign Service officer, since he is a professional, has the same kind of caution bred of experience that a good doctor or lawyer has.

The CHAIRMAN. Thank you very much, indeed, for very intelligent testimony and for very intelligent points. I think one has to have actually experienced the days of McCarthyism to be able to recall it with the vividness that one should. And, I believe and I trust that the Department of State has representatives here who, as they are looking through section 612, will keep your testimony in mind.

I must say it would seem to me that a selection board, if one wanted to cozy up to the Secretary of State, could really raise havoc with Foreign Service officers who had views counters to those of the administration.

I also remember being at the environmental conference in Stockholm, Sweden, a few years ago, and the chilling effect the presence of Mr. Erlichman had on the free expression of views of people in that delegation when they met and expressed the thought that we were engaged in environmental warfare in Vietnam. That was absolutely considered disloyal to say and, yet, it was a fact and we have recognized that fact since then. And, we are now in the process of ratifying a treaty that will prevent environmental modifications as a means of warfare.

And, as times change, I think the people in the career service should be given protection for their own views as long as they are loyal servants to the Government.

PERFORMANCE PAY

In connection with performance pay where some Foreign Service officers will get higher pay than others, which will necessitate a new burden for selection boards to figure out which ones will get it—somewhat like paying one major general extra pay as opposed to another major general or as opposed to the present system which is very much the same in the Foreign Service as in the military where the carrot is the prospect of better assignment and promotion and where the stick is the thought of not being promoted and passed over, which, I think,

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seems to work fairly effectively—I was wondering what your views were on that, Ambassadore Herz.

Ambassador HERZ. Mr. Chairman, I believe the intention of those who support performance pay is simply to make sure that Foreign Service officers would be adequately compensated.

The CHAIRMAN. Forgive me, I don't think that is the reason. I think the reason is to encourage their performance. But, the adequate compensation is provided for by the salary and living allowances theoretically.

Ambassador HERZ. Thank you, sir. I completely agree that this should be the main concern. Adaquate pay, I think is—I just wish to say what my comments on performance pay should not by any means be interpreted as directed against adequate compensation for Senior Foreign Service officers.

I don't believe they are adequatly compensated now. I think means should be found to compensate them adequately. Whether the allowance is due, that is another question. At any rate, I don't think that should be the main consideration when one is considering the concept of performance pay.

Using your parallel, Senator, of generals, and not wishing to use examples of recent wars, I would say that Hanibal would probably have gotten performance pay for crossing the Alps, but as for Fabius Maximus cunctator—the Roman Senate would surely have withheld performance pay from him because he would have been regarded as a timid general who was not using properly agressive tactics against the enemy.

Fabius Maximus defeated Hannibal, but defeated him after a long campaign in which his feints, his retreats, his failure to have an immediate showdown with him, were the essence of his strategy.

I don't see how, using the Foreign Services as a realistic case, the "general" in the Foreign Service who avoids the showdown will be as easily rewarded or as easily recognized as deserving reward as the one who has it out, who creates the crisis and "solves the crisis," because he will be regarded as the activist, as a man who has really worked hard. Whereas, in fact, the other man may have worked harder, more intelligently and in the long run with better effect.

Using another parallel from the field of my wife, who is a doctor, I imagine if performance pay were given to doctors in a hospital, the doctor who successfully performs a triple bypass heart operation would be entitled to performance pay, but the internist who so manages the patient that he does not need a triple bypass operation, would probably not get performance pay.

What I am pointing out is that it is very difficult to see how this provision can be equitably enforced.

And, I would again wish to close my remarks on the subject by saying ways should be found so that responsible representatives in the Foreign Service who are representing the United States abroad or who are in important policymaking positions in Washington, should be adequately compensated. These are people who carry enormous loads and who certainly deserve to be put in a position not inferior to people in the civil service who get substantial compensation.

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CONCERN FOR NEEDED MANPOWER

The CHAIRMAN. Absolutely. I think all the salaries should be increased, but does the thought of even the paperwork involved in setting up the selection boards, however they would do it, to reward people with these added little pay bonuses, that in itself would use up a good deal of manpower. Does that concern you at all?

Ambassador HERZ. I am worried by that, but am more worried by the unseemliness of the kind of competition you would get for performance pay. It is even today, at least when I was still in the service, difficult sometimes when you read a telegram from a chief of mission in the field, perhaps in some trouble spot, to know whether it was written because he wishes to make a record or whether it was written because he thought that what he was saying made the most sense.

This is a human frailty which is normal, I think, in most professions. But, we should be careful not to exacerbate that human frailty when it is coupled with the desire for increased material recognition.

The CHAIRMAN. Going back to your analogy of doctors, I sometimes get worried under the present system whether a doctor, if he suddenly finds he needs a new garage or something of that sort, would have a tendency perhaps to perform a hysterectomy whereas you go into the Kaiser plan where the doctor gets no more, then you find the number of hysterectomies, and so forth, vastly reduced.

I am thinking here of a Foreign Service officer who needs a new garage. He might not want to antagonize his boss with a specific recommendation if he thought that nice pay bonus is going to go down the drain. I think this also can enter into it a bit.

Ambassador HERZ. I think, Senator, you are going too far in that respect. I am not sure that the monetary incentive would, in practice, turn out to be the important thing because it is monetary. But what you are doing, if you approve the provision for incentive pay, is starting an entirely new round of competition among Service officers.

Now, if this were for a particularly attractive medal publicly displayed, I am not sure that this would not be equally bad, quite aside from the question of whether it is money. But you are creating a new set of hierarchies. This ambassador has gotten $10,000 more because of the way he handled a crisis in Groustark, now what can I do to be his equal, how to surpass him?

The CHAIRMAN. First, create a crisis in Groustark and then resolve it.

Ambassador HERZ. I am more worried about that than the garage that needs to be fixed or replaced.

The CHAIRMAN. I think you have an excellent point. I would love to go on all morning with you, old friend, but I think it assists and move on to our next witness, the honorable Sheldon B. Vance, former Ambassador to Chad and Zaire.

I notice you have a very long statement, which will appear in full in the record. If you can digest it, it would be appreciated.

[Ambassador Vance's biography follows:]

BIOGRAPHY OF AMBASSADOR SHELDON B. VANCE

Sheldon B. Vance has been practicing law in Washington, D.C., in the firm of Vance & Joyce, since his retirement, February 28, 1977, from the Foreign Service.

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His 34 years in the American Foreign Service included almost seven years as Ambassador, three in a position comparable to Assistant Secretary, and four and a half as a Deputy Chief of Mission. He retired with the personal rank of Career Minister.

His posts included embassies in Brazil, Ethiopia, Chad and Zaire, in the latter two as Chief of Mission. He also served at two consulates in France and had four tours of duty at home in the Department of State. The latter included assignments as the desk officer for Belgium and Switzerland, Chief Personnel Placement Officer for Africa, Director of the Office of Central African Affairs, a Senior Inspector, and the Executive Secretary of the President's Cabinet Committee on International Narcotics Control. In the latter position, he was also Senior Advisor to the Secretary of State and Coordinator of Foreign Narcotics Control.

He had a nine month academic assignment to the Department of State's Senior Seminar in Foreign Policy and served as the African Affairs Advisor to our U.N. General Assembly delegation in 1968. He served twice on Department of State Selection Boards, once as Chairman.

Born in Minnesota on January 18, 1917, he obtained his BA from Carleton College and his J.D. from Harvard Law School. He is married.

STATEMENT OF HON. SHELDON B. VANCE, FORMER AMBASSADOR TO CHAD AND ZAIRE

Ambassador VANCE. I intend to attempt orally to summarize my prepared statement, briefly.

Mr. Chairman, I would first of all like to express my appreciation for the privilege of addressing this committee this morning on a subject of great interest and concern to me, based upon the 34 years I spent in the Foreign Service until I voluntarily retired about 3 years ago.

The CHAIRMAN. When did you enter the service, what year?

Ambassador VANCE. 1942. During that period, I was Ambassador to two different countries. I later held a position equivalent to an Assistant Secretary of State. I was promoted to the personal rank of Career Minister before retiring. And, I have held just about every type of assignment that is available in the Foreign Service, including personnel management and assignment to the inspection corps.

The importance of the Foreign Service to the Republic need not I think be emphasized in this body. I see it as playing two basic roles. One, as giving foreign policy advice with all appropriate candor to the President and the Secretary of State and once foreign policy is decided, assisting them in implementing it. Two dangers threatened by the proposed Foreign Service Act of 1979 concern me.

The first has been addressed very eloquently by my friend and former colleague, Ambassador Martin Herz, which is to assure that the Foreign Service in the future gives its advice to its seniors with all appropriate candor. The second, which was also addressed by Ambassador Herz, is that the accumulated experience and wisdom of the Foreign Service be protected. However I wish to emphasize that this protection should be afforded in reasonable balance with the equally essential up or out principle that has governed the Foreign Service since the Foreign Service Act of 1946.

I would like to talk to these two points in that order. One, I think that candor is threatened by several provisions in the present act. The provision that concerns me the most is the creation of performance pay for the proposed Senior Foreign Service, which mirrors or paral-

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

lels or copies the Civil Service Reform Act of last year and the Senior Executive Service.

And, as you, Mr. Chairman, have yourself suggested, there is a world of difference between the two services. And what is applicable to the one is not necessarily applicable to the other.

The CHAIRMAN. Along that line would you think that the Foreign Service should be allied more with the Civil Service or with the military service?

Ambassador VANCE. I would like to develop that thought a little further, if I may, Mr. Chairman.

Amongst the factors that should be clearly understood, I think, in the proposal of performance pay is that competition for that cash bonus would be open even to ambassadors of career service and to assistant secretaries, even to the Under Secretary of State if he happens to be a career officer and wishes to participate.

Also, the old rule that no officer at a given post may be paid more than the chief of mission would be breached by this performance pay idea.

We are told by management that performance pay will be awarded by the selection boards and management suggests that selection boards can assure that these rewards will be made equitably. However, I would like to say the following, speaking from the experience of a number of assignments to selection boards and a considerable knowledge of how they function.

I believe that the Foreign Service evaluation system is the best that has been developed thus far in our Government. However, it cannot, in my opinion, be finely tuned sufficiently to be able to make an annual decision of a cash bonus in an equitable fashion.

The great temptation for our officers will be to reduce candor in order to encourage the most favorable possible recommendations from one's immediate boss each year. These awards are not like promotions, which, once attained, continue to be enjoyed. These are annual awards.

I want to underline also for this committee, Mr. Chairman, that this new idea has not yet even been tried in the Civil Service. I have seen press reports stating that personnel managers in the Civil Service have expressed dismay as to how they are going to be able to administer this strange new notion.

The Civil Service is, as the committee knows, a rank-in job service. And, one cannot get promoted no matter how well one does unless you get another kind of job that has a higher rank. This, as the chairman well knows, is not true of the Foreign Service nor of the military where rank is in person and good performance can be rewarded and is rewarded by promotion.

As the chairman has suggested, if such cash awards for performance are appropriate for the Foreign Service, why not for our military services? I understand that our Air Force tried something like performance pay and abandoned it. Quite simply, it is not appropriate to seek a cash bonus for doing one's duty.

I cannot speak for the Civil Service, but I can assure the committee from my experience that the Foreign Service does not need a cash encouragement to do its best.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The position on performance pay of the American Foreign Service Association is, if I understand it correctly, the following: as the professional or trade union representative of the Foreign Service as a whole, it cannot appropriately try to block the opportunity of members to earn more money.

I agree that the Foreign Service, at all classes, should receive more compensation, but the idea of the proposed performance pay is certainly not, in my opinion, the way to go about it.

The chairman mentioned that a Senior Foreign Service officer might want a new garage and he would set out to do everything possible to gain a performance pay award in order to pay for it. That unhappy supposition could occur. But, it would not be something on which that officer could base the family budget or decide to send junior to that school instead of this one, because the bonus would be good only for 1 year. This is not an answer to the need of the Foreign Service for more remuneration.

It has been suggested, I believe, by management witnesses that the Foreign Service generally supports performance pay. I would like to make the following statement. Although I am today speaking solely for myself, being a retired officer, when this bill was first proposed, I volunteered my services to the Foreign Service Association, of which I have long been a member. For my pains—perhaps another example of the old saw that one should never volunteer—I wound up the chairman of one of the task forces established by the Foreign Service Association to examine the impact of this new legislative proposal on the Foreign Service. The task force I chaired was the one that looked at the bills impact on the senior ranks.

Our task force included 11 members. We consulted hundreds of Foreign Service officers of all ranks in the active service. We also studied the airgrams and telegrams that came in from the field from virtually every one of our posts commenting on the various aspects of this proposed new legislation.

My reading of these, and my conclusions from these studies, from this total exposure, is that the idea of performance pay is not one that is welcomed by the service as a whole. I think most Foreign Service officers of all ranks are uncomfortable with it. A larger number would swallow it for reasons of the possibility of additional money. But, it would still, in my judgment, be a minority.

The CHAIRMAN. Do you have a copy of that report?

Ambassador VANCE. Of the task force?

The CHAIRMAN. Yes.

Ambassador VANCE. Yes; I do.

The CHAIRMAN. That will be incorporated into the record without objection.

Ambassador VANCE. I would like to add that there have been a number of changes made in the draft legislation since we wrote that report. So, its pertinence is perhaps not as wide as it might be. But, it certainly supports what I said with regard to performance pay.

The CHAIRMAN. Thank you.

[The information referred to follows:]

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

DEPARTMENT OF STATE,
Washington, D.C., April 6, 1979.

KENNETH N. ROGERS, Esquire,
Chairman, State Standing Committee, American Foreign Service Association, c/o Department of State, Washington, D.C.

DEAR KEN: I have the honor to submit the report of our task force on "The Senior Service", for your transmittal to Management as part of the Association's overall response to Management's proposals on Foreign Service personnel reform.

The members of the task force included the following officers other than myself:

Marshall P. Adair, FSO–5;
Michael H. B. Adler, FSR–1 (AID);
M. Lyall Breckon, FSO–2;
Peter S. Bridges, FSO–1;
Richard Hecklinger, FSO–4;
Ivan Izenberg, FSIO–2 (ICA);
Edward W. Lollis, FSO–3;
Wade Matthews, FSO–2;
James R. Ruchti, FSO–1;
Moncrieff J. Spear, FSO–1.

Our task was made far easier by the remarkable degree of agreement we have found among Foreign Service officers on basic Service problems.

Respectfully submitted,

SHELDON B. VANCE,
Chairman, Career Minister, Retired.

Enclosure.

THE SENIOR SERVICE

A. THE PROBLEM

This task force, and AFSA through its consultations with officers in Washington and in the field, have found deep concern among members of the Foreign Service that recent years have seen a serious erosion of the basic "up or out" principle underlying the Foreign Service Act of 1946—but an overwhelming belief among members of the Service that a massive revision of this Act, as provisionally proposed by Management, is not the way to proceed. Vigorous implementation of the "up or out" principle is vital to the overall effectiveness of the corps of 3400 Foreign Service Officers (FSOs) who have formed the heart of the American Foreign Service since the Foreign Service was first created as our career diplomatic and consular service by the Rogers Act of 1924. (Much of what is set forth in this paper is applicable also to the Foreign Service Information Officers of ICA, and to senior levels of State Department Foreign Service Reserve and Staff Officers, whose future structure is also discussed in a separate report.)

The basic legislation under which the FSO corps operates today is the Foreign Service Act of 1946. This Act, which as emphasized in the 1946 House of Representatives report "was written by departmental and Foreign Service officers working together", has with relatively few amendments provided a flexible system which has maintained strict intake and promotion standards, permitting successive postwar Administrations to name from the FSO corps two-thirds or more of our Ambassadors, as well as a varying number of Presidential appointments in the Department. The FSO corps also fills most of the other officer-level positions in our Embassies, Missions and Consultates abroad and, since the reform authored by the Wriston Commission two decades ago. FSOs have filled most officer-level positions in the Department in Washington. Beyond this, a number of FSOs are assigned temporarily to other Federal agencies, to staff positions in the Congress, to State and local governments, and to universities and non-profit organizations, in accordance with Sections 571 and 576 of the Act. Thus a Service destined primarily to represent this country's foreign interests also enjoys a unique assignment flexibility at home, which benefits both the Federal service and individual officers' career development.

1. *Management's analysis.*—The Department's management has stated, in its proposals of February 13, 1979 entitled "Proposed Foreign Service Act", that

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

major change is necessary to correct defects in the present Foreign Service system, and that "The most important defect in the existing FS system is the seriously impacted situation at senior personnel levels which has caused severe restrictions and distortions at all levels affecting intake, promotion, and assignments with consequent career frustrations, uncertainties, and morale problems." In suggesting possible remedies for the situation it describes, Management has emphasized the basic difference between the Civil Service and the highly mobile, rank-in-person Foreign Service which is called on to accept assignment anywhere in the world. Nevertheless, Management insists that the greater the comparability between the Foreign Service and the Civil Service, the greater the benefits to the Department and its employees; it believes that innovative features of the recent Civil Service Reform Act "should, therefore, be drawn on or paralleled where that would be advantageous to the FS." Furthermore, Management has argued for a major piece of new legislation, warning that "a piecemeal approach limited to a few changes in the Act of 1946 will not enable us to achieve this important reaffirmation of the unique and essential role of the Foreign Service."

2. *AFSA's analysis.*—Our analysis, as well as the critique and proposed alternatives which follow, reflects views widely held within the Service insofar as we have been able to determine them through a careful process of consultation. The members of the task force have reviewed a large number of cables and letters received from AFSA chapters and individual officers abroad; they have listened to the views expressed at open meetings which AFSA has held in Washington; they have sought the private views of officers assigned in Washington, including a number of widely respected senior officers holding senior positions. Senior officers of AID and ICA served on the task force and contributed valuable insights gained in part from interviews with officers in their agencies.

We have not found perfect unanimity among the officers of the Service, but we found an impressive similarity of views.

Basically, we agree with Management that there is a "seriously impacted situation at senior personnel levels". Unfortunately Management has not supplied any analysis of this situation. The root causes of this situation in our view are the following:

(1) The decision of the Department Management in 1976 to lengthen time-in-class maximums for senior officers, which has significantly slowed attrition at the top and, because of the "cascade" effect, thereby prevented promotion of perhaps seventy officers through the ranks in 1978;

(2) The very low recent rates for selection-out for sub-standard performance, after the Department was required by a 1975 court decision to provide a greater element of due process—rates which may admittedly be difficult to raise;

(3) The low recent voluntary retirement rate for senior officers, due to the early-1977 pay raise which has led individuals to delay retirement until they can calculate pensions on a higher 3-year average;

(4) The recent temporary halt to mandatory retirement at 60, after a lower court decision which the Supreme Court has now overturned 8–1 in Vance v. Bradley—a halt which is however sought anew in a bill introduced by Congressman Pepper;

(5) Non-use of Section 519 of the Act, which calls for mandatory retirement of an FSO who has not been reassigned after serving as chief of mission;

(6) Over-use of "stretch" assignments of mid-grade officers to senior positions, which in moderation is a useful management tool;

(7) Finally, the decision of the current Administration to increase the number of political, non-career appointments to senior positions in the Department of State. This flies in the face of Jimmy Carter's praise of the Foreign Service in Why Not the Best and his indication that he would end non-merit diplomatic appointments. It is true that about three-quarters of American Ambassadors are now drawn from the career service, a slightly higher percentage than in previous Administrations, but no other major country makes more than a tiny handful of ambassadorial appointments from non-career rank; most major countries make none. Furthermore, about 55 percent of ranking positions in the State Department (deputy assistant secretary and above) are now filled by political appointees; and political appointees have been named to office-director positions which had been filled by career officers in previous Administrations. In the last Administration there was only one political appointee and 13 career officers among Assistant Secretaries of State (including the heads of CA, INR and PM); now these positions are filled by 8 political appointees and only 7 career officers! Who can dispute that this affects the "impacted situation at senior personnel levels"

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

which even the Department's management calls "the most important defect in the existing FS system"?

Aside from "impaction", we believe that the Service faces other serious problems not addressed in Management's proposals. Among these are:

(a) *A decreasing substantive role for the Foreign Service.* As the roles of the NSC staff, other Departments and agencies, and non-career personnel in the Department in formulating and executing foreign policy have expanded, participation by the career Service has declined proportionately. As successive Administrations have tended more and more to send delegations (often interagency ones) overseas for important discussions, rather than rely on communication through Embassies, the sense of serving ceremonial and facilitative, rather than substantive, functions has increased in Foreign Service posts. This effect varies by functional sector and "cone." But declining job satisfaction is widespread, and the trend has been downward for some time.

(b) *The decrease in the Service's materials compensation,* due to the drastic decline in the dollar vis-a-vis many currencies as well as inflation (which we share with other citizens, but which is better compensated for in private business).

(c) *Family stress* in the Foreign Service, which has increased, in part as a result of change in American society which can have a particular effect on the Service. For example, spouses are offered expanding opportunities for satisfying employment in the US, and are often understandably loath to leave a good job in Washington to assume household and ornamental functions overseas. Foreign Service parents are understandably concerned about the need to send teen-aged children away to boarding schools, a need which has expanded with the opening of posts in cities where no English-language secondary schools exist.

(d) *The decade-old division of FSOs into political, economic/commercial, consular, and administrative "cones"* which was made without adequate consultation or sufficient analysis of Service needs. The cone system turned most officers to increased specialization; it has brought benefits, and undoubtedly our Service does have need of specialization; but in the view of the task force the present system is too crude and inflexible, and has not only unnecessarily divided the Service but has impeded the development of officers who, if they are to reach the top of the Service, are supposed to have mastered all areas of foreign-affairs work.

B. MANAGEMENT'S PROPOSED REMEDIES

Management proposes to improve the senior levels of the Foreign Service by instituting a "senior threshold" selection process and creating a "Senior Foreign Service" inspired by the new Senior Executive Service created by the Civil Service Reform Act. The top rank of the Senior Foreign Service, called "Minister" and equivalent to the present class of Career Minister, would serve on a three-year appointment renewable on a basis of the Department's overall needs and Selection Boards' recommendations on individuals. (Renewable contracts would also be instituted for senior specialist officers, presumably non-FSOs.) The next two ranks, designated "Minister-Counselors" and "Counselors" and equivalent to present FSO–1 and FSO–2, would have "shorter than current time-in-class limits".

The three SFS ranks (and possibly lower ranks, in time) would be eligible for special performance pay, modeled on similar provisions for the Senior Executive Service, to be awarded on the recommendation of Selection Boards. Although Management's proposals of February 13 state that performance pay could be awarded to up to half of the "Senior Foreign Service", the Department Notice of March 27 (sent to the field as State telegram 76373) on the Staff Corps—but presumably applicable in this regard to FSOs—states that "The money for performance pay for each Selection Board category * * * would be the same as currently available for merit step increases, but rather than being distributed to everyone, it would be awarded on the basis of performance." This necessarily indicates that performance pay awards must be very limited in either numbers or amounts.

In addition, Management proposes to bring about a radical change in promotion procedures at both senior and lower levels by furnishing to Selection Boards, which currently work only on a basis of officers' performance files, Management's recommendations on individuals' suitability for promotion.

Management also states that it would continue the "valuable career development practice" of assigning outstanding mid-career officers to senior jobs, and that the exchange of senior officers with other agencies "would be encouraged".

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

These are in each case simply reaffirmations of existing practices and not new proposals.

C. AFSA CRITIQUE OF MANAGEMENT REMEDIES

With exceedingly few exceptions, members of the Foreign Service have as individuals and through AFSA chapters expressed their strong opposition to any comprehensive legislative re-design of the FSO corps. They have strongly expressed the need for caution, and for thorough consultation with the Service, before attempting to replace the 1946 Act of which has proven an excellent, flexible tool for the management of the Service. They have pointed out that management has not used the tools available to it to confront the "impacted situation"; they have expressed their doubts that this situation is in any sense a structural defect requiring new legislation. Among cables received from many posts, officers of a major Embassy in Europe have suggested that the management proposals are intended as a substitute for "the responsibility and self-discipline which management has failed to exercise." The officers of an Embassy in Central America have noted that the management proposals are argued largely on the basis of the Civil Service Reform Act, which is the first such intended reform of that Service in 60 years while the Foreign Service's basic legislation is postwar and its reforms since then numerous; they say that the Foreign Service should not "suffer the indignity of yet another major overhaul for the sake of change alone, unless real benefits, which are not apparent, are to be found." A number of officers have contrasted Management's present proposals, drafted without consultation with the Service, with the coordinated, cooperative venture which resulted in the 1946 Act.

An additional reason to avoid structural change intended to ease the "impacted situation" is that data available to the task force indicate that this situation may ease appreciably within the next year even if Management fails to take any action, structural or otherwise. For instance, we understand that in February 1980, three years after top salaries were raised to $47,500, a total of 429 senior FSOs, or roughly two-thirds of the total, will be eligible to retire on this new "high-3" basis.

All in all, the basic Service criticism of Management's proposal for a "Senior Foreign Service" is that it seems to lack justification other than a desire to create a structure outwardly similar to the Senior Executive Service. Such a structure is totally unnecessary in order to carry out needed reforms. A number of officers have also questioned why Management has chosen the rank-in-job Civil Service for a model, while failing to look for possible inspiration at the other main rank-in-person services; the military services which, as the Supreme Court has reminded us in Vance v. Bradley, were with good reason closely studied and drawn on by the framers of the Foreign Service Act of 1946. Many have also questioned whether it makes sense to imitate a recent innovation in the Civil Service which may conceivably not live up to expectations, and which in any case is intended to create for the Civil Service the kind of broadly-experienced, broadly-assignable senior executives which the Foreign Service already possesses. As noted above, Sections 571 and 576 of the 1946 Act as amended already provide authority under which FSOs can be assigned to a wide range of agencies and institutions. The system works; for example, in the present Administration FSOs have held senior positions in a range of other agencies including CIA, Commerce, Defense, Energy, and Treasury.

Further Service criticism is directed at Management's intention to provide Selection Boards with recommendations as to which officers should be promoted. The task force shares the view that this is a most unwise proposal, subject to political manipulation, and believes that the Foreign Service Selection Board system provides what is probably the fairest and most equitable system of merit promotion in the Federal service. Since officers are promoted on the basis of boards' rankings, Management cannot always raise up by direct action those officers which it believes best; but it does so indirectly by assigning them above their rank to key jobs which, if they do well, will surely win them high board ranking; meanwhile, the impartial board review helps ensure that the officer in Madras or in Wichita gets as fair a deal as an Under Secretary's favorite. The idea of feeding to selection boards Management's ideas as to who should be promoted not only flies in the face of our merit principles but is inherently foolish, since an independent selection board might deliberately low-rank an officer urged on it by management. Furthermore, although Management would make its Board recommendations available to the individual officer, the result would undoubtedly

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

be a high rate of grievance actions to remove these assessments from files, and increased distrust of the promotion system. This is not to say that the present evaluation system could not be improved; it could; see Section D below.

Many officers have criticized the still vague proposal for performance pay. The task force has given this question close attention; the senior ranks (and not only the senior ranks) of the Foreign Service are under-paid, and any proposal to allow at least a few FSOs to raise their pay from $47,500 to $66,000 obviously deserves a good look. Several considerations apply.

The Foreign Service, unlike the Civil Service, has a considerable percentage of senior officers in Presidential appointments, to which separate non-career salaries apply. Would an FSO serving in a Presidential appointment be eligible for performance pay? If so, would it not be better management for the President to award the premium pay, rather than a Department selection board? If not, would it be good management for an office director to be able to earn more than the Ambassador to France?

The vast majority of officers would strongly oppose the use of money from regular step increases for performance pay. We would emphasize that the legislative basis for step increases in the Foreign Service is quite different from that of the Civil Service. Section 625 of the Foreign Service Act presently provides an annual step increase for *any* officer whose services meet Service standards, and possible additional increases for especially meritorious service.

Some officers have expressed concern that the intended performance-pay system runs entirely against the valid concept of the senior FSO corps as a uniquely valuable group of public servants, most (though admittedly not all) of whom render extraordinary service. If management should intend to make performance pay available for a high percentage of senior officers, this concern would be allayed; but a system awarding performance pay to as low a percentage as is intended for the SES would be a negative judgment on the worth of the Foreign Service. As noted above in Section B, available information indicates that the percentage receiving extra pay would in fact be very small.

It must also be emphasized that if a performance pay system should be judged advisable for the Foreign Service, it need not be conditioned in any way on introduction of a "Senior Foreign Service" proposal. The performance-pay idea cannot "sell" the rest of the SFS idea to members of the Service.

Finally, the task force notes that a large number of officers have expressed their overall objection to the notion of performance pay, simply on grounds that the concept is alien and demeaning to the Foreign Service. Performance pay may be a valuable tool to elicit outstanding performance from a Civil Service officer for whom a salary increase is impossible unless his or her job is upgraded. That situation does not apply in the rank-in-person Foreign Service, whose officers are not locked into a job with a particular salary. The task force agrees that premium pay will not necessarily produce better performance by a Service which is highly motivated and hard-working. The question is rather whether Management (and the Congress) can do a better job of supplying better overall compensation to a Service which, as noted in Section A above, has suffered a loss in both psychic and material income. As the House Report on the 1946 Act put it, "Compensation should be sufficient to attract able men [and women] regardless of the possession of private means".

In sum, the task force believes that the Service is not wholly opposed to the idea of performance pay; but it believes that Management owes the Service a frank discussion of the problems outlined above, before any further step is taken. It believes that the question of performance pay should not disguise the basic problem of overall compensation. And it notes, incidentally, that another rank-in-person service, the Air Force, has recently abandoned incentive or performance pay as unworkable.

Aside from performance pay, the key element in the "SFS" proposal is that for three-year renewable contracts at the top SFS level, which would equate the Career Ministers who presently have no time-in-class maximum. It is not clear how many officers would be retired earlier under such a proposal; there are never more than a few dozen Career Ministers, and a number of them hold Presidential appointments at any given time (23 out of 38, at present) and would not be immediately affected by retirement from the career service. Moreover, the option of involuntary retirement through Section 519 is available.

The task force's basic criticism of this contract proposal is that the reason for putting it forward is quite unclear. Is it principally intended to deal with the "impacted situation"? It will, as noted, affect relatively few senior officers;

50-236—80——16

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

at the same time Management has until now made no report to the Service on how it views the possibility of early action on the factors listed in Section A.2 above which are the real cause of the "impacted situation". True, Management also proposes to reduce time-in-class maximums for other "SFS" officers; but one does not need to create an "SFS" to reduce maximums which Management itself lengthened only three years ago. All in all, the task force is led to the conclusion that the main reason for the contract proposal, as for the "SFS" proposal as a whole, is simply to emulate a Civil Service innovation yet to prove itself.

D. PROPOSED ALTERNATIVES

There is no denying the fact that the Service needs improvement at senior levels. One basic need is to improve the performance evaluation system in such a way as to make possible the "senior threshold" process mentioned but not laid out in Management's proposals.

Since our promotion process in effect substitutes a Selection Board for the judgment of one or two supervisors, it is vitally important that a board have at its disposal the most accurate information possible on the performance of the individual being reviewed. The improvements made in the efficiency report system over the past decade have introduced more equity, and at the same time have increased the difficulty of writing frank reports. This difficulty is further increased when promotion rates go down; in such a situation, the supervisor tends to think that his or her subordinate will suffer in competition if not described in superlatives. This is another example of the fact that the personnel system must be managed as a coordinated whole, since problems in one part of the system inevitably affect other parts.

The best way to improve the evaluation system so as to make possible a real senior threshold would seem to be to introduce some additional means of objective assessment. The Board of Examiners has recently begun using, with candidates for entry into the FSO corps, individual and group assessment techniques of the sort used successfully by many private firms and pioneered in the Federal service over a decade ago by the IRS.

The task force suggests that a possible solution to the evaluation problem, which is most critical for officers at senior ranks whose files tend to become increasingly laudatory, would be to institute an assessment process for all officers after their promotion to Class 3. Officers in the field would presumably be assessed on their next return to Washington on transfer or consultation. This would not be a substitute for efficiency reports, but rather an additional examination of an officer's abilities and potential to serve at senior levels, obtained in a one- to two-day assessment carried out in Washington. Such assessment would be required for eligibility for promotion to Class 2. The task force understands that assessment techniques are available which evaluate not only skills developed in past service but the potential to assume the management responsibilities which are required for most senior positions. This, coupled with the higher senior attrition rates which Management can bring about without recourse to legislation, could do much to ensure that officers who reach and remain in the senior ranks are of a very high standard. Needless to say, the modalities for such a threshold assessment—and the precepts instructing Selection Boards what weight to give to assessment records—would need to be worked out carefully between AFSA and Management. None of this, it may be noted, would require new legislation.

The task force also noted that Management's decision several years ago to cease requiring Foreign Service Inspectors to do reports on each officer in a post or bureau, has reduced the amount of objective information available to Selection Boards. While we appreciate the amount of effort required to produce inspection reports on each officer, we believe that the need for better performance evaluation argues for reconsideration of Management's decision.

As to the "impacted situation", the task force is firmly of the opinion that Management possesses sufficient authority to resolve the problems, in the first instance by reducing senior time-in-class maximums. The task force believes that Management should take such action without further delay. The vast majority of officers unquestionably agree that promotion rates and attrition rates are too low for a Service designed, according to the House Report of 1946, to "* * * insure the rapid advancement of men of ability to positions of responsibility and the elimination of men who have reached their ceilings of performance."

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

It should be clear that the task force believes the proposal for a "Senior Foreign Service" unjustified. Aside from the reasons cited above, we see no reason to create a separate structure marking a division between our senior officers and the rest of the Service—although we do agree on the need for better evaluation of candidates for senior ranks and have suggested above how this might be done. The fact is that we already possess an excellent "senior service", a sizeable number of whose members have been called on to fill Presidential appointments by each Administration since the creation of the Foreign Service.

As to the question of short-term contracts for one or more of the senior grades, the task force believes that it would be useful for Management and AFSA to begin discussions, to see whether agreement could be reached on a proposed partial amendment of the Act of 1946 which might enjoy broad Service support. A number of preliminary observations may be useful in this regard:

(1) It would seem preferable to use the term "commission" rather than "contract".

(2) A three-year term for a renewable senior commission seems too short, in the opinion of a number of officers who have expressed their views. To lessen suspicion that political pressure might somehow be exerted by a particular Administration, to reduce senior officers' desire to seek assignment in Washington rather than abroad in order to be more "visible", and to permit a more objective basis for a renewal/termination decision than evaluation of an officer in a single job, a five-year commission might be preferable.

(3) A group of senior FSOs in the Department has suggested that a system of renewable commissions might be introduced not only at the Career Minister level but for FSO–1s and FSO–2s. The task force has serious reservations regarding the possible effects of this proposal on the Service, but believes that the underlying idea deserves further study.

(4) Consideration should be given to substituting some sort of limited-commission proposal for the present Section 519 of the Act, so seldom used.

(5) Some consideration should be given to names. The rank of Career Ambassador is meaningful for the general public, but there are no Career Ambassadors on active service and the task force is unaware of any plans to promote any officers to that class. The rank of Career Minister is not meaningful for the general public, given the demise of legations. Perhaps the present class of Career Ministers should be re-named Career Ambassadors, but with a provision for future promotion to that class only of officers who had already served as Ambassadors abroad.

(6) In considering the problem of retaining only high-quality senior officers, Management and AFSA might examine proposed legislation submitted by the Defense Department for the armed services, which inter alia provides that a brigadier general may serve a total of 30 years or spend 5 years in grade, whichever is longer; corresponding figures for major general are 35 and 5.

(7) Regardless of what changes may be agreed for the Foreign Service, a number of domestic-service positions will be reserved for the Senior Executive Service in the State Department. The task force understands that these positions number about 100, and assumes that none of these are FSO positions or positions traditionally filled by FSOs. The task force believes that while it is important to set the Civil Service in the Department on a new and better basis, it is equally important to protect the "home base" for FSOs in the Department provided by the Wriston reforms two decades ago.

In conclusion, the task force emphasizes that it has found in its investigation strong support among Foreign Service officers of all ranks for restoring conditions, in an already competitive Service, which while fully maintaining the principles of merit and equity, would reward outstanding officers with more rapid promotion through renewed, more effective implementation of the "up or out" principle. The officers of the Service will also strongly support measures to provide more responsible jobs, in the context of increased responsibilities for the Service as a whole. The Foreign Service has been much studied and criticized; but as the President has made clear in Why Not the Best?, it is an unparalleled reservoir of talent which deserves the fullest use.

The officers of the Service will fully support measures to improve the Service further. They will however insist—and principles of good management would dictate—that they be consulted closely in the elaboration of such measures.

Ambassador VANCE. I will now talk about the repugnance with which I read the language quoted by Ambassador Herz in section

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

612(a) which authorizes management for the first time in the history of the Foreign Service to introduce into the evaluation records that go before selection boards some uncontrolled and uncontrollable statements of management's views about the future assignability of officers to be evaluated.

I would like to close this statement at this position of my remarks by urging the elimination of all reference to performance pay and of this objectional language from section 612.

My second and last point is the need, as I see it and as Ambassador Herz sees it, to protect, to assure that the tenure of the Senior Foreign Service shall not be diluted dangerously. However, I think it equally imperative to the well-being of the Foreign Service and the national interest in a sound Foreign Service that promotion up and selection out, and particularly selection out, be maintained, that upward movement be assured.

There must, therefore, be a reasonable balance between these two objectives, which are mutually inconsistent to some extent.

The Foreign Service has basically four methods of thinning out the Foreign Service. The first is obligatory retirement at age 60, which I fervently hope continues to be applicable notwithstanding Congressman Pepper's, in my view, misguided efforts to apply to the Foreign Service his proposed legislation removing this age cap.

Second, voluntary early retirement. As the chairman knows, after 20 years of service and after age 50, Foreign Service officers may voluntarily retire. The administration has spoken in its testimony of the surplus on glut of Senior Foreign Service Officers that has developed in the last couple of years.

I would like to go very briefly into why this glut has developed. Our retirement pensions are determined by a formula which looks to the average salary of the highest paid 3 years.

I would point out that, at the end of February 1977, there was a very large pay increase for the Foreign Service as well as for all Government employees.

Therefore, there is a very large number of Senior Foreign Service officers who have been awaiting the attainment of 3 years at this new salary level before retiring. There will be very little financial reason for many of them to remain in service after that period. And, we are already beginning to see, I understand, a large number of voluntary retirements of this age group as we approach February of 1980.

The third method of thinning out is selection out. In our selection boards each year we look not only for the officers who are recommended for promotion, but also identify the lowest percentile of officers who, even though they are still performing satisfactorily, are recommended for selection out because of relatively less productive performance.

Now, I think this is an excellent principle and it is one that was borrowed, again, from the military by the 1946 Foreign Service Act. Management has pointed out that thinning out from this procedure has dropped in numbers very appreciably in the last few years.

I agree with management that this is regrettable. I would point out, however, that increased openness, the creation of grievance procedures and the like, which I think are quite appropriate in a democracy, have resulted in cumbersomeness being increased not only in

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the Foreign Service, but in other quasi-judicial and judicial procedures throughout our Government.

How this can be corrected is a very difficult problem, but it should be corrected only with the greatest of care.

The fourth and last method of thinning out of the Service is time in class, which means very simply that if an officer is not promoted to the next higher class after an administratively fixed number of years in class, he is automatically retired.

The CHAIRMAN. We are very fortunate that does not happen in the Senate.

Ambassador VANCE. The administration, in connection with this new legislation, has stated that it proposes administratively to reduce time in class. One wonders why it awaits the new legislation in order to reduce time in class, because it can be done administratively.

It also, by legislation, introduces a new tool of personnel management called the renewable commission. This means that, after administratively reduced time in class, the selection board can have an option additional to the options that existed before.

The options that existed before are: promotion up, selection out, or leave the officer there and, if time in class tolls, he is out.

The proposal would permit the board to recommend that he be given a renewable commission, even though the officer had reached the end of time in class. The length of a renewable commission would be administratively determined.

The administration has indicated that in order to eliminate this glut of senior officers, it will greatly reduce time in class for the senior ranks and establish, perhaps, a 3-year renewable commission.

The administration points out, quite accurately, that a glut in the numbers of senior officers limits the openings for promotion and blocks the upward flow from the bottom to the top, which is essential to the health of the Foreign Service. Such a blockage results understandably in low morale and the departure from the Foreign Service of some younger good officers we should not be losing.

However, I would like to point out low morale and departure of good officers are caused by more than periods of slow promotion or a perception that pay is inadequate. I would like to emphasize the psychic pay which used to exist when Foreign Service officers believed they were contributing participants in a venture in American world leadership designed to make this planet a better and safer place on which to live.

The Vietnam syndrome has largely destroyed this psychic pay, although Khomeini and his ilk may be correcting this sickness.

Another contribution to low morale arises from the following. Experienced Foreign Service officers know from hard-won experience that effective foreign policy implementation requires coordination. Yet, these same officers have seen AID and what is now called ICA moved very recently by statute even further away from effective State Department coordination.

The same Foreign Service officers have also very recently seen commercial positions taken away from the Department of State and given to another department, copying the earlier ill-advised experiment which saw our agricultural officers taken away from State and given to another department. I saw, personally, the harm done by this latter move.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The last contribution to low morale I want to mention is noncareer appointments to Foreign Service positions, a problem with which this committee has had more than ample experience.

We have today perhaps as many chiefs of mission who are career as in other recent administrations. However, my count in the most recent Department of State telephone book as to the number of career and noncareer officers now filling the positions of Assistant Secretary or the equivalent and above, counting ambassadors at large (but not the Secretary of State), totals 24 noncareer and 11 career officers.

In the last administration there was only one noncareer Assistant Secretary.

POLITICAL APPOINTMENTS VERSUS CAREER OFFICERS

The CHAIRMAN. Along that line, as you may know, I have long fought for the idea there should be a higher percentage of career chiefs of mission. But, it is interesting in the last 30 or 40 years, the percentages remain somewhat the same, hovering around 70 percent or 65 percent of career and the balance noncareer for chiefs of mission.

And, it seems to be staying there now. When you get to the Assistant Secretaries of State, I am wondering if those should probably not be, and this is a question of concept, political, because those are really political positions. And in that situation the deputies should be career.

It is a matter of where the political line is drawn. You could say that a Foreign Service officer would make a much better Secretary of State because he would be more familiar with the world, but still, I think, we all agree that that level should be political. Where do you then stop this process? I agree with you, I think, that most ambassadors should be career because the ambassadors, particularly in this age of instant communications, are merely soldiers carrying out the political orders given from Washington. But at what level do you think it should stop? Do you think it should stop at the Under Secretary level? Or, do you think it should include the Assistant Secretary level?

In other Government agencies, as you know, as a general rule, the new administration brings its own people down to the Assistant Secretary level. In Great Britain, however, they stop at the cabinet or immediate subcabinet level.

Ambassador VANCE. I certainly believe that the Secretary and his immediate deputy, the Under Secretary, should be political. Traditionally, the third position in the Department of State has been career, as it is today.

I agree that the President and the Secretary of State have got to have freedom to appoint Assistant Secretaries from among persons of their political persuasion. However, I think a better balance could be achieved by the present administration. Recent administrations of both parties did better.

I think the present administration has leaned somewhat out of balance in the direction of political appointments. I would add that one level to which political appointments should not reach and which, for the first time in the history of the Foreign Service the present administration has reached, is the level of office director.

The CHAIRMAN. I would completely agree with you.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Ambassador VANCE. You spoke of other departments. Other departments other than the military do not have a career service that is available for them to draw upon.

I do not think that any administration has had any reasonable basis to complain about the lack of loyalty of the Foreign Service in the implementation of foreign policy once that policy is decided upon.

So, the fear of a new administration, coming in following one of another political persuasion is, I think, ill-founded.

PERFORMANCE PAY BASED ON RESPONSIBILITY OF WORK

The CHAIRMAN. Thank you. In connection with your statement, which will appear in full in the record, I am very, very appreciative. Your view, as I understand, your thought is that the pay should be increased because of the responsibility of the work.

And, I would agree there with you. But, do you think the Foreign Service would welcome equally the idea of an increase in pay being divided up amongst the whole group as having the individual bonuses to be decided by the selection board?

Ambassador VANCE. I would think that they would prefer the available moneys to be divided equitably between all members. And, to that end may I add a remark or two about pay comparability, which I think is directly pertinent to the Chairman's question?

I am told that OMB [Office of Management and Budget], has very recently decided to refuse in the Department of State's upcoming budget some $24 million which the Department of State requested in order to bring about pay comparability at the middle and lower ranks of the Foreign Service with the civil service.

The Chairman will recall that in last year's appropriation bill, the Department of State was directed to conduct a study of pay comparability between the Foreign Service and the civil service. The State Department engaged Hay Associates, which is a very well-known firm used by many major corporations, for this type of study. And, Hay Associates determined——

The CHAIRMAN. That was my amendment. My memory is jogged that that was my amendment that provided the means to do that.

Ambassador VANCE. Yes. Hay Associates found that Foreign Service officers in the middle and lower ranks are being paid less for comparable work than the civil service. There was, therefore, a decision by the Department of State to seek approximately $24 million in this year's budget in order to correct this to the extent recommended by Hay Associates.

OMB, I am told, has decided to give $4 million spread over 4 years to make some slight, but totally inadequate corrections. I think this is very regrettable. And, I think this is another argument why performance pay should be eliminated.

I suggest it is totally inappropriate to make performance pay available to the Senior Foreign Service, cash in addition to base salary, when at the same time we are not paying our middle and lower ranks at the same level as the civil service.

While on the subject of the budget, I also have been informed that very serious cuts are being made by OMB in moneys the Department

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of State is requesting this year for language and area training. I would suggest to the chairman this is not the time to reduce language and area training, with the crises we are facing around the world.

And, if it is going to be cut for officers, I fear such training will be eliminated totally for our spouses. And, the Department of State just recently won authorization to give them this kind of training. Our spouses have always been anxious to further their country's foreign policy goals and should certainly be given all the training possible to put them in a position to do so more effectively.

The CHAIRMAN. I would agree on that. The Hay study did not just compare the Foreign Service salaries with the Civil Service, but also with the military and industry. And, as I understand, in every case, the Foreign Service came out at the low end of the totem pole, including the military.

You have another factor emphasized and that is, in a world at peace, the danger, the possibility of death, illness, maiming is far greater in the Foreign Service than it is in the military service. And, the fact that we have had five chiefs of mission killed or assassinated in the last 10 years is a fact of life that I don't think is thought enough about and is another reason why a comparison with the military is more relevant than with the civil service is warranted because not too many civil servants are assassinated or maimed or held——

Ambassador VANCE. As hostages.

The CHAIRMAN. Or held as hostages at this time. And, it is a factor that I think should be kept in mind.

Thank you very much, indeed.

Ambassador VANCE. Mr. Chairman, may I make a brief comment in response to what you just said? There are two ways that are readily available by administrative action for the Department of State now, without further legislation, to give more remuneration to Foreign Service officers.

One relates to differential pay. As the chairman knows, our hardship posts around the world, usually in the developing countries, are rated as 10, 15 or 25 percent differential and all persons assigned to those posts, except chiefs of mission, receive this percent of base pay as "differential" pay. This decision to deprive chiefs of mission is an administrative decision which can be reversed administratively.

This would not only be an immediate benefit to chiefs of mission, to career officers assigned to hardship posts but it would encourage officers to seek these assignments, which are not always the most desirable in that they include such places as Afghanistan, Iran, Pakistan, and so forth. Moreover, the present rule that prohibits any officer at post receiving more pay than his chief of mission results in a number of officers at these posts not receiving as much money as they would otherwise get.

When I was Ambassador in Kinshasa, Zaire, which was a 25 percent post, I did not receive this differential and that meant that some five or six of my senior associates were receiving less than they would have if chiefs of mission were given differential pay.

Another suggestion relates to the chargé d'affaires pay. As the chairman knows, if a chief of mission is absent temporarily, his No. 2 becomes chargé d'affaires. What made me think of this suggestion was the chairman's reference to the dangers our officers are experiencing.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

I was thinking of my friend and fellow Minnesotan, Bruce Laingen, who is chargé d'affaires in Iran.

A chargé d'affaires has to wait 28 days, before he gets any difference in pay and then he gets only 50 percent of the difference between his pay and that of his absent chief. And, he has to wait considerably longer (90 days) to get 75 percent. These are all administrative decisions and I see no reason why a chargé d'affaires should not get the full difference if he is performing that difficult a position for any appreciable period of time.

The CHAIRMAN. I think you are correct. As you know, the chargé pay also applies to consulates as well. I think that is a very good suggestion.

I thank you very much, indeed, Ambassador Vance, for being with us. I look forward to reading your testimony in detail myself, too.

Ambassador VANCE. Mr. Chairman, may I introduce also in the record a two-page document which indicates that, perhaps, the glut in the Senior Foreign Service is virtually ended now and we may even be facing a shortage next year.

The CHAIRMAN. Without objection, that will be inserted in the record following your prepared statement.

[Ambassador Vance's prepared statement follows:]

PREPARED STATEMENT OF HON. SHELDON B. VANCE

I greatly appreciate the privilege of testifying before this Committee on the proposed bill to restructure the Foreign Service, replacing the Foreign Service Act of 1946.

The Foreign Service constitutes an unequaled national resource of experts for advising our Government on foreign policy and for implementing that policy once it is adopted. We should all be concerned at assuring that:

(1) The Foreign Service performs its advisory functions with maximum candor; and

(2) Its accumulated experience and wisdom is protected in reasonable balance with the opportunity for younger officers to be promoted to the top.

These are the two issues I will discuss, in that order.

I

I fear that some of the proposals in this bill which relate to the Senior Foreign Service will seriously dilute the candor with which the Foreign Service advises the President and the Secretary of State. I refer to the proposal of performance pay for the Senior Foreign Service, itself to be created under this bill.

I am distressed by the context in which these proposals were put forward, as well as by their substance. As to context, the creation of a "Senior Foreign Service" copies last year's Civil Service Reform Act and its creation of the Senior Executive Service. We all recall that the Civil Service Reform Act was pressed by the Administration because it wanted to strengthen management's control of the Civil Service work force. If the same motivation led to the legislation proposed for the Foreign Service, we should be concerned about its impact on candor.

We have been assured by the honorable men who currently head the State Department that they value candor and favor "risk takers", or officers willing to advance presently unpopular positions. However, this may not always be the attitude of Departmental leadership. Therefore, let us be sure that the legislation protects appropriate candor.

"Performance pay" proposes that members of the new Senior Foreign Service may compete for annual cash performance bonuses. Even career chiefs of mission and assistant secretaries may join in this competition! Awards are to be based upon recommendations from the annual selection boards. However, even though the selection board system of the Foreign Service is the most equitable evaluation system yet devised by our Government, my considerable experience with it persuades me that it cannot be finely enough tuned to make annual per-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

formance pay awards equitable. Temptation will be great on the part of the competitors to assure a highly favorable recommendation from supervisors, to the serious dilution of candor.

Even in the Civil Service, it has yet to be proven that performance pay is desirable. Press reports speak of the dismay of Office of Personnel Management experts at the difficulties they anticipate in administering performance pay in the Civil Service.

Anyhow, the Civil Service is a "rank in job" service and the only way one can be promoted is to be assigned to another, higher ranking position. The Foreign Service is a "rank in person" system and there is annual competition for promotion. Incidentally, management can exert influence by the assignment process, assigning a favored officer to a position where he may more easily show his qualifications (or the reverse).

Finally, many, including myself, oppose performance pay because it is simply inappropriate to reward someone for doing his job, especially when he can earn promotion by following such a course. If performance pay is appropriate for the Foreign Service, why not for the military services with which our Foreign Service has so much in common? Moreover, the military services are also "rank in person" and do not seek cash bonuses for doing their duty. Our Air Force experimented with performance pay and gave it up.

The American Foreign Service Association's Board is uncomfortable with performance pay, but does not believe it would be proper for the Board as the trade union organization of the Foreign Service to block the opportunity for any member to earn substantially more money. I share the belief of the Association that the Foreign Service, as a whole, and not just its senior officers, is underpaid. But the possibility of an annual grant of performance pay would not be a reliable factor upon which family budget planning could be based. In sum, performance pay would detract from meaningful compensation, would be impossible of equitable implementation and hence lead to toadyism, and it would be, quite simply, inappropriate.

Under last year's American Foreign Service Association's Board, I had the honor to lead one of its task forces to consider the earlier drafts of this legislation. This was the task force on the legislation's impact on senior officers. We consulted with several hundred Foreign Service Officers of all ranks and read the reports of reactions from most of our officers in the field. We found that very few favored performance pay. More, but still a minority, would swallow it only because of the feeling that the Foreign Service should be better remunerated. Virtually all were uncomfortable with the method proposed.

You could ask what appropriate suggestions could be advanced to provide more remuneration for the Senior Foreign Service other than performance pay. Although I am sure other means might be found, the following two come to mind:

(1) Personnel assigned to hardship posts in the Foreign Service are given differential allowances ranging from 10 to 15 to 25% of base pay. However, by administrative, not legislative, action chiefs of mission are not given any differential pay. This not only penalizes them but also the other senior officers at the post because of the quite appropriate rule that no one should be paid more than the chief of mission (please note that performance pay ignores this rule).

(2) If the second officer at a post becomes in charge because of the absence of the chief of mission, his chargé pay is, by administrative decision, not payable until he has been in charge 28 days and, even then, he receives only half the difference between his pay and that of his absent chief. (After 90 days of chargé ship the percentage goes to 75.) It should be made immediately effective, and for the full difference.

I have just learned that OMB is denying the budget request of the Department of State for $24 million which State believes would be required to bring about pay comparability between the Foreign Service and the Civil Service in the lower and middle grades. You will recall that the Congress directed that a study of pay comparability be made in the Department of State. The Department engaged Hay Associates to prepare such a study. This firm is probably the best known in its field and is widely used by major corporations. After careful study, Hay Associates concluded that the Foreign Service is being paid less for the same work than the Civil Service in the middle and lower grades. To correct this state of affairs, they proposed to change certain linkage points between Foreign and Civil Service ranks and pay scales. OMB is recommending much less than needed to correct the incompatibilities found by Hay Associates, apparently for budgetary reasons.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

If monies are not available to assure equal pay for equal work, a principle mandated by law, one can reasonably wonder whether the new funds which would be required to implement performance pay over and above those required for the continuation of regular salaries would be made available, especially in this day of budget stringencies. Moreover, it would not be appropriate to give the Senior Foreign Service money above salary, in order to give these officers treatment equal to that given the Senior Executive Service, while at the same time depriving the middle and lower grades equality with Civil Service base pay.

(Incidental to this point, but important: I have learned that OMB is seriously cutting the Department of State budget requests in the area of language and area training. It would appear that this is a classic case of penny wisdom and dollar foolishness. Today's foreign policy crises surely call for increased, not decreased, training for our Foreign Service. Also, if language and area training for officers is to be decreased, the newly won programs for such training for Foreign Service spouses risks cancellation. Our spouses want to further our foreign policy goals, and it would be shortsighted to deprive them of the training which would render their efforts more effective.)

II

My second major concern with this proposed legislation is that tenure in the senior ranks of the Foreign Service will be diluted dangerously.

I believe that a number of factors have resulted, in recent years, in too much protection of tenure, an imbalance damaging to the "promotion up or selection out" principle which must continue to be the basic personnel policy for our Foreign Service. But, let us not over-correct.

Management complains that there has been a serious falling-off in the number of senior officers "selected out" in the "promotion-up or selection-out" system, which was borrowed by the 1946 Foreign Service Act from our military services. This is regrettable because, in order to maintain the high quality of the Foreign Service, its less productive officers must be sternly culled out, even if they are performing satisfactorily, in order to keep upward movement functioning. However, this problem is not restricted in today's America to its Foreign Service. Openness, grievance procedures, and the like, which a democracy must favor, have led to increased cumbersomeness across the whole range of our governmental, and especially quasi-judicial and judicial procedures. Solutions are not easy to find which will not so dilute senior officer tenure as to approach Russian roulette or pressure, at the expense of candor, to cater to the boss.

The Administration proposes in this legislation to attempt to make "selection out" easier for selection boards and management by the creation of a new tool called the "renewable commission" for the three senior classes. As we shall see, this and other actions proposed would importantly erode tenure.

The Foreign Service system presently provides for thinning the ranks by four procedures:

(1) Selection-out for relatively less productive performance (to which we have just alluded);

(2) "Time in class" ("Time in class" provides that officers not promoted before the expiration of an administratively fixed time in a given class or rank are automatically retired);

(3) Obligatory retirement at age 60 (which may not be retained, if Congressman Pepper's singularly misguided efforts to extend his proposal to the Foreign Service succeed); and

(4) Voluntary early retirement.

The Administration argues that not only are far fewer of the less productive officers now being dropped but that a surplus of senior officers has developed, relative to the number of positions available. This glut restrict promotions which contributes to low morale among middle and junior officers.

It is proposed (administratively) to reduce "time in class" sharply and provide (legislatively) for the "renewable commission." In other words, this would provide that an officer not promoted after a much reduced "time in class" may be given a "renewable commission" which would extend him at his present rank for an administratively determined, but short number of years. A later (or an initial) denial of this renewable commission is expected by management to be less difficult for selection boards than recommending selection out for the less productive officers. If that proves to be the case, "selection out" may resume retiring a larger number of less effective officers. Management has said that it has in mind reducing "time in class" for classes 1 and 2, now an excessive total

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of 22 years, to perhaps 5 years for each class, with the possibility of a "renewable commission" of perhaps an additional 3 years, per renewal.

I would favor this experiment, but would want to see safeguards that some future managers do not reduce "time in class" and the length of the "renewable commission" to derisory totals of years, thus instituting virtually no tenure or Russian roulette. I hope the Congress will make the legislative history clear that it will closely monitor the Department's implementation in order to be sure that tenure in the senior ranks is reasonably protected and that decimation of this valuable resource does not occur. Additionally, the legislation itself should provide that the Board of the Foreign Service should certify that the annual selection board precepts are in accordance with this intent. It is conceivable that we could see a serious shortage of senior officers develop as early as next year.

It should be noted that the surplus of senior officers has been created to a very considerable extent by the extension of "time in class" for classes FSO 1 and 2, just mentioned, which was administratively decided in 1976. It was also brought by the court decision which set aside compulsory retirement at age 60 for a number of months until that decision was only recently overturned by the Supreme Court. And, finally, a large number of senior officers who would otherwise have opted for voluntary early retirement for one reason or another have been waiting to retire until now because of the impact of the large pay increase of February 1977 on the rule that retirement pensions are based upon the average salary of the highest three years. Finally, it should be noted that something like 35 percent of total senior positions are filled by non-senior officers, in so-called "stretch assignments." Some more reasonable balance could be attained if more promotions were assured by a return to serious, strict "up or out" attrition.

As for the admittedly low morale in the Foreign Service, reasons other than slow promotions and base pay can be identified. These include the serious erosion in "psychic pay" which used to exist when Foreign Service officers believed they were contributing participants in a venture in American world leadership designed to make this planet a better and safer place on which to live. The Viet-Nam syndrome destroyed most of this feeling. However, Khomeini and his ilk have done much to restore recognition that the United States must lead if it is to survive.

The Foreign Service, which has been convinced by experience that a country's foreign policy, to be effective, must be coordinated, has seen recent laws removing still further from State Department coordinating influence two of the key arms of foreign policy implementation, AID and USIA (to use the former titles). Most recently, our country's efforts to help our foreign commerce have been taken from State and lodged in another Department. This was done notwithstanding the conviction of the Foreign Service that it had earlier been a mistake to take away from State and lodge elsewhere our efforts abroad in the agricultural field.

Then, there is the problem of non-career appointments to Foreign Service positions. While it is true that about three-quarters of American ambassadors are now drawn from the career service, a slightly higher percentage than in previous administrations, no other major country makes more than a tiny handful of ambassadorial appointments from non-career ranks. Most major countries make none. Furthermore, about 55% of ranking positions in the State Department (deputy assistant secretary and above) are now filled by political appointees. And political appointees have been named even to office-director positions which had all been filled by career officers in previous administrations. In the last administration there was only one political appointee and 13 career officers among assistant secretaries of State (including the heads of Consular Affairs, Intelligence Research and Politico-Military Affairs). Now there are 8 political appointees in these jobs! Added to this, is the increasing resort to special missions sent abroad, staffed from the NSC and other sources. A certain amount of this is perhaps unavoidable in our political system, but it should not be exaggerated.

* * * * * * *

I have just been informed that Section 612A of the proposed bill contains another provision which is dangerous to candor. The early Association task forces had objected strongly to it and I had supposed it had been dropped.

This section describes the material which may be given to selection boards. After listing documents appropriate for this purpose, such as efficiency or evalua-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tion reports by supervisors, reports by inspectors, official commendations or charges of misconduct, this section adds for officers in the Senior Foreign Service, "and records of current and prospective assignments".

This last phrase could mean either that Mr. Smith may look forward to assignment as chief of mission, or it can state that management envisages extreme difficulty in placing Mr. Smith anywhere.

How could the victim protect himself? Projecting the future is the classic "iffy" question. Disproving a projection of the future would not be possible for the individual.

I urge elimination of this language.

A Grim Fairy Tale: Do We Need a New Foreign Service Act to Clear the Path to the Top?

(James R. Ruchti[1])

Only occasionally do ugly ducklings turn out to be swans. But one of those occasions may come as early as March 1, 1980. The ugly ducklings are the surplus senior officers whose failure to retire voluntarily in previous reliable numbers (about 90–100 a year) has clogged the personnel system. This has prevented flow-through so that middle-grade officers are not being promoted in the numbers of a few years ago. This situation, it is alleged, has swept the Department's management toward a complete restructuring of the Foreign Service, although the Congress may not share M's sense of urgency.

Let's look at senior officers in the Department over the 10-year period, 1968–1978. There are fewer senior officers (CM, FSO–1 and 2, FSR–1 and 2, and FSRU–1 and 2) today than ten years ago, both absolutely and relatively (1968: 1131 senior officers, or 5 percent of the total work force. 1979: 939 senior officers, or 3.8 percent of the work force).

The old birds have been staying close to the Department feed trough, however, waiting for clearer readings on retirement at age 60 (which is once again mandatory) and for three high years at the current salary maximum of $47,500 to feather their retirement nests. The first high-3 nest egg at $47,500 will hatch by March 1, 1980.

At that time, there will be at least 400 seniors, of which 320 are FSOs, with all the technical qualifications to fly the coop voluntarily: they will have high-3 at $47,500, 20 years of service, and will be over 50.

When the results of all the other methods of separation are added (time-in-class for Class 2, disability, age 60, selection-out for substandard performance, etc.), something like another 50–75 seniors will retire.

Thus the maximum total potential departures would be just under 500. A very high range of separation would be about 50 percent or 200–250. A low range would be about 10 percent or 50–60. A medium range would be 100–125. These estimates are probably conservative. By March 1, 1980, 258 senior officers will have 30 years of service and 111 will have 35 years. Given the tax picture and the absence of cost-of-living adjustments for seniors at $47,500, there is almost no net financial gain to be had by remaining on the job, because retirement pay is close to net active duty pay.

To understand the significance of these facts, we need one more set of figures. Promotion rates over the last 15 years for FSO–2 to 1 and FSO–3 to 2 have averaged 9 percent of the class in each case. There were 647 FSO–3 and 293 FSO–2 officers on June 30, 1979. Thus, the expected promotion rate for both FSO classes is 60 for 3's and 30 for 2's, for a combined total of about 90 promotions in 1980. To these should be added the FSR and FSRU promotions for Classes 3 and 2, or a combined total of 15–20 annually. The grand total for all 3's and 2's is in the range 105–110.

The conclusions are obvious. Under almost any predictable scenario, there will be a strong swing back to normal senior separations in 1980 which will match or, probably, exceed the expected promotion rate of Class 3 and even the combined expectations for Classes 2 and 3.

There may even be a shortage of senior officers by the summer of 1980, and it could be a severe one, lowering the proportion of seniors in the total work force substantially below the 4 percent figure for the first time.

[1] James Ruchti is presently with the President's Commission on Foreign Language and International Studies. Formerly he was reports coordinator in M/MO and Consul General in Stuttgart. He is a member of the Open Forum Working Group on Professional Concerns.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

To carry the metaphor one step further, it looks like Management may be in the process of really laying a restructure egg. If its real concern is the bulge at the top, Management should let nature take its own self-correcting course.

Middle-grade officers, who are concerned about prospects for promotion to senior ranks, should note that the historical promotion rate of 9 percent for Classes 3 and 2 is nevertheless below that of recent years. The figure, though disappointing, is instructive. It indicates the limitations on promotions. Only a draconion revision of personnel rules, policies, and procedures, which raises questions of safeguarding professionalism from political manipulation, would have much long-term effect on average rates of advancement.

The CHAIRMAN. Our next witness is Mr. Robert Stern, American Foreign Service Association. Thank you for being with us.

STATEMENT OF ROBERT H. STERN, AMERICAN FOREIGN SERVICE ASSOCIATION, WASHINGTON, D.C.

Mr. Stern. Thank you, Mr. Chairman. If I may, sir, before we get to our basic remarks, I would like to comment that the Association could not agree more with your opening statement that there are fundamental differences between the Civil Service and the Foreign Service. And, we should not be slavishly looking for ways to get closer to it, but should be looking at other models, particularly the military. We could not agree with that more, sir.

I also think I should make a comment or two regarding the statements of the previous witnesses, with whom for the most part, the Association is quite in agreement. There is, however, I think in Ambassador Herz's testimony the inference that the middle- or junior-level officers of the Department and of the Association are making policy without regard to the interests and to the experience of our senior colleagues.

And, I would like to note, as Ambassador Vance has himself stated, he was the chairman of our task force. We have actively gone out to seek all of the people we could find who could provide us with his kind of personal knowledge and experience. And, he was a vast help to us.

We also have two retired ambassadors who are members of the Board of Directors of the Foreign Service. They are the retired constituency. They are regular and very active participants.

We are, by executive order, barred from seeking the participation of many senior officers as they are deemed confidential employees. And, therefore, we may not ask them to participate in day-to-day activities. Nevertheless, we do canvass them.

When the administration first put forward a draft proposal of the bill you have before you, sir, we circulated it to our membership worldwide. We received back almost 300 messages. We held several major meetings in Washington. We did our best to canvass everybody.

And, I think that the statement that I will offer to you today on behalf of the Association is very reflective of that broad consensus throughout the ranks.

We do represent and we are the exclusive representatives of the 11,000 AID and State Foreign Service employees. We believe that we can offer proposals which will better serve the national interest than some of the elements of the current act.

We have testified, of course, before the joint subcommittee of the House on two occasions. We explained to them then why we could

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

not endorse the proposal as it was presently written, and presented a detailed analysis of the changes needed to win our endorsement.

We will, sir, submit a line-by-line analysis of the bill, but will not take your time with that at the moment.

[The information referred to appears on p. 265.]

In our consultation with the leadership of State and AID, we are now convinced there is a greater commonality of objectives than in the beginning. In part, this is due to the fact we have been consulting for a period now approaching 1 year.

The bill before you is a substantially different document than the original draft. We are pleased we had a hand in that making. It still does not meet all of our concerns.

Essentially, there are three elements we would like to bring to mind. The first is the role and integrity of the Foreign Service, which we believe must be preserved and enhanced.

Second, we believe that career employees must be assured a strong voice in the evolution of the Foreign Service. This touches on previous testimony from previous witnesses. And, lastly, we would like to reemphasize the comments of Ambassador Vance and your intervention, sir, that the Foreign Service must be compensated on a par with other Government employees and must receive appropriate incentives for lifetime service abroad.

On the first point on the role and integrity of the Service, the loss of the commercial function is the latest in a series of events which highlights the need to reaffirm the role of the career service as an institution for which there is no credible substitute within our Government.

And, we ask that both in the general provisions of the proposed act and in its legislative history that the Congress support a Foreign Service of the United States which advises and assists the President and Secretary of State in the formulation of foreign policy and conducts the full range of U.S. Government civilian affairs overseas on behalf of the principal foreign affairs agencies and those with major foreign affairs concerns.

We believe this will require maximum uniformity of Foreign Service personnel management, particularly of the Senior Foreign Service among the varying agencies.

We have modified our original proposal for Foreign Service development officers in AID to outright endorsement that they should be commissioned officers. There should be no artificial labels or distinctions among Foreign Service officers.

On the other hand, we do recognize, given AID's recent history, that a rush to compatability would be a disservice. Too many officers who have been frozen in-grade for too long would be ill served.

We will have recommendations on that as well. We believe the changing roles and aspirations of the families of our overseas employees must be an integral part of the comprehensive improvement of the quality of Foreign Service life for all. The dangers and hardships endured by Foreign Service families must be acknowledged and addressed.

We want more training. We would like chances for employment. And, we are looking at such benefits as vested retirement rights.

However, we are very concerned and we totally reject the fratricidal implications of the Office of Management and Budget approach which

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

would require that the resources to support the families would have to be taken out of the hides of the career employees.

This must not be a zero sum game. In our section-by-section analysis, we provide a number of changes which would mandate specific improvements for families, but that would stipulate as a matter of law that resources and opportunities necessary may not be reprogramed to the detriment of the professional career employee, staff corps, officer, or whatever else.

We are concerned that the intake into the Service, the career development, and the intake into the senior ranks as well as just, honorable, and secure retirement must be predictable and controlled.

It is for this reason in a variety of places in our testimony and in the line by line, we seek to make some of the new concepts in the act subject to negotiations with the representative of the Foreign Service. We recognize these will be evolving processes and we are concerned that if we put things too hard and too fast into the 1979 law, we may well find them unacceptable in 1983.

We would prefer rather to have more permissive language which would allow us, as we do presently, to discuss these things on a regular basis and negotiate fully.

Ultimately, however, the preservation and enhancement of the Service's ability to serve the national interest can only be accomplished if the administration and the Congress provide the financial and personnel resources necessary for us to accomplish our mission.

We can no longer survive shifting resources from one important activity to another, such as reducing political reporting to provide administrative services. The United States cannot continue to maintain a strong international diplomatic position in the complex world of the 1980's by deploying fewer people than it did in the 1950's.

Now, the association would not be so simplistic as to suggest that the reduction of a few reporting positions is solely responsible for our problems. It is, however, significant. And, in the face of the challenges ahead, we think it irresponsible that the fiscal year 1981 budget for State put forward by OMB proposes further cuts in reporting positions, language, and other training.

It is inconceivable to us that, at a time when the entire Nation is aware of the importance of our relations with foreign countries, our ability to deal with them will be further reduced.

We know, sir, that you and the Congress have called attention to the fact that we have not had sufficient numbers of officers trained in hard languages. Yet, we now see the Office of Budget and Management proposing to reduce that number even further. We consider that grossly unacceptable.

In the recent reorganization plan which was presented to the Congress to strengthen and improve U.S. commercial function overseas, we lost 600 positions, 162 of them officers. We now understand that a large number of those positions will not be passed on to the Department of Commerce, but for budget reasons will be retained within OMB.

Thus, we find that rather than strengthening our commercial function abroad, we will dilute it. We don't even know how many years it will be before we come back to the current strength.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

We find that the concept of having these separate services non-integrated within an embassy is unacceptable. We believe they can only be mutually reinforced if they are integrated under the ambassadors and clearly backstopped by the department.

We ask the Senate to specify that the balkanization of the Foreign Service end and that the integrity of the service be no further impaired.

In terms of our need for a voice in the evolution of the service, we recognize that the proposed act will give management broad new authorities. We know where we stand under the existing executive order and under existing legislation. We have no idea how successive administrations may choose to implement new authorities. We are concerned, as you heard from Ambassador Herz and Ambassador Vance, of possible political abuses in the future.

Therefore, we feel it is in everybody's interest that the employee representative be as broadly based as possible, that we have the largest possible bargaining unit. The executive order under which we presently act is rather unique in that managers and supervisors are part of our bargaining unit. This is a recognition of our rank in person. It is a recognition of our shared problems, hardships, and concerns worldwide.

It differs very significantly from the Civil Service Reform Act legislation. The best thing we can say about the current act is that it works well. Neither management nor the employees have found any reason to challenge this aspect of it and we urge that Title VII of the Civil Service Reform Act of 1978 not be included in the Foreign Service legislation. It would disenfranchise half of the service.

On this particular point, title VII proposes the exclusion of a wide variety of people who, in the civil service, would be considered supervisors by virtue of the rank-in-job. In our service, which is rank-in-person, an officer may well be a supervisor on a given tour and not be a supervisor in the next.

I might state from personal experience in my last overseas assignment, I was a chief of section and supervised seven people. Since then, I have been promoted and supervise half a secretary. This is not at all uncommon because we move back and forth depending on our responsibilities.

It is important, sir, that subject to the necessary limitation of confidential employees, which we recognize should not be involved in the bargaining unit, we keep as broad a based unit as we can. And, in our line-by-line, we would make specific comments on it.

We are also concerned that in the Foreign Service Act they would water down the disputes' panel decisions. In the Civil Service Act, disputes' panel decisions are final. We think they should be final for the Foreign Service as well.

Lastly, sir, I would like to turn to the question of pay. If we are to attract, develop, retain the talented people we need we have to be able to make reasonable predictions about their futures and they must retain tangible benefits. For the staff corps this means compensation built into the salary structure for the overseas factor and a renewed assessment of the extra responsibilities they assume abroad.

50-236—80——17

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

I should mention that few of our staff corps serve in Washington. They serve the great majority of their careers overseas. To try and look at them on a one-for-one basis with a civil service which never goes overseas, begs the question. We find they do not receive pay authorization for the extraordinary hours they spend on standby duty. At small posts, this often means communicators never get a day off. They live by the telephone 7 days a week.

This is the functional equivalent of house arrest. Something has to be done for them.

For the service, we would like to see an end to the exclusion from hardship pay for ambassadors. As has been brought out by Ambassador Vance, by administrative fiat, ambassadors may not receive these allowances. All of their senior officers below them are, therefore, denied it as well.

We have had five ambassadors assassinated in the past decade. That is more than all of the U.S. generals killed by hostile fire in Vietnam. Ambassadors deserve the same rights and same allowances as anybody else.

We are split on the question of performance pay. We have attempted to reach all of the senior officers who might be affected by it and those officers who could reasonably be expected to join the Senior Foreign Service over the next few years. And, we get a mixed reaction. We have chosen not to oppose it because at the moment it is the only tangible thing we have seen that would offer additional compensation for our senior people.

On basic pay comparability, we note that almost 10 years ago the Congress enacted 5 U.S.C. 501 which explicitly called for equal pay for equal work. In 1978, the Congress directed and authorized funds to the Hay study that was mentioned earlier. I should add that when the Civil Service Commission was being changed into the Office of Personnel Management, they hired Hay Associates as their consultants. It was this which led us to make the same choice.

The State Department, the Agency for International Development, and the International Communications Agencies have all accepted Hay's findings and have recommended to OMB adoption of proper linkages.

OMB has chosen to ignore the intent of the Congress, the evidence of the study, and the advice of the agencies and instead seeks to substitute the findings of the study done more than 5 years ago by the Civil Service Commission. We ask the Senate to insist that the intent of the Congress to rectify this longstanding injustice be rectified immediately, setting into law the pay parity between the Civil Service and Foreign Service at the Hay recommended linkages.

We could not support this act unless necessary provisions for pay comparability have been elaborated either beforehand or within this legislation. There is no reason, however, why pay comparability must of necessity be deferred until such time as this bill is enacted. In light of the Federal budget cycle we would strongly support a decision by the Congress to proceed on this question immediately.

Lastly, sir, I would like to conclude my statement by addressing the question of equal employment opportunity in the Foreign Service. It is very clear to us that the Foreign Service has not yet succeeded in attracting sufficient numbers of women and minorities. We would like

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to go on record today as stating that the Association is committed to actively supporting the goal of equal opportunity for all. But we recognize that legislation alone cannot bring about the changes required to produce a fully representative service. Implementation, however, of the three principles I have outlined, which would make the Foreign Service more monetarily and professionally attractive for all, would take away the disadvantages we presently suffer in competing with other Government services and with the private sector for the outstanding people we need.

The foreign affairs agencies must produce career development programs that will assure the growth of all personnel to achieve a more open and balanced service in the years ahead.

[Mr. Stern's prepared statement follows:]

PREPARED STATEMENT OF ROBERT H. STERN

Mr. Chairman: We are pleased to appear before you today to indicate our desire, as the exclusive representative of the 11,000 AID and State Foreign Service employees, to support a new and improved Foreign Service Act—and to outline our comprehensive proposals for achieving this goal. Incorporation of our proposals would result, we believe, in an Act which will also better serve the national interest than some elements of the present text. Our Association explained to the Joint House Sub-Committee on July 9 and again on September 27 why we could not endorse the proposal as it then stood and presented a detailed analysis of it. Today I wish to review briefly events since that time and describe the essential elements, as we see them, of the proposed bill. We will be giving you a refined, line-by-line analysis which takes into account recent developments, our further talks with State's leadership, and testimony by others before this committee.

Our consultations with the leadership of State and AID, as well as with our constituency, convince us there is a greater commonality of objectives than may have been immediately apparent. Secretary Vance concurs fully in the basic principles which I am about to present to you. He has expressed his confidence that we can reach agreement or substantially narrow our differences on specific points at issue. We share that confidence and are prepared to give support to a bill which secures these principles.

There are three elements which are essential to be a new Foreign Service Act. The role and integrity of the Foreign Service must be preserved and enhanced. Career employees must be assured a strong voice in the evolution of the Foreign Service. Foreign Service employees must be compensated on a par with their Civil Service colleagues and must receive appropriate incentives for a lifetime of service abroad. I will concentrate only on those specific points under each of these elements which are not adequately addressed under the Administration's proposal, with particular attention to areas where consensus has not yet been reached.

First, the role and integrity of the Foreign Service must be preserved and enhanced. The stripping of the commercial function is but the latest in a series of events which highlight the need to reaffirm the role of the career Foreign Service as an institution for which there is no credible substitute within our government.

Both in the General Provisions of the proposed Act and in its legislative history, we ask the Congress to support a Foreign Service of the United States which: (1) advises and assists the President and Secretary of State in the formulation of foreign policy; and (2) conducts the full range of U.S. Government civilian affairs overseas on behalf of the principal foreign affairs agencies and those with major foreign affairs concerns.

This will require maximum uniformity of Foreign Service personnel management, particularly of the Senior Foreign Service, among the individual agencies operating abroad. We have modified our original proposal for Foreign Service Development officers in AID to outright endorsement of the concept of Foreign Service Officers serving each of the agencies utilizing the authorities of this Act, without artificial labels implying that officers of some agencies are more equal than others.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

On the other hand, AID's recent history would make too rapid a movement toward compatibility in some areas unwise. The decline in AID's Foreign Service workforce from some 5,500 a decade ago to less than 2,000 today has virtually frozen promotions during that period, leaving many outstanding officers with many years in class. The sudden application of time-in-class limits would remove these people from the Service. By the same token, it would make no sense to apply the senior threshold window concept in Sec. 602(a) unless and until there is an established and reasonable time-in-class limit at that level and reasonable prospects for promotion above it.

The history of AID personnel management clearly indicates that the application of such concepts as retirement for excessive time-in-class (Sec. 641) or substandard performance (Sec. 642) will have to be gradual, with the full consent of the Foreign Service expressed through its exclusive representative. To make clear that AFSA is the exclusive representative of the affected Foreign Service people now that AID has been subsumed by IDCA, we have proposed an amendment at Sec. 2402.

The changing roles and aspirations of families of our overseas employees must be an integral part of a comprehensive improvement of the quality of foreign service life for all.

The dangers and hardships endured by the foreign service families who accompany the employee to the far ends of the earth must be acknowledged and addressed with increased opportunities for employment, training and other benefits such as vested retirement rights. However, we totally reject the fratricidal implications of the OMB approach which requires that resources for such long overdue reforms be taken out of the hides of our employees. This zero sum game path to rendering justice is unacceptable. In our section-by-section analysis, we provide a number of changes which mandate specific improvements for families, but stipulate as a matter of law that resources and opportunities necessary to realize them may not be reprogrammed to the detriment of the staff corps.

The intake into the Service, career development through the middle grades, and intake into the senior ranks, as well as just, honorable and secure retirement must be predictable and controlled. Only in this manner can we end the vagaries of successive managers, commissions and boards.

The bill provides a number of generally desirable new mechanisms to consciously regulate the overall flow through the personnel system. With a few specific changes, many of which management regards as improvements, we strongly support these new mechanisms. However, it is essential that the application of these authorities be broadly subject to negotiation with the employee representative to prevent any possible abuse.

Ultimately, however, the preservation and enhancement of the Service's ability to serve the national interest can only be accomplished if the Administration and Congress provide the financial and personnel resources necessary for us to accomplish our mission. We can no longer survive shifting resources from one important activity to another, such as reducing political reporting to provide administrative services. The United States cannot continue to maintain a strong international diplomatic position in the complex world of the '80s by deploying fewer people than it did in the '50s.

In all candor, we must admit that some of the failures that have been laid at the doorstep of other agencies can be attributed to the Department of State, which should properly be this nation's first and internationally accepted means of assessing political and economic trends in areas where our vital national interests are engaged.

The Association would not be so simplistic as to suggest that the reduction of substantive reporting positions abroad is solely responsible for the failure in the world arena which are all to familiar. Nevertheless, it is a significant factor.

In the face of the challenges ahead, we think it irresponsible that the FY 1981 budget for the State Department put forward by the Office of Management and Budget proposes further cuts in reporting positions, language and other training. It is inconceivable to us that at a time when the entire nation is aware of the importance of our relations with foreign countries our ability to deal with them will be further reduced. We know that you in the Congress have called attention to the fact that we have not had sufficient numbers of officers trained in such languages as Farsi, and you are right. Yet what we see is the Office of Management and Budget proposing to reduce that number even further.

In this context, the Foreign Service is appalled by the ill-conceived Reorganization Plan No. 3 which was recently presented to the Congress in the name of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

"strengthening and improving" the U.S. commercial promotion overseas. This "reform", which has stripped the State Department of about 600 positions (including 162 American positions) at the most important commercial posts for transfer to Commerce may, in fact, mask an actual reduction in the resources committed to this function. We understand that OMB is purposefully procrastinating on releasing many of the new positions to Commerce in the name of budget stringencies. It may be a number of years before on-line U.S. commercial promotion strength in these posts recovers from this reorganization. Even then, we fear that the "separate commercial promotion function" will atrophy rather than prosper. The various U.S. interests within a given country can, however, be made mutually reinforcing if integrated under the Ambassador and backstopped by the Department of State.

While hoping that this "reorganization" plan can be reversed, the Association urges the Senate to clearly specify that the "balkanization" of the Foreign Service stops here. The integrity of the Foreign Service must not be further impaired.

Second, career employees must be assured a strong voice in the evolution of the Foreign Service. The proposed Act will give foreign affairs management broad new authorities for administering the Foreign Service. While we know where we stand under existing legislation and Executive Orders, we do not know how successive administrations will attempt to implement these authorities. We also need to guard against possible political abuses in the future. Therefore, the safeguards of an effective employee organization are essential if there is to be a new Foreign Service Act.

In order to play a creative, responsible influential role, our employee organization must be as broadly based as possible.

Since its inception, Executive Order 11636 has served the Foreign Service well. We see no need for exclusions from the bargaining unit beyond management officials and confidential employees as defined in this Executive Order. Additional exclusions, as proposed in the bill, must be minimized in legislative history and in practice. Exclusion of "supervisors" along the lines of Title VII of the Civil Service Reform Act of 1978 would be intolerable, because it would disenfranchise more than half of the Foreign Service, whose need to participate in collective bargaining is in no way diminished when they are assigned as supervisors under our rank-in-person system.

Our scope of bargaining must be as broad as that accorded the Civil Service. For example, Disputes Panel decisions, like Civil Service arbitration awards, must be final. Indeed our unique and essential rank-in-person system, and the special demands of career service abroad, require the broadest possible negotiating mandate. We must be able to negotiate in advance the implementation of such provisions of the Bill as: (1) precepts for tenure, promotion and selection out; (2) changes of time in class; (3) definition of concepts such as "worldwide availability" and "the needs of the Service"; and (4) ranges of promotion and attrition rates. This concept is essential to a new Foreign Service Act. We would adamantly oppose an Act which granted management major new authorities without providing those whose careers they affect a handle to prevent the abuse of these authorities.

We could only accept the imposed monopoly on grievance representation if its inclusion would not then be used to further reduce the size of the bargaining unit in the name of preventing conflict of interest. This would be a heavy burden on our resources since we have dedicated professional staff precisely to provide independent representation to grievants.

Indeed, we would prefer that the monopoly on access to the grievance board not be imposed. Rather, we would ask for a stipulation in law that employees retain free access to the grievance board, but that no finding by the board may operate to impair a duly concluded labor-management agreement. In cases of dispute, the Foreign Service Impasse Disputes Panel would be charged with determining whether such an infringement exists. We will provide specific language in our line-by-line recommendations to accommodate this change. Aside from the above and some particular word changes, we are favorably impressed with the grievance proposals in Chapter XI.

Finally, the Foreign Service must be compensated on a par with the Civil Service and must receive appropriate incentives for a lifetime of service abroad. If we are to attract, develop and retain the talented people we need from all segments of our society, they must be able to make reasonable predictions about their futures in the Service. They must also receive tangible benefits for pur-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

suing a career which takes them away from home for much of their lives, exposes them to hardships and dangers and frequently thrusts incredible responsibilities on them.

For the Staff Corps this means: (1) compensation built into the salary structure for the "overseas factor" and a renewed assessment of the extra responsibilities they assume abroad; (2) pay authorization for the long hours they are regularly on standby duty—the functional equivalent of house arrest.

For the Senior Service it means an end to exclusion from hardship pay for Ambassadors. With five Ambassadors assassinated in the past decade, more than all U.S. generals killed by hostile fire in Vietnam, Ambassadors do not deserve this exclusion. This exclusion also acts as a cap on the hardship pay for senior officers under them. In addition, senior personnel are entitled to compensation ranges on a level with the Senior Executive Service.

The Service is divided on the question of "performance pay." Since it is the only means now available for providing equitable compensation for our senior ranks, we will not oppose its enactment. It is essential there be guarantees of its protection from political abuse and of impartial distribution through the Selection Boards. We must emphasize, however, that it is not financial incentives but the standard of excellence which has provided our real motivation for superior service.

For the first time, senior AID Foreign Service personnel would become, as members of the Senior Foreign Service, presidential appointees, with an opportunity to be promoted to the highest rank, now called Career Minister. Political abuse of the system should be reduced by deletion from the Foreign Assistance Act of the anachronistic Administratively-determined as well as the 631 B personnel appointment authorities. Together, these sections allow the Agency to appoint some 185 officers from outside the career service—over 100 of whom may be given supergrade status, thereby negatively impacting on both AID's professionalism and its employees' opportunities for advancement. Moreover, we have urged that the legislative history of Sec. 311(a)(3) and (b)(1) explicitly include AID and USICA members of the Senate for appointment as Chiefs of Mission. We would include IDCA also, if it becomes part of the Foreign Service Community, which it clearly should. Organizations such as IDCA which deal exclusively in the foreign affairs area should not be staffed exclusively by civil servants who do not serve overseas and therefore cannot fully understand the impact of the policies they establish.

Almost ten years ago the Congress enacted 5 USC 5301 et seq. which explicity called for equal pay for equal work for the Civil Service and the Foreign Service. In 1978 the Congress directed and authorized funds for the State Department to conduct a study of pay comparability between the Foreign Service and the Civil Service. The Department, with OMB concurrence, hired Hay Associates, the leading American firm in the field of pay comparability analysis to conduct the study. The Hay findings conclusively prove that existing Foreign Service-Civil Service pay linkages are inequitable. Continuation of these inequities is unlawful. The State Department, the Agency for International Development and the International Communications Agency have accepted Hay's findings and have recommended to the Office of Management and Budget adoption of proper linkages as recommended by Hay. OMB has chosen to ignore the intent of the Congress, the evidence of the study and the advice of the agencies and instead seeks to substitute the findings of a study done more than five years ago by the then Civil Service Commission. We note in this connection that in the transformation of the Civil Service Commission into the Office of Personnel Management, Hay Associates was selected by OPM as an expert and impartial consultant.

We ask the Senate to insist that the intent of the Congress to rectify this long-standing injustice be realized unequivocally, setting into law pay parity between the Foreign Service and the Civil Service at the Hay recommended linkages. We could not support this Act unless necessary provisions for pay comparability have been elaborated, either beforehand or within this legislation. There is no reason, however, why pay comparability must of necessity be deferred until such time as this bill is enacted. In light of the federal budget cycle, we would strongly support a decision by the Congress to proceed on this question immediately.

In sum, the Foreign Service Act should contain these three essential elements:

Enhancement of the role and integrity of the Service;

A strong voice for the career Service determining conditions of employment;

Full pay parity with the Civil Service.

If these three essential questions are adequately addressed, we will actively support the Act. The Association is prepared to work with the Congress and the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Administration to develop the kind of bill which will be a new and welcome benchmark in the history of the Foreign Service.

I wish to conclude my statement by addressing the question of Equal Employment Opportunity in the Foreign Service.

It is clear that the Foreign Service has not yet succeeded in attracting sufficient numbers of women and minorities. I want to go on record today as stating that the American Foreign Service Association is committed to actively supporting the goal of equal opportunity for all. We are in complete agreement with the explicit application of the principles contained in 5 USC 2301(b) (1) and (2) to the Foreign Service.

Legislation alone, however, cannot bring about the changes required to produce a fully representative service. Unless, by implementing the three principles I have outlined, the Foreign Service is made more monetarily and professionally attractive for all and unless flow is restored to the personnel system, we will continue to be disadvantaged in competing with the Civil Service and the private sector for the outstanding people we need. Foreign Affairs agencies must produce career development programs that will assure the growth of all their Foreign Service personnel to achieve a more open and balanced Service in the years ahead.

The CHAIRMAN. Thank you very much.

ISSUE OF STANDBY PAY

There are a couple of specific questions here if I could.

In connection with the point you made of the standby pay, do you favor standby pay of this sort for those who have to just call in occasionally or answer a beeper but are otherwise free to travel as long as they are within a convenient distance from the Embassy, or would you recommend it only for those few employees who must remain on standby right within practically walking range, a 10-minute driving range of the Embassy?

Mr. STERN. That will be a very difficult line to draw, sir, and I must admit we haven't attempted to shave it quite that finely. Our main feeling is to those posts where we know that people don't have the freedom of movement, where we recognize that telephonic communications are grossly inadequate, if they don't stay at their home literally they may not be reached. We realize that many of these people are on standby not only on the weekend but all through the night as well because we don't have adequate staffs, particularly such groups as communicators.

We need to find ways of properly compensating these people. Hopefully, we can do it by looking at the base pay. It is certainly our preference to see the overseas dimension incorporated into the base pay rate rather than an allowance which may or may not apply at a given time or another.

But we would certainly want to look at some of the places where the hardships are more evident than others.

The CHAIRMAN. Why do you believe that there should be this wide-ranging representation? Don't you think communicators and secretaries have rather different interests from Foreign Service officers?

Mr. STERN. Not necessarily, sir, because we all serve overseas. We are all concerned about whether or not we are going to have a baggage allowance. We are all concerned by the same uniform regulations which are handed down by the foreign affairs agencies and apply to the lowest ranking staff person or the most senior Ambassador in the Service. This is the unique quality. There are not separate regulations based on rank but rather a uniform set of regulations that apply to any person that is Foreign Service. We recognize certainly that not everybody within the Service has identical interests.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

And for this reason we have established task forces so that we can have the expertise. With me at the table today, for example, we have a representative of the staff, we have a specialist on pay, we have a specialist on personnel flowthrough so as to be able to address the totality of the interests of the Service. But I don't believe the staff corps would advocate a separate organization for themselves. And I don't feel that, speaking as one officer, I would want to see them split away.

We have too close a relationship.

Mr. McBride. Senator, if I might add for a moment, having been involved intimately in the Foreign Service since I came back on the last night of evacuation from Saigon, having been involved intimately in the Foreign Service Association, I think there are a number of reforms that we need to accomplish. I can tell you personally that if the broad and extensive unit that we have to bargain with is broken up, we would suffer from a balkanization, a setting off of one interest against the other, which would only totally vitiate in my view any effective representation of employee interest.

And in the process we would find that the new manager who harkens only to his immediate political boss and has no concept of the Foreign Service tradition of service going back now for over one century, we would find the employee attachment and devotion would be destroyed. We would lose our ability to effectively represent our people.

The Chairman. You may be right. I have always felt that the Foreign Service per se is very much in the nearest analogy to the military service, similar to the Marine Corps. They are dedicated. I tell young Foreign Service people when they come up to the Hill, that in civilian life the profession may be more akin to that of the clergy. You go into it for a life of service, not to become a bishop. And the Foreign Service should have that idea even more. The Ambassador's brief case is not in every man's luggage, the life of service is, the same way as the general's stars are not necessarily in every military man's baggage, when he goes to an academy. But this point of service is very important.

And I think it is one that should be kept in mind.

Mr. McBride. Sir, I can only tell you now that the Foreign Service Association maintains the plaque on which the names of 46 of our colleagues have been recorded since 1965. I personally went and counted those names. I knew a number of them. The Foreign Service Association speaks to the interest of the staff corps who were frying, along with our officers, in Islamabad, and to the interests of the staff corps, the communicators, and the secretary who was one of the 13 released from Teheran and stayed until the last night with me in Saigon.

All I can say is there is a commonality in the Foreign Service of this commitment from the top and bottom, staff and officer alike, of this spirit of commitment to service. This spirit must be maintained.

The Chairman. I think it is a point, too, the American Foreign Service Association and the other groups that represent you should emphasize a great deal more. And I think you would do better rather than scratching around for comparability to the Civil Service. It ought to be comparability to the Marine Corps. I think you would find the response would be better. I don't think you emphasize that good point enough. One of the things about the bonus pay is that it goes in just the opposite direction. I don't imagine a Marine Corps general or

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

colonel gets legislation proposing a bonus pay for a colonel who does a good job; I don't imagine that would get very far.

A colonel who does a good job is more likely to become a general very quickly. That is the difference. I would say the same thing for the Senior Foreign Service officer; if he does a good job, he may not get the money for the garage that year but is more likely to move on to another assignment which will either give him a garage door or increased interest.

Mr. STERN. Sir, we couldn't agree more. We are a Service. We believe in service. But at the same time we recognize that just as a corporation seeking to attract the finest people from the universities will sometimes up the bidding a little bit, we have to recognize there is some of this competition beginning at the bottom. With our concept of up or out we are in a sense encouraging everybody to think that they have that marshall's baton in their knapsack. We are a very small service.

If I may, I would like to introduce Bill Veale, who is our expert on pay, who can address this comment, particularly to the military analogy. Bill is a former military officer as well.

STATEMENT OF WILLIAM C. VEALE, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. VEALE. Thank you, Mr. Chairman.

I would like to start out by pointing out the Foreign Service is an institution which has similarities to both the military and the Civil Service but is compensated less favorably than either. I am a major in the Reserves, that is a rank equivolent to my FSO–5 rank. When I go on active duty for 12 days I bring home—not on per diem—$150 more on that paycheck, partly because of the quarter's allowance the military enjoys any time they are not occupying Government quarters. I cite this just as one example.

We have long believed the Foreign Service deserved full pay parity with the Civil Service. This is in fact because the law calls for equal pay with the Civil Service, and a linkage with the Civil Service. We appreciate the support the Congress has given that led to the Hay study. We do not see common salaries with the Civil Service as threatening the independence of the Foreign Service. The independence of the Foreign Service we believe must stand on stronger grounds.

We generally support the Hay findings which made clear the need for upward adjustments of junior and mid-level salary levels and defended the salaries of the staff corps. However, we are dismayed that the Hay recommendations are reflected only in the first two of the four pay options developed by an OMB–chaired interagency task force.

These four options are first, an option that advocates 10 classes. The second option calls for nine classes. Both of these have the same kind of linkages with the Civil Service that Hay recommended and paralleled the recomendations of Hay. The other two options are also nine class options which have much less favorable linkages with the Civil Service scales.

While our Association would prefer the 10-class solution proposed by Hay, we have made clear our willingness to settle for immediate implementation of Hay's 9-class recommendation, that is, the task

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

force's second option. In doing so we joined a consensus for option 2 supported by all the foreign affairs agencies and the Board of Foreign Service.

We understand the Secretary of State is also personally committed to option 2 and intends to give the pay issue first priority in the Department's budget.

Opposed to this position, however, are OMB and OPM supporting the fourth option, the lowest, based on an out-of-date 1974 position survey by the Civil Service Commission that even failed to take account of the overseas dimension of foreign service work, one aspect of which we are all reading in the papers now.

We are particularly chagrined that OMB has tried to structure the options paper to favor a compromise on the third option, slightly better than option 4 but still not consistent with the Hay findings. And we are appalled that on an issue where so much is at stake, for the future of the Foreign Service the selection of the final pay option is to be made on budgetary grounds—because OMB views State's budget as a "controllable" expense.

But what kind of price tags are we really talking about? For immediate implementation in all foreign affairs agencies option 1 would cost $33.8 million; option 2, for which we would settle, would cost $30.5 million; option 3 would cost $21.7 million; and option 4 would cost $15.2 million. We are talking then about a spread of $20 million.

Mr. Chairman, in our view this is peanuts, not much more than the cost of one F–14 Tomcat; a fighter aircraft of the type now rotting on airfields in Iran.

The CHAIRMAN. Normally I would agree but don't forget that that is a dime for every man, woman, and child in America. You have to ask every man, woman, and child do they really want to pay this much more.

Mr. VEALE. It is a question of the long-term objective, of what it does for the Foreign Service.

To conclude, I would say that the Foreign Service is well aware of Hay's findings. We have come to look on the pay issue as a symbol that in these trying times somebody cares about the Foreign Service. Any solution to the pay problem short of immediate implementation of option 2 will create a real crisis of morale.

In the face of the uncertainties of a restructured Foreign Service there will undoubtedly be resignations of well-qualified people, as there already have been. Especially in the middle ranks the caliber of entrants will sag. In the end, we feel the American people will be ill served by a Foreign Service that is less qualified and less representative.

The CHAIRMAN. Thank you.

REMOVAL OF PAY INCENTIVE FEATURE

In essence then, you support the legislation but with some changes and you would not be adverse to the removal of the pay incentive feature. Would that be a correct statement?

Mr. STERN. That would be, yes, sir.

The CHAIRMAN. Thank you.

From the viewpoint of the staff corps I have heard some questions, I have had some secretaries come up to me and say they were unhappy about it. What is your reaction, madam?

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Ms. AUSTIN. With regard to the act?

The CHAIRMAN. Yes.

Ms. AUSTIN. Basically I don't think that secretaries per se have any problems with it. It is more in line with the communicators who have had some problems with the idea of selection out of time in class. While the staff corps supports the idea of selection out and time in class as a means of getting our ranks, but we make sure we have only the best in the Foreign Service——

The CHAIRMAN. I must say I have had some members of the staff corps very vigorously say they do not support the concept.

Ms. AUSTIN. We are divided on the issue. There is no doubt about that. But I think we would definitely settle for the idea that we could accept time in class for selection out if it were grandfathered for the people currently in the Foreign Service and implemented for those who would be newly coming into the Foreign Service and who would be coming in with the understanding that time in class and selection out is the procedure.

The CHAIRMAN. Does the legislation grandfather them in now?

Mr. MCBRIDE. Sir, the provisions are being made in the legislation and in amendments we have worked out with management based upon these kinds of concerns to grandfather. The grandfather is presently for 5 years I believe. And we would expand that to 10 years. I would have to doublecheck it.

The CHAIRMAN. In the bill as presently written it is not.

Ms. AUSTIN. No, sir, it is not.

Mr. STERN. It is on our line by line.

The CHAIRMAN. Yes.

Mr. MCBRIDE. No, but management would agree with us.

DROPPING PAY INCENTIVE

The CHAIRMAN. On the Foreign Service and the pay incentive business, if that is dropped out completely what will be the reaction of the American Foreign Service Association?

Mr. STERN. You are referring now strictly to the performance pay aspect?

The CHAIRMAN. Yes, sir, that one specific point.

Mr. STERN. If that were struck out—and as I said, we have chosen not to oppose it rather than say we support it—we could live with it.

The CHAIRMAN. Right. Thank you very much. Are there any other points?

Mr. MCBRIDE. Could I make one briefly and speaking to what Ambassador Herz talked about, which is the danger of the Senior Service becoming terrorized by political manipulation, we are very concerned about that kind of problem. And we have proposed a number of changes which we would propose to work over with your staff in great detail to make sure that does not happen. One of those specific changes turns to section 612 which the Ambassador cited in which as presently drafted the law would permit inclusion of all sorts of material, including perspective assignability in decisions, in material being put before selection boards for retention or selection out if you would.

We would delete that material totally from the law so that anything and everything that is to be put before a selection board must be subject to negotiation with the exclusive bargaining agent to protect

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

our individual officers and staff from any return to a McCarthy approach of approaching the Senior Foreign Service.

The second thing is we offer a number of suggestions, some of which management will accept, which will address again the board issue of the negotiability of the application of the various attrition mechanisms they will now be able to employ under this concept. We think that very important, sir. We think that we can start with a service which will permit a regular and a balanced flowthrough but which will not lead to either political abuse or will not lead to senior officers having to constantly look over their shoulders and say the junior officers have gotten to the Secretary and they are going to ax me, because that is not what we want.

The CHAIRMAN. Thank you.

One final question. Obviously when it comes to assignments, certain personnel factors enter into it. If a Foreign Service officer has a spouse, be that spouse a male or a female, who is an alcoholic, for example, that could have an effect on the assignment of where the person goes. As I understand the present rules, you are not supposed to have in your personnel jacket that fact; is that correct?

Mr. STERN. I believe the way it read, sir, is that you may only have in the jacket that which is germane to the performance of the work. So if we had a person illustratively that is an alcoholic but presently under treatment——

The CHAIRMAN. Or the spouse.

Mr. STERN. Or the spouse——

The CHAIRMAN. If he is an alcoholic he shouldn't be in the service in my view.

Mr. STERN. Well, we would not necessarily of course know whether a spouse was or was not an alcoholic but for the sake of the assumption, if it was not deemed that this would detract from the ability of the person to perform the job, then it should not be indicated. If in fact it was something where the spouse had abused privileges or position, this would have to be a matter of record because it directly impacts on the ability to perform.

But we are dealing with some very fine lines in social legislation which have come through fairly recently. And I am not an attorney myself. I feel I am about to get into very deep water. I might ask for our attorney to comment on it.

The CHAIRMAN. I won't go further on it, but I would just state instances I have known in the past year where the spouse of the Foreign Service officer can be a tremendous help to that Foreign Service officer or can absolutely ruin him. And I think this is a factor that should be taken into account. At any rate, I thank you very much indeed, gentlemen, for being with us.

[The following information was subsequently supplied for the record.]

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C., December 18, 1979.

Senator CLAIBORNE PELL,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PELL: The American Foreign Service Association appreciated the opportunity to testify before the Foreign Relations Committee December 14 on the proposed new Foreign Service Act. I regret that illness prevented my appearing personally. In view of the specific questions you raised regarding

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

"performance pay" for the Senior Foreign Service, the Board of Directors of our association believes the following supplemental information on our position might be useful to you.

We are proud of our traditions of excellence and willingess to walk in harms way in the service of our nation. Financial incentives have never been the prime motivation of the Foreign Service but they are of course important to our employees and their families and they should be compatible with those of our colleagues elsewhere in the Federal Government. The Congress chose in the Foreign Service Act of 1946 to establish points of linkage between the Foreign Service and Civil Service pay scales. In 1978 it mandated the review of those link points. It also passed the Civil Service Reform Act which inter alia established Performance Pay for the Civil Service which could exceed the Federal Pay Ceiling. Subsequently, the mandated study on pay linkage established that certain categories of foreign service personnel were indeed substantially underpaid when comparing the content of their jobs to those of the Civil Service. At the same time, the Administration chose to include "performance pay" for the Senior Foreign Service in its proposals for a new Foreign Service Act.

The American Foreign Service Association has taken the position that any new legislation must include provisions for full pay parity with our colleagues elsewhere in the Government for all categories of personnel. In the case of linkage of pay scales all that is required is an immediate change in link points as proposed in the Hay Associates Study.

"Performance pay" presents a more complicated picture because it implies that our senior officers might perform better if competing among themselves for additional pay and because it would require new administrative mechanisms which might be subject to abuse. These are valid concerns. The Association would prefer some other means for assuring adequate compensation for the Senior Foreign Service but believes that these concerns can be overcome through adequate language in the law. However, no alternative has been proposed either by the Congress or the Administration. We have been told that alternatives such as a 15% overseas allowance are politically infeasible. We would support an alternative to "performance pay" which provided compensation levels for the foreign service as high as those elsewhere in government service. In the absence of such an alternative, however, the Association could not support a new Foreign Service Act which established pay ceilings for the Senior Foreign Service below the Senior Civil Service. It is for this reason that we cannot oppose "performance pay" for the Senior Foreign Service, the only means now available to assure pay parity.

We would appreciate your making this supplemental material part of the record on the Foreign Service Act hearings.

Sincerely,

KENNETH W. BLEAKLEY, *President.*

UPDATED SECTION-BY-SECTION ANALYSIS OF THE BILL TO PROMOTE THE FOREIGN POLICY OF THE UNITED STATES BY STRENGTHENING AND IMPROVING THE FOREIGN SERVICE OF THE UNITED STATES AND FOR OTHER PURPOSES

[Submitted by: American Foreign Service Association]

CHAPTER I—GENERAL PROVISIONS

Sec. 101 (a) (1) (p. 2), insert after Foreign Service *"of the United States,"*

Comment: Emphasis on the national, interdepartmental character of the Service.

Sec. 101 (a) (3) (p. 2), add in first line "that the *members of the* Foreign Service . . ." Insert after "languages, *and.*"

Comment: Each member of the Service should strive to be representative of the American people and to remain truly American rather than becoming too foreign or cosmopolitan.

Sec. 101 (a) (4) (p. 2), add new subsection (4) *"that the Foreign Service should be* operated on the basis of merit principles; *and*

Comment: It is desirable to reaffirm that the merit principles of the Civil Service Reform Act apply to the Foreign Service as indeed they do by the terms of 5 U.S.C. 2301 (b) (1).

NOTE: A √ next to a section number indicates a change in our line-by-line since our October 17, 1979 submission.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Sec. 101 (a) (5) (p. 2), add new subsection (5) *"that the growing scope and complexity of the nation's foreign affairs has heightened the need for a professional Foreign Service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State and the agencies concerned with foreign affairs.*

Comment: This addition explicitly acknowledges that the need for a Foreign Service of the United States is increasing due to world events.

Section-by-Section Analysis: Add new paragraph under Findings and Objectives, following paragraph ending "merit principles:"

"Finally, this section finds that our growing and increasingly complex foreign affairs has heightened the need for a professional Foreign Service to serve the President, the Secretary of State, and the various agencies concerned with foreign affairs."

Comment: This emphasizes the broad scope of responsibilities envisioned for the Foreign Service.

Sec. 101 (b) (6) (p. 4), insert new phrase "to provide *compensation, including* salaries . . ."

Comment: This wording clarifies the concept that it is "compensation" in its broadest sense and not merely certain elements of it which encourages and rewards outstanding performance.

Section-by-Section Analysis: Revise para on Section 101 (b) (6) to read: "Section 101 (b) (6), drawn from section 111 (7) of the 1946 Act, states that the Act will provide salaries, allowances and benefits *compensation* that will attract and retain qualified personnel, and *as well as* incentive payments and awards to encourage and reward outstanding performance. *Compensation for the Foreign Service must take into account the conditions of overseas service referred to in Section 101 (b) (5).*"

Comments: The additions make clear the intent to minimize the impact of the hardships, disruptions and other unusual conditions of overseas service upon the members of the Foreign Service and to mitigate the special impact of such conditions upon their families.

Sec. 101 (b) (9) (p. 4), revises subsection to read: "(9) to increase efficiency and economy by promoting maximum compatibility *uniformity of personnel management* among the agencies authorized to utilize the Foreign Service personnel system *particularly in the Senior Foreign Service* as well as compatibility between the Foreign Service and the Civil Service; and"

Comment: Just as there is a single Civil Service system flexible enough to serve the interests of the individual domestic U.S. agencies, there should be a Foreign Service with a Senior Foreign Service component paralleling the Senior Executive Service which serves U.S. national interests abroad.

Sec. 104 (2) (p. 7), insert as follows: "provide guidance for the *formulation and* conduct of United States foreign policy and programs . . ."

Comment: This establishes that the Foreign Service advises the President and Secretary on foreign policy in addition to executing it.

Section-by-Section Analysis, para 3 (p. 7), insert as follows: "Section 104(2) states that members of the Foreign Service shall provide guidance for the *formulation and* conduct of United States *foreign policy and for the formulation and conduct of* Government . . ."

Comment: See comment on 104 (2) above.

CHAPTER 2—MANAGEMENT OF THE SERVICE

Sec. 202 (a) Section-by-Section (p. 9), add: *"It is expected that these agencies will use all the appointment authorities in the Act. For example, the International Development Cooperation Agency will establish a Foreign Service Officer corps."*

Comment: In order to enhance compatibility among the Foreign affairs agencies and the status of the international development function, the law should strongly encourage the establishment of a Foreign Service Officer corps in IDCA, parallel with FSO's in State and FSIO's in USICA. The categories of personnel who would be so appointed would be worked out subsequently by regulation.

Sec. 206 (p. 13)

Comment: We strongly support the re-establishment in law of the Board of the Foreign Service. We agree with the composition and functions of the Board described in Sec. 206 and its analysis. We welcome the proviso that a career

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

member of the Senior Foreign Service chair the Board, and we believe that a majority of Board Members should likewise be career Members of the Senior Foreign Service. Only those domestic agencies with government-wide responsibilities (OPM and OMB) or which use the Foreign Service overseas but have none of their own (Commerce and Labor) should be represented. To insure that the Board can function as an independent and useful source of advice to the Secretary and other foreign affairs agency heads, it should have a staff, like that of the FSLRB in Chapter 10 or the FSGB in Chapter 11, independent of agency management and responsible only to it. Its career Foreign Service members should be neither officials of the exclusive employee representative nor management officials as defined in Sec. 1002(10)(F). It should not only respond to requests from agency heads for advice on issues arising under the Foreign Service Act on the Secretary's government-wide authority, but also initiate such advice. In forming its judgments, it should feel free to hear representatives of both agency management and the exclusive representative.

CHAPTER 3—APPOINTMENTS

Sec. 311 (a)(1) (p. 17), add:

"The President shall provide the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve."

Section-by-Section, add: *Additionally, it requires a report from the President to the Senate Committee on Foreign Relations on the competence of his or her nominees, measured against these criteria."*

Comment: This provision will improve the Senate's ability to judge the qualifications of a nominee, and deter the nominations of inadequately qualified persons.

Sec. 311(a)(3) (p. 18), and Section-by-Section change to read "(3) for to the *maximum* extent practicable . . ."

Comment: This change parallels the language of Sec. 311(a)(1) with respect to the qualifications of a chief of mission and reflects the previously expressed sense of Congress (Sec. 120, P.L. 94–350 (90 Stat. 829) that "a greater number of positions of ambassador should be occupied by career personnel of the Foreign Service."

Sec. 311(b)(1) (p. 18), Section-by-Section, add: *"It is expected that Foreign Service personnel from the foreign affairs agencies other than the Department of State will receive fair consideration for Chief of Mission nominations."*

Comment: IDCA and USICA Foreign Service personnel should receive fair cosideration for Chief of Mission positions.

Sec. 321. (p. 19), Section-by-Section, add: *"As noted in the analysis of section 511(b), the number of non-Foreign Service personnel serving in Foreign Service positions (which includes those serving under limited appointments in the Service) is not expected to exceed the number of Foreign Service personnel assigned to non-Foreign Service positions."*

Comment: This reflects the expectation that the present balance of exchange in senior assignments between the Foreign Service and the rest of the Government will be maintained lest Foreign Service promotion and assignment opportunities be reduced.

Sec. 322. (p. 19), Section-by-Section, line 10, insert after ". . . be for four years": *Career members of the Senior Foreign Service will normally be appointed by the promotion (cf Sec. 602) of career personnel who will have established records of performance in the Foreign Service. Career candidates at the SFS level will be appointed from outside the career Service only in extraordinary cases where the needs of the Service cannot otherwise efficiently be met. Accordingly, such candidates will serve not less than four years in probationary status so that their qualifications for career status can be thoroughly evaluated.*

Comment: This section provides clear safeguards that the new mechanism for accepting career candidates directly into the Senior Foreign Service will be controlled. This will ensure that candidates' demonstrated competence for top level management have been carefully evaluated and confirmed before career status is conferred. The aggregate number of such outside appointments should not undermine the predominance of appointments from within the career service which

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

is necessary to maintain healthy flow rates throughout the Service in recognition of meritorious performance.

Sec. 322 (p. 19) Section-by-Section. Add the following as the new final sentence in the first paragraph: *Appointments to the highest rank of the Senior Foreign Service shall be from the ranks of those who have already achieved career status.*

Comment: This parallels the provision of the existing law that all appointments to the highest rank of career minister must come from the ranks of career Class 1 officers.

Sec. 323 (p. 20)

Comment: Reference to "class higher than class 4" should be reviewed to bring it into conformity with determination of classes under Section 421 once that provision has been established.

Amend Sec. 333(b) to read as follows:

333(b). Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

Sec. 333(b) Section-by-Section, insert *"full-time"* before *"positions."*

Comment: This change is consistent with existing law (Sec. 413, P.L. 95–426, 92 Stat 963) which makes it clear that full-time American career positions should not be abolished in order to create those positions, sometimes part-time, temporary, or intermittent (PIT), for family members. Such action of creating PIT positions reduces promotion and assignment opportunities for current career members of the Foreign Service. Our proposed change is not intended to impede increases in job opportunities for family members, or innovations concerning job-sharing overseas.

CHAPTER 4—COMPENSATION

Sec. 462 (p. 36), Section-by-Section, and Table of Contents—Change "Allowances" to *"Differential."*

Comment: The special allowance, unlike other allowances available to government employees overseas, but like the post differential, is taxable, and established as a percentage of basic salary. Also unlike overseas allowances, it can be paid for positions in Washington. Calling it a differential would be more logical.

Sec. 462, Section-by-Section, change to read:

"Section 462 authorizes the Secretary to pay special *differentials* in addition to other compensation to *all* Foreign Service officers who are required to perform additional work on a regular basis in substantial excess of normal requirements. *It is contemplated that officers who must work an average of at least 50 hours per week, receive special differentials at the rate of not less than 25 percent of basic salary.* This section is identical in substance to section 451 of the 1946 Act, and is in lieu of overtime or other premium pay under subchapter V of Chapter 53 of title 5, United States Code. *The Department shall not take advantage of the ineligibility of FSO's for premium pay by requiring them to work when work is not really essential, or avoiding the need to ask for more personnel whenever necessary to perform the Department's mission.*"

Comment: As indicated below (Sec. 2301 (3)), AFSA seeks the repeal of the premium pay ban on FSOs. If this is not possible, we seek at least to mitigate the injustices with which the special allowances have been administered. The Department, adding insult to injury, claims that the legislative history of the provision excludes FSO–3's (new FS–1s) and special assistants to Presidential appointees of Executive Level 3 and above; limits the total eligible to approximately 100 in State; defines "substantially in excess of normal requirements" as 55 hours per week; and provides as a special allowance only 12 to 18 percent over basic salary. The premium pay ban and special allowance limits also encourage the Department to overwork FSOs rather than adjust its workload to seek additional resources. The new sectional analysis would correct these problems.

Sec. 462 (p. 36), after "authorized" insert "(a)" and line 25, add: *"or (b) to Foreign Service personnel who are required by the nature of their assignments overseas to remain on call on a regular basis for substantial periods of time outside normal duty hours."*

Section-by-Section, add: *"Subsection (b) would apply the concept of the special differential to Foreign Service personnel required by the nature of their assignments overseas to remain on call on a regular basis for substantial periods of time outside normal duty hours."*

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Comment: Many Foreign Service personnel, especially secretaries and communicators at small posts overseas, are required to remain on "stand-by duty" or on call for extremely long periods of time, but are not compensated except and to the extent that they are required during such periods to come in to work. The concept of the special allowance, of a certain percentage of basic salary, is an appropriate way to compensate personnel for such a substantial loss of free time.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

Sec. 511(b)(1) (p. 38, line 1) Insert after "filled by" *"the assignment for specified tours of duty . . ."*

Section-by-Section Analysis, first paragraph, add: *"The number of such personnel is not expected to exceed the number of Foreign Service personnel assigned to non-Foreign Service positions."*

Comment: All Foreign Service personnel assignments are for specific tours of duty, normally for two or three years. Similarly, an assignment of a non-Foreign Service employee to a Foreign Service position should be for a specific period of time after which the assignment could be renewed or another person assigned to the position. The purpose of revising the legislative history is to reflect the expectation that Foreign Service assignment and promotion opportunities will not be adversely affected by reversing the present balance in assignments between the Foreign Service and the Civil Service.

Sec. 521(a)(4) (p. 39). Section-by-Section analysis, add following at end of paragraph: *"A substantial number of Foreign Service personnel should be given assignments under this paragraph."*

Comment: This restores the original concept of the "Pearson Amendment" (Sec. 572 of the Act of 1946 as amended). The legislative history should reflect the sense of Congress that such assignments are important to a comprehensive career development program.

Sec. 521(b)(1) (p. 39), first sentence. Insert *"the higher of"* before "the salary"; and in the following line delete irrespective and insert *"or"*. Also, revise the accompanying legislative history by amending all of paragraph four before the last sentence to read as follows: 521(b)(1) *preserves the rule established by 571(c) of the 1946 Act that a member of the Service assigned under this section will receive the salary of his or her Foreign Service class or, when assigned to a non-Foreign Service position, the salary of the position to which the member is assigned if it is higher than the salary of the member's class."* [Continue with existing last sentence.]

Comment: This is consistent with the existing law and with the concept of equal pay for equal work which is part of merit system principles.

√ *Sec. 531(a)* (p. 41). Amend last sentence to read: No member of the Service may be assigned to duty within the United States *upon initial appointment, for a period to exceed three years, or* for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period in special circumstances.

√ *Sec. 531.* Section-by-Section: Delete last sentence of first paragraph and insert:

"The limitation of three years initial service carries forward the policy of sec. 625(d)(2) of the Foreign Assistance Act, 22 U.S.C. 2385(d)(2). The limitation of eight years continuous service carries forward the policy of section 571(a) of the 1946 Act."

Sec. 531(a) (p. 41). Section-by-Section analysis, add the following to the end of the first paragraph: *"It is expected that regulations limiting assignments in the United States and procedures for exceptions of the eight-year rule would be negotiated with the exclusive representative for each agency."*

Comment: We applaud Sec. 531(a) as a reaffirmation of the principle of worldwide assignment in the Service. However, it is essential that the regulations and procedures under which these aspects of service discipline are applied be codetermined by the exclusive representative to ensure equitable application and prevent arbitrary abuse.

Sec. 531(b) (p. 41). Revise Section-by-Section Analysis by adding the following at the end of the second paragraph: *"The implementation of this subsection implies that a reasonable number of Foreign Service positions will be maintained in the United States in all categories so as to permit the assignment of those who desire assignment in the United States after extended duty abroad."*

Comment: We approve of paragraph (b). However, there are some specialties, e.g., secretaries and communicators, in which there are not enough positions in

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Washington to meet this objective because not enough positions are classified Foreign Service. This revision envisions steps to ensure that enough slots are made available for all Foreign Service personnel categories to permit reasonable domestic rotations after extended duty abroad.

CHAPTER 6—PROMOTION AND RETENTION

Sec. 602(a) (p. 43), Section-by-Section Analysis, add following as a new paragraph: *It is contemplated that the exclusive representative will be able to negotiate the time-in-class (TIC) for new FS–1, as well as the number of years in the threshold window during which one may be considered for promotion. In AID/IDCA, where retirement for excessive TIC has not been used, the establishment of a threshold window would have to await the establishment of a TIC at that level—both on the basis of negotiation with the exclusive representative;*

Comment: Our approval of the senior threshold "window" and the extension of TIC to AID is conditioned by the requirement that the application of these authorities be negotiable as a safeguard for employees.

Sec. 602(b) (p. 43), substitute the following:

"*(b) Decisions by the Secretary on the numbers of those to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—*

(1) a regular, predictable flow of recruitment at the junior levels of the Foreign Service;

(2) effective career development patterns to meet the needs of the Service; and

(3) regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service."

Section-by-Section Analysis, revise as follows: First sentence, delete "in making" and insert in lieu thereof "*to base,*" and insert "*upon*" after "SFS" and delete "to take into account". Insert as new second sentence the following: "*This subsection calls for the establishment of long-term promotion ranges in the relevant competition groupings, together with the associated ranges of combined voluntary and involuntary attrition necessary to achieve overall balance in the flow pattern.*"

Comment: These changes are necessary to lend greater specificity to the Congressional requirement that the personnel system of the Service be managed as an integrated whole in which the overall entry, departure and promotion rates are consciously kept in balance.

Sec. 602(b) (p. 43), Section-by-Section Analysis, add following as another paragraph:

It is contemplated that these long term target promotion ranges in the relevant competition groupings would be subject to negotiations which would also identify the range of permissible forced attrition necessary to achieve overall balance in the flow pattern. Anticipated failure to stay within the agreed target promotion ranges would trigger renegotiation of either the long term promotion and/or attrition target ranges.

Comment: The fundamental long-term trade-offs between advancement and security must be negotiable if the exclusive representative is to properly safeguard the interests of employees. By negotiating overall ranges with a long-term character management would be free to make the necessary adjustments to fine tune the system from year to year, but employees would be empowered to negotiate if exogenous factors force a fundamental shift in the balance between job security and promotion opportunities.

Sec. 603 (p. 44) Section-by-Section Analysis, add following sentence at end of second paragraph: "*It is expressly understood that the composition of selection boards, and the precepts under which they function, should continue to be subject to negotiation and agreement with the exclusive representative.*"

Sec. 612(a) (p. 44). After "Dependability" insert "usefulness", and lines 2–7 delete everything after "Service."

Comment: "Usefulness" is from the 1946 Act; to us it carries an implication of assignability. However, we would eliminate all the examples of reports in the performance file in order to leave these for negotiation between management and the exclusive representative. Many of our Members are concerned that records of prospective assignments for SFS members might be subject to abuse.

Sec. 641(a) (p. 47), Section-by-Section Analysis, add the following to the last sentence of the first paragraph: "*and/or among classes, but all individuals in a*

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

given occupation and within the same class, competing for the same assignments and promotions will be covered in an identical fashion."

Comment: This section is meant to protect specialist categories, particularly communicators, to ensure that those competing for the same jobs and assignments at a given level will be treated identically with regard to TIC regardless of the different rules which applied before to those formerly holding FSS versus FSR/U designations. Equitable application of this provision requires that it be negotiable between Management and the Exclusive Representative.

Sec. 641(a), Section-by-Section Analysis, add the following to the second paragraph:

"The establishment and adjustment of regulations specifying time-in-class (or combinations thereof) and the duration of limited extensions of career appointments shall be negotiable with the exclusive employee representative to ensure that these authorities are exercised in a manner consistent with equity and stable career planning."

Comment: Adjustment in time-in-class or the duration of limited extensions of career appointments are extremely blunt instruments for managing the composition of the work force. These regulations must be negotiable to maintain confidence in the Service that this authority will not be abused because of external political influences or internal cronyism. In AID, different historical circumstances require that TIC must be established very carefully and gradually as safeguarded by mandatory negotiations with the exclusive representative.

Sec. 642 (p. 48), delete "relative" and substitute *"failure to meet standards of"* in heading of bill, section-by-section heading, and table of contents.

Comment: We support the concept of selection out for substandard performance, including its extension to what is now the Foreign Service Staff Corps, and to AID, where the authority has not been used recently. We oppose, however, a section title which suggests that selection out could occur to a career member of the Service who is performing adequately, albeit not as well as his/her peers and if retired, would not receive an immediate annuity. Either immediate annuities should be extended below age 50 or new FS class one, or the legislation should not be written so as to prejudice the negotiations on performance standards precepts. On the other hand, we would have no problem with retirement for relative performance for personnel who are eligible for immediate annuities and whose retirement would increase promotion opportunities for outstanding mid-level and junior members.

Sec. 642 (a) (p. 48). Section-by-Section: Insert after first sentence of second paragraph:

"All individuals in a given occupation and within the same class competing for the same assignments and promotions will be covered in an identical fashion."

Comment: This provision is intended to protect specialist categories, particularly communicators, to ensure that those competing for the same jobs and assignments at a given level will be treated identically with regard to standards of performance.

Sec. 642 (p. 48), Section-by-Section Analysis, revise last sentence of first paragraph as follows:

"However, section 2104 (e) of this bill exempts those members currently on the rolls to whom section 633 (a) (2) of the 1946 Act does not now apply from application of this section for a period of five *ten* years *or eligibility of the individual before that time for voluntary retirement with immediate annuity.*"

Comment: See our comment to Sec. 2104 (e).

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

Sec. 701 (b), Section-by-Section, first line (p. 53), after "that" insert *"in addition to training for employees."*

Comment: Parallels text of Sec. 701 (b).

Sec. 703, Section-by-Section, line 11 (p. 54), insert new sentence: *"This provision, derived from sections 702 and 703 of the 1946 Act, is intended to encourage a variety of activities to foster broadened experiences for members of the Service, including activities involving . . ."*

Sec. 703 (b) (p. 55), delete "esoteric."

Comment: The Service may require proficiency in languages which are not esoteric.

Sec. 704 (a), lines 2 and 5, (p. 56), delete "orientation and language."

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

V *Sec. 704 (a)*, line 2. Amend to read: ". . . to *employees and* members of families . . ."

line 3. Amend to read: ". . . to *employees and* family members . . ."

Comment: The Secretary should have the authority to provide grants to cover the actual costs of training for *employees* and family members pursuant to section 701 (b).

Sec. 704 (a), line 7, and Section-by-Section, delete references to $300 per month and six months.

Comment: The Secretary should have the authority to provide grants to cover the actual costs of training pursuant to Sec. 701 (b).

V *Sec. 704 (b)* Substitute: *"If a member of the service or* a member of the family of a member of the service . . ."

Sec. 705 (b) (p. 57), delete "facilitate" and insert "assistance in facilitating through a family liaison office," after "personnel", insert "including"; delete subparagraph (3); section-by-section, add: *"Of course, the Family Liaison Office may be assigned additional functions by the Secretary. (The existing Family Liaison Office currently provides a wide variety of services relating to Foreign Service families.)"*

Comment: This recognizes the role which the Family Liaison Office can play in facilitating the employment of Foreign Service spouses.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec. 821. (c) (2) (p. 71), revise to read:

"If an annuitant dies and is survived not by a spouse but a child or children, an annuity equal to the maximum survivor annuity for a surviving spouse shall be paid to the child or in equal parts to the children."

Comment: Considering the very unique problems of orphaned minor children, we believe the current schedule of annuities to be unrealistic. Making arrangements for the further support of such child or children can be very difficult because foreign service life weakens ties to the extended family and the only surviving relative may reside in a foreign country. We recommend that the annuity schedule for surviving orphan children be increased under the above formula.

Sec. 836 (b) (p. 80). Amend to read: ". . . shall determine *that the needs of the Service require* any participant . . ."

Comment: The justification for extending the period of employment of a career employee beyond age 60 should be tied to Service needs, which can be measured and determined.

V *Sec. 837* (p. 81). Section-by-Section Analysis, add: *"This provision should be used systematically as one of the attrition mechanisms."*

Comment: This section is an improvement over Sec. 519 in the 1946 Act in that it extends coverage to all career employees with Presidential appointments and not just chief of mission appointments. Section 519 retirements have been used sparingly.

Sec. 872 (a) (p. 93), change to read: "not to exceed during any calendar year the basic salary the member *would be* entitled to receive under this Act *if currently employed in the Foreign Service class which the Secretary determines most compatible to the class the member held on the date of his or her retirement from the Service."*

Comment: Considering inflation and the significant basic federal salary increases which have occurred, it is unrealistic and unfair to use the employee's salary at time of retirement as a ceiling for what he can receive as annuity and salary when re-employed. Rather, the ceiling should be no less than that salary which the employee would be receiving if he or she had continued his or her career employment.

CHAPTER 9—TRAVEL, LEAVE AND OTHER BENEFITS

Sec. 901 (1) (p. 98) Section-by-Section Analysis, last line, change to read "tion 911 (1), (2), *and (6)* of the 1946 Act."

Comment: Management officials have testified that 901(1) includes the authority of old 911 (6).

Sec. 901 (2), and Section-by-Section (p. 98), change to read "authorized *or required* home leave in the United States."

Comment: Parallels Sec. 911.

Sec. 901 (3) (p. 98), delete all after "duty."

Comment: The Secretary should have the authority to determine by regulation conditions under which travel costs of family members may be paid in connection with an employee's TDY.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

Sec. 1001 (3), Last sentence (p. 106), change "shall" to "*should*".

Comment: Parallels CSRA Sec. 7101(b)

Sec. 1002 (5) (p. 108), change to read:

"(5) 'confidential employee' *means an individual who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.*"

Section-by-Section, first paragraph, insert "*certain*" before "management"; delete parenthetical phrase.

Comment: parallels CSRA, Sec. 7111(d)(13) as well as the definition used in E.O. 11636.

Sec. 1005 (a) (1) (p. 112) Delete "of type and classes"

Comment: parallels CSRA, Sec. 7106(a), and is consistent with Sec. 1005(b) of this bill.

Sec. 1011 (a), last sentence (p. 113), change to read ". . . on a nominee, each *such* agency and each exclusive representative whose agreement is required . . ."

Comment: To make clear that the exclusive representative for employees in each agency has the same right as the management of that agency to participate fully in this process, even though one labor organization may be exclusive representative of more than one bargaining unit.

Sec. 1014(c) (p. 118). Delete all after "otherwise."

Section-by-Section, delete last two lines.

Comment: Parallels CSRA, 7119(c)(5)(C).

Sec. 1023(b)(1)(A) last three lines (p. 122), change to read "concerning *any grievance or any personnel policy or practice or other general condition of employment.*"

Change Section-by-Section to read "*other employees.*"

Comment: Parallels CSRA, Sec. 7114(a)(2).

Sec. 1023(d)(2) (p. 123), Change to read ". . . *any* condition of employment;"

Comment: Parallels CSRA, Sec. 7114(b)(2).

Sec. 1041(e) (p. 132).

Comment: This subsection, paralleling Sec. 1(b) of E.O. 11636, has prevented and will effectively prevent any real or apparent conflict of interest for any employee, if not a management official or confidential employee. Thus additional exclusions from the bargaining unit are unnecessary.

Sec. 1041(f) (p. 132) Delete "prohibited picketing"

Comment: Parallels CSRA, Sec. 7120(f), which reflects a decision of the Conference on the CSRA (see p. 156 of Conference Report).

Sec. 1051(c) (p. 133), Delete "under Section 1021(b)(1)(a)" and insert "*alleging that ten percent of the employees in an agency have membership in the organization*".

Comment: Parallels CSRA, Sec. 7115(c)(1).

CHAPTER 11—GRIEVANCES

Sec. 1101(a)(1) (p. 135), insert "involuntarily" before "separation" and "*character of*" before "information."

Comment: Parallels the existing grievance legislation, Sec. 692(1)(B) of the Foreign Service Act of 1946 as amended.

Sec. 1101(a) (p. 135), Section-by-Section. Amend next to last line to read ". . . alleged wrongful *or capricious* denial of allowance . . ."

Comment: Consistent with current law, the provision should be clear in its coverage to include cases where an allowance or financial benefit has been denied arbitrarily or capriciously even if permissible under the letter of the applicable statute.

√ Sec. 1103(b) (p. 138) Substitute for first two sentences: A grievant who is a member of the bargaining unit represented by an exclusive representative shall be represented at every stage of the proceedings only if represented by that exclusive representative, *or a representative approved by such exclusive representative.* Such a grievant has the right to present a grievance on his or her own behalf; however, the exclusive representative shall have *all the rights of a party to the grievance proceedings.*

√ *Sec. 1103(b)* Section-by-Section: Delete last sentence and insert: *A member of the bargaining unit represented by an exclusive representative may be represented only by that exclusive representative although the exclusive representative can approve representation by an alternate representative.*

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

It is expected that the exclusive representative would establish criteria for reviewing all potential grievances to see which have sufficient merit to file.

Where a grievant chooses to present a grievance on his or her own behalf, the exclusive representative would concomitantly have all the rights of a party to the grievance proceeding, so as to enable it to protect the collective interests of its constituents.

V Insert new 1103(c) and renumber subsequent section accordingly: (*c*) No *finding by the Foreign Service Grievance Board may operate to impair a duly concluded labor-management agreement.*

V *Sec. 1103*(c) Section-by-Section:

This provision is designed to effectuate the purposes of the Act to ensure the inviolability of any duly concluded agreement between the agency and the exclusive representative, and to reinforce the employees' right under section 1004 (b)(2) to engage in collective bargaining with respect to conditions of employment.

Sec. 1103(d) (p. 138), Amend to read "The Foreign Service Grievance Board *shall have authority to ensure* that no record of—"

Comment: The above wording repeats that contained in present legislation. Because the present wording has presented no problems and there is precedent concerning its meaning and interpretation, AFSA recommends against any change.

Sec. 1111(b) (p. 140), Amend to read: ". . . each such agency *and exclusive representative shall select two nominees . . .*"

Comment: The revised wording clarifies and reinforces the concept of equality between the agency and the exclusive representative for the bargaining unit in that agency.

V *Sec. 1112* (p. 142) Amend subsec. (2) to read: "the grievant, the grievant's representatives, the *exclusive employee representative*, and the Department's representative are entitled to be present at the hearing."

V *Sec. 1112* Section-by-Section. Add:

Where the grievant has chosen to represent himself, or where the exclusive representative approves alternate representation, the exclusive representative shall have the right to be present at the hearing to protect the collective interests of its constituents.

V *Sec. 1141*, (p. 148) Section-by-Section. Add:

Since, under sec. 1103(b), the exclusive representative would have all the rights of a party to the grievance proceeding, the exclusive representative would consequently have the right to appeal a decision of the Foreign Service Grievance Board to District Court, in cases where the Grievance Board's decision operated to impair a duly concluded labor-management agreement.

CHAPTER 12—COMPATABILITY OF PERSONNEL SYSTEMS

Sec. 1203 (p. 150) Add:

. . . in a manner that will assure maximum uniformity of personnel management, particularly in the Senior Foreign Service, among . . .

Comment: This fosters the concept of a Foreign Service of the United States and of the flexibility which could result from it if uniformly administered by the various participating agencies.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, REPEALS AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

Sec. 2101(b) (p. 153) Change "availability" to "assignment".

Comment: This corrects what is apparently a typographical error.

Sec. 2101(c) (p. 154), Insert new subsection "(c)" to read: "(c) *Any Foreign Service officer or candidate currently serving who at the time of original appointment met the new criteria for appointment at class 4, shall be immediately promoted to the appropriate step of that rank if it has not already been attained.*"

Comment: This is a necessary transitional authority to avoid disadvantaging an employee who is already in the Service in contrast to a new recruit.

Sec. 2104(e) (p. 160), change to read: "(e) *Retirement under* Section 642 of the Foreign Service Act of 1979 shall *not be effected until ten* years after the effective date of this Act *with respect* to members of the Foreign Service."

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Change Section-by-Section Analysis last sentence (p. 159) to read ". . . for *ten* years . . ."

Sec. 2104(e) (p. 160)

Add new (3): "(3) *who are not eligible for immediate annuity upon retirement under Chapter 8 of the Foreign Service Act of 1979.*"

Comment: We support the extension of retirement for substandard performance throughout the Foreign Service. However, we have many members of the present Foreign Service Staff Corps who have served for many years under the assumption that they would be able to continue to serve until eligible for retirement with an immediate annuity, but who are not yet in FSSO Class I or age 50 with 20 years service. It would be harsh to apply selection out to them, particularly to secretaries who find it very difficult to start a second career after age 40, and particularly in the context of relative performance which may be adequate although relatively less good than that of their peers. Our amendment would start the selection out process immediately after enactment, but would avoid for ten years thereafter actual retirements from the Service of those not eligible for an immediate annuity. This would apply to AID Foreign Service Corps members as well.

Sec. 2105 (p. 160). Delete "under the direction of the President."

Comment: There should be no doubt that the Secretary (and other foreign affairs agency heads) have the discretionary authority to prescribe implementing transitional regulations—and therefore, the obligation to negotiate these regulations with the exclusive employee representative. We would be particularly interested in negotiations on procedures for the determination of worldwide availability, pursuant to Sec. 2101 (a) (2), p. 173, lines 11–13, and Sec. 2102 (d), p. 175, lines 3–4; and the determination of needs of the Service, pursuant to Sec. 2101 (b) (1), p. 173, lines 19–21, and Sec. 2102 (d) (1), p. 175, lines 8–10.

Sec. 2106 (p. 161). Add at end of section: *Within twelve months of the effective date of this Act, the Director of the International Development Cooperation Administration shall promulgate regulations implementing the provisions of Section 302 of this Act to establish from the ranks of tenured career officers a commissioned Foreign Service Officer Corps for the Agency for International Development.*

Comment: All foreign affairs agencies should utilize the authorities of this Act, without artificial labels which imply that officers of some agencies are more equal than others. See our line-by-line for Sec. 202(a).

CHAPTER 2—AMENDMENTS TO OTHER LAWS

Sec. 2201 (a) (p. 164). Insert a new subsection "(4)" and renumber succeeding subsections:

"(4) *Sec. 27—Exemption from Foreign Customs Duties and Local Duties and Local Taxes.*"

The Secretary of State shall take all appropriate steps, including the negotiation of bilateral and multilateral agreements, necessary to carry out fully the provisions of the Diplomatic and Consular Conventions which extend to noncommissioned diplomatic and consular personnel assigned abroad protection from host government customs duties and local taxes. Pending completion of such agreements, the Secretary is authorized to reimburse members of the Service for those customs duties and local taxes which the member has paid despite the protection accorded by the appropriate conventions."

Comment: The Vienna Conventions and others extend to noncommissioned diplomatic and consular personnel assigned abroad certain protections from host government customs duties and local taxes. Despite these assurances many host governments deny such exemptions at considerable extra expense to members of the Service. Departmental efforts to persuade host government compliance with the Conventions have always been time-consuming and all too often unsuccessful. The purpose of this new section is to reinforce the Department's determination to force other governmental compliance and to authorize reimbursement of disadvantaged employees, and to place the Department's obligation in this regard on an equal basis with its obligation to bargain for employment for family members. If other countries are not willing to accord the internationally recognized privileges, immunities, and employment opportunities, the Secretary should withdraw any such benefits from the country in question.

Sec. 2202(b) (p. 173) Add a new "(1)" and renumber subsequent subsections.

(1) Section 625 (b) is amended by adding at the end of this section: *No personnel serving under this appointment authority may be assigned to any position des-*

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ignated as a foreign service position pursuant to Section 401 of the International Development and Food Assistance Act of 1978.

Comment: The Agency for International Development has taken the position that the excepted service appointed authority of the Foreign Assistance Act of 1961, as amended, supersedes section 401 of the International Development and Food Assistance Act of 1978, the so-called Obey Amendment, 22 U.S.C. sec. 2385a. This position is directly contrary to subsection (c) of that section, which provides:

(c) Regulations which take effect pursuant to this section shall have the force and effect of law and shall apply with respect to the personnel of the agency primarily responsible for administering sub-chapter I of this chapter, notwithstanding and [sic] inconsistent provision of law unless that provision of law specifically states that it supersedes regulations issued under this section.

The Agency's construction would allow it to circumvent the Obey Amendment by appointing up to 110 non-career and non-Foreign Service employees to positions designated as Foreign Service positions.

This amendment to the Foreign Assistance Act would further the intent of the Obey Amendment and would serve to protect the integrity of the Foreign Service.

Sec. 2202(b)(2) (p. 174). Insert after "is amended" by striking out the first sentence and replacing it with: *"The chief and his or her deputy of each special mission or staff carrying out the purposes of Part I shall be appointed by the President from the Senior Foreign Service, and may, notwithstanding the provisions of any other law, be reassigned by the President at his discretion . . ."*

Comment: The proposed Foreign Service Act provides that five percent of the Senior Foreign Service may be non-career appointees. (sec. 321). To continue to allow for non-career 631(b) appointments is therefore unnecessary. Furthermore, it is inimical to the personnel system, opening it up to abuse. Allowing too many non-career employees to enter into the Agencies' senior ranks would impair AID professionalism and its employees' opportunities for promotion.

This amendment would also further the objectives of the proposed Foreign Service Act to promote maximum compatibility among the Agencies authorized to utilize the Foreign Service personnel system. (See sections 101(b)(7) (Senior Foreign Service) and 101(b)(9)).

Sec. 2206 (p. 77, after line 8). Insert *new Section:*

Sec. 2206 Post Differential.

5 U.S.C. 5925 is amended as follows: All members of the Service shall receive the full amount of post differential to which they are entitled, provided that the amount of basic salary, post differential, and, if applicable, senior differential, shall not exceed in any fiscal year the salary provided by law for Level I of the Federal Executive Salary Schedule (5 U.S.C. 5312).

Comment: 5 U.S.C. 5925 establishes a taxable post differential often called a "hardship allowance", of 10, 15, 20, or 25 percent of the basic salary as a recruitment and retention incentive to staff assigned to certain designated posts. A post differential is established for when, and only when, the location of the post involves extraordinarily difficult living conditions, excessive physical hardship, including physieal danger, or notably unhealthful conditions. Living costs are not taken into account. Heretofore, pursuant to regulations, post differential has not been paid to chiefs of mission and has been paid to subordinate personnel only in amounts so that the employee's salary plus post differential will not exceed $100 less than the salary of the chief of mission. These restrictions were apparently adopted in the belief that chiefs of mission receive sufficient other forms of compensation and that their authority would be threatened if their salary were less than the salary plus post differential paid to subordinate employees.

AFSA believes these regulatory restrictions are unfair and anachronistic. The full amount of allowed post differential should be paid to all governmental employees assigned to the post. This is in line with the recommendations of the 1977 report of the Inter-Agency Committee on Overseas Allowances and Benefits for U.S. Employees. Using the base salary of the chief of mission as a ceiling on the amount of post differential that can be paid to a subordinate employee creates undesirable anomalies. A senior official, including a present-day FSO-3, could receive more in the form of salary plus allowances if assigned to a relatively subordinate position at a "differential post" Class I mission than when assigned to a more challenging position, such as deputy chief of mission, at a Class III "differential post" mission. The outstanding officer thus has an incentive to accept the less challenging assignment.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Chiefs of mission are subject to the same physical hardships and unhealthful conditions as all other members of the mission. In many cases they are the most likely person at the post to be selected as the target for a terrorist attack or other acts of violence.

We believe that senior management officials of the Department are sympathetic to this proposal. See also Sec. 441 above.

CHAPTER 3—REPEALS

Sec. 2301 (3) (p. 178, line 24). After "section" insert "*412 and*".

Comment: This section is the amendment which abolished premium pay for Foreign Service officers. Since it took effect in October 1978, it has caused great bitterness among FSO's, including those who never personally apply for overtime. The provision for special allowances (repeated as Sec. 462 of the draft bill), has so far only benefited some 77 FSO's who regularly work more than 55 hours a week, and they are making much less than they would have. This provision enables the Department, by overworking its FSO's, to cut its costs and avoid requesting adequate staffing.

While we understand that the author of this amendment was aiming at what he regarded as the unprofessional practice of FSO's seeking overtime pay, the provision bans all forms of premium pay for FSO's, including extra pay for night, Sunday, and holiday work which may be imposed on the office or activity in which the FSO serves with other Foreign Service or non-Foreign Service personnel who are eligible for premium pay. In principle, FSO's are not even allowed to take compensatory time off or to participate in flexitime which the Office of Personnel Management is now urging.

We strongly urge the repeal of this provision. See also Sec. 462 above.

CHAPTER 4—SEVERABILITY, SAVING PROVISION, REPORTS AND EFFECTIVE DATE

Sec. 2402 (p. 203). After line 9 insert: "*(including recognition of any organization of Foreign Service Officers and employees in the Agency for International Development as the exclusive representative of employees in the International Development Cooperation Agency)*."

Comment: IDCA is being touted as not just a "successor agency" to AID, within the meaning of E.O. 11636, but a superagency of which AID is only one element. We want to make sure that the status of the current exclusive representative of AID Foreign Service people, and thus its ability to protect the interests of the AID Foreign Service in the coming transition, is not adversely affected either by the IDCA reorganization plan or this bill.

Sec. 2404 (p. 181). Change "January" to "*October*" *add "Provided, that actions may be taken after that date on the basis of any the current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.*"

Section-by-Section, change "January" to "*October*" and add: "*permits implementation to be retroactive to the beginning of any current personnel evaluation cycle.*"

Comment: The January 1980 date is not realistic. October would correspond more closely to legislative reality, including the budget cycle The additional words would take account of the various promotion cycles.

The CHAIRMAN. We now move on to Mr. Kenneth Blaylock, national president of the American Federation of Government Employees.

STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, WASHINGTON, D.C.; ACCOMPANIED BY STEPHEN KOCZAK, CHARLES MEDD, AND MARY JACKSTEIT

Mr. BLAYLOCK. I am not in the Foreign Service. I am the national president of the American Federation of Government Employees. I appreciate the opportunity to express our views on this——

The CHAIRMAN. Let me just for my edification ask what is your own personal job. Are you in the Foreign Service?

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Mr. BLAYLOCK. I am not in the Foreign Service. I am the national president of the American Federation of Government Employees. I have with me, Mr. Stephen Koczak, who is my special assistant, specializing in Foreign Service affairs and a 15-year employee of the Foreign Service. I have also with me this morning Mary Jacksteit, our legislative counsel who also has experience in the Foreign Service, and Charles Medd, who is presently with the Voice of America and has long experience——

The CHAIRMAN. You have a rather long statement so——

Mr. BLAYLOCK. I have a summary statement. I would request that the full statement be entered after my oral statement.

These are a couple of comments I would like to make, Mr. Chairman. As you know, my organization played a key role and worked very intimately with the administration and with the Congress as we developed Civil Service reform. And I think there seems to be an assumption, really I guess proposed by the administration as they proposed this legislation, that it is very much in line with Civil Service reform, however, there are some major differences in the Civil Service Reform Act and some of the proposals in this particular piece of legislation.

We supported the Reform Act itself and I had no serious opposition to the Senior Executive Service conditioned on certain protections.

For instance in the Civil Service Reform Act the members of the Senior Executive Service still have the protections of the title I of that act, which are the merit principles which are policed and protected by the Merit System Protection Board. This legislation proposing the Senior Foreign Service does not provide that kind of independent statutory statutory protection.

We also have built into the Senior Executive Service in the Civil Service Reform Act a parachute clause that allows career employees who go into the Senior Executive Service from the career service to parachute back into the career service provided they do not make it in the Senior Executive Service system. The design there was to avoid loss of competent, dedicated employees who may not make it in the Senior Foreign Service.

I would like to basically go over the summary of our prepared statement, which I already stated is comprehensive and does deal specifically with each element of the legislation.

When I discussed some 6 months ago the administration's proposed reform, S. 1450, with members of our AFGE locals 1534 and 1812, the consensus we reached was that our foreign service has been seriously neglected and that apparently not even the Secretary of State appreciated fully the grave dangers this neglect entailed for our national security. We felt that the progressive depreciation of the foreign affairs agencies, the Department of State, the Agency for International Development, and the International Communication Agency, had to be reversed and the needs of the United States and of the personnel in these three agencies had to be perceived in the larger context in which they have to discharge their missions.

Our estimate has been unhappily confirmed by the events which have transpired since then. Today, nearly 50 members of the Foreign Service are hostages while our Nation prays and demonstrates for their safety. Some are military personnel; most are civilians; some have

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

been in Iran working in such offices as Bi-National Centers. Some have performed diplomatic functions, others consular tasks, still others administrative and clerical duties. All now share a common fate, irrespective of grade or rank—the fate of hostages, captives despite every pledge of security and immunity with which they had gone forth, not only by the U.S. Government as their employer, but also by the U.N. and by the World Court on the basis of the Geneva Convention of 1961 defining diplomatic and consular immunity and privilege.

How are we to succor, let alone compensate, these Foreign Service personnel? Can we honestly say that the present law, or the proposed administration's Foreign Service reform legislation, reflects the conditions of their employment and the commitment of loyalty and sacrifice which they have given?

My comments and proposals for solving these problems take full cognizance of the stark realities of the foreseeable future.

First, I have sought to identify the degree to which the Foreign Service is unique, that is incomparable with other civil service systems. In that light, I have sought a method to compensate this uniqueness by a special tax exempt allowance and by providing retirement at rates at least equal to such other hazardous professions as the FBI and firefighters.

Second, we have sought to define those areas where the Foreign Service is comparable to the Civil Service. In those areas, such as base pay, premium pay, labor management relations, grievance procedures, we have sought to assure that Foreign Service personnel do not receive less than their Civil Service counterparts.

Third, we have drawn attention to injustices, some of recent origin, others the residues of the past. These affect several hundred employees at the Agency for International Development and nearly 50 employees at the Voice of America who were formerly with Radio Free Europe/Radio Liberty.

These are the broad outlines of my concerns. I shall now summarize my proposals specifically to accommodate the time limitations affecting us this morning, with the understanding my entire statement will be entered into the record of these hearings.

The CHAIRMAN. Without objection.

Mr. BLAYLOCK. It has been our position since this legislation began to take form, that the measure fails to respond to the needs for adequate compensation for Foreign Service employees, for a personnel structure that will enhance the ability of Foreign Service employees to carry out their vital work, and for the need to preserve to each foreign affairs agency the ability to carry out the mission assigned to it. We have also insisted that in every case of rectification of past errors in management of the foreign affairs agencies, there must be due respect for the rights of the employees to be affected.

We do not believe that the personnel system envisaged by the administration bill is inadequate to the times, will attract new talent to the Foreign Service, or will reward achievement or compensate employees and their families for the dangers and traumas which the new international climate contains.

First, the bill seeks to bring an end to the era of attempted unified personnel systems in the foreign affairs agencies. As our statement describes in detail, AFGE never advocated the unified system policy

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and fought it in every way possible. We succeed in reaching an agreement with the International Communication Agency several years ago which in effect ended the program in that Agency but provided that those in the Foreign Service as foreign affairs specialists would be permitted to retain the status which the Agency assigned to them under these previous personnel policies, if they so desired.

The program undertaken by AFGE and ICA in this regard is an earnest one and represents the best judgment of both employees and their representatives, and the agency, as to the fairest and wisest way to end an unfortunate personnel experiment. We oppose the administration provision to cancel this agreement and legislate a resolution to this problem, thereby ignoring the legitimate rights of employees and their representative, and placing into jeopardy their compensation and benefits.

Second, we reject the efforts in this legislation to compromise the independence of the USICA and AID by altering their fundamental relationship with the Department of State by conferring on the Department the authority to enforce "maximum conformity" in matters of personnel policy. We want to strenuously repeat our support for the separate career Foreign Service Information Officer Corps and endorse the comments made by Director John Reinhardt to this committee last summer on this subject. We oppose any first step in eliminating the separate FSIO corps such as transforming the Senior Foreign Service, proposed in the bill, into a unified, interagency management corps.

Third, we urge the committee to examine the proposals we have made for a 15-percent allowance for Foreign Service employees who serve abroad, and for improved retirement benefits. Our evaluation of the exercise going on within the executive branch at this time, to establish a new pay scale for the Foreign Service, is that it will fail miserably to bring real equity to the Foreign Service compensation system, and will completely fail in its attempt to reward Foreign Service employees for the unique burdens they bear from a career served abroad. The allowance approach is more equitable and more effective.

Fourth, we find unacceptable the labor-management provisions of the bill which would establish a separate and inferior labor-management system for the Foreign Service. We firmly believe that the rights and interests of Foreign Service employees can only be served by giving them access to the new labor relations structure created by Congress last year. The unique characteristics of the Foreign Service can be fully accommodated within that structure by special provisions with regard to membership and scope of bargaining units.

We also believe it essential that the bill and legislative history clearly establish the right of the employee representatives to negotiate with the foreign affairs agencies on the implementation of the provisions of this bill which accord extraordinary powers to management in the areas of career tenure, time in class, and performance pay. It will be the employee representatives alone who will be able to insure that this grant of authority is not misused and abused.

Finally, expanded management authorities referred to above raise the specter of politicization of the Foreign Service—they will increase dramatically the ability of the agencies to enforce conformity

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

among a group of employees within which creative intelligence and courageous thinking is essential. We are not convinced that this direction represents "reform," let alone progress. In our statement we have made a number of recommendations for modification of these proposals.

I thank you again for the opportunity to appear here this morning. If you have any questions, I would be happy to answer them.

[Mr. Blaylock's prepared statement follows:]

PREPARED STATEMENT OF KENNETH T. BLAYLOCK

Mr. Chairman, distinguished members of this Senate Subcommittee, I appear before you fully cognizant of the somber circumstances which surround the lives and the liberties of foreign service personnel today. The events at the American Embassy in Tehran are but the latest, potentially the most tragic confrontation in the recent annals of our foreign service. Yet the fact is that the fabric of diplomatic and consular immunity has been torn often before, if not so flagrantly. The assassinations, undue verbal harrassment and attacks on sovereign soil which the United States foreign service has experienced recently and the murders and kidnappings to which the diplomatic and consular representatives of other states are being subjected are only precursors, in our view, of even more grave events.

When I discussed some six months ago the Administration's proposed reform, S. 1450, with members of our AFGE Locals 1534 and 1812, the consensus we reached was that our foreign service has been seriously neglected and that apparently not even the Secretary of State appreciated fully the grave dangers this neglect entailed for our national security. We felt that the progressive depreciation of the foreign affairs agencies, the Department of State, the Agency for International Development, and the International Communication Agency, had to be reversed and the needs of the United States and of the personnel in these three agencies had to be perceived in the larger context in which they have to discharge their missions.

Our estimate has been unhappily confirmed by the events which have transpired since then. Today, nearly 50 members of the foreign service are hostages while our nation prays and demonstrates for their safety. Some are military personnel; most are civilians; some have been in Iran working in such offices as Bi-National Centers. Some have performed diplomatic functions, others consular tasks, still others administrative and clerical duties. All now share a common fate, irrespective of grade or rank—the fate of hostages, captives despite every pledge of the security and immunity with which they had gone forth, not only by the U.S. Government as their employer, but also by the U.N. and by the World Court on the basis of the Geneva Convention of 1961 defining diplomatic and consular immunity and privilege.

How are we to succor, let alone compensate, these foreign service personnel? Can we honestly say that the present law, or the proposed administration foreign service reform legislation, reflects the conditions of their employment and the commitment of loyalty and sacrifice which they have given?

I do not believe that they do and our members and their families, whether in the foreign service or the civil service, do not believe that the employees of the foreign affairs agencies have been properly honored and properly compensated.

I am sure that you know that in saying these words I speak with knowledge and deliberation because our union represents approximately 25,000 Federal employees whose missions are involved with U.S. foreign policy or U.S. physical presence overseas. We are the exclusive representative of all employees, civil service and foreign service, in the International Communication Agency. We represent all the civil service employees in the Agency for International Development and some civil service employees in the Department of State. We have a separate Council of Foreign Affairs Employees to coordinate our representation at these so-called Foreign Affairs agencies. In addition, we have an entire District, the Fifteenth, within whose jurisdiction are those employees overseas of all the U.S. Federal Departments, including employees in the Panama Canal area, Germany, Italy, and other foreign countries for whom we have won exclusive representation. Thus, our membership is fully cognizant of the importance and wide ramification of foreign affairs in our national life.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

I have reviewed our involvement in foreign affairs so extensively primarily because I shall be commenting on the proposed draft for the Foreign Service Act of 1979 from that very broad perspective.

Seen from this perspective, the Administration's proposals are disappointing and reactionary. They incorporate time-worn procedures for promoting, selecting and managing employees with concepts to ill-advised and destructive that we do not wonder that the legislation introduced with such haste has been pursued only fitfully. For our part, we have consistently argued that the Administration's bill is inadequate to the times, unable to attract new talent, reward achievement, and compensate empolyees and their families for the dangers and traumas which the new international climate contains.

I earnestly beseech you, with the wisdom you have available and the lessons which the last half year have brought to world-wide attention to use this opportunity to draft Foreign Service legislation fitted to our times. The Foreign Service Act has not been re-written since 1946 and whatever is put in law now is likely to be with us another decade. We do not believe that the bill submitted by the Department is sufficient even for the immediate future, based on recent developments in international affairs.

THE DECLINE OF THE "FOREIGN AFFAIRS AGENCIES"

One fact which reveals the disintegration of our foreign policy structures is the ratio of career foreign service personnel at our missions abroad. Generally speaking, the Department of State asserts that only 1 in 4 persons are subject to the jurisdiction of its own foreign service; adding ICA and AID, the ratio is no more than 1 in 3. This issue is not in any way addressed by the bill.

Some of this problem, but increasingly of less importance at this juncture, is the role of the Central Intelligence Agency both in Washington, D.C. and in the diplomatic and consular missions abroad. Of far greater threat are the present ambitions of such other Federal agencies as the Department of Commerce and the Department of Agriculture, which wish to operate abroad without direct personnel involvement or cooperation of members of the traditional foreign service of the United States. These ambitions have been gratified recently by the Administration under Reorganization Plan Number 3 of 1979, transferring approximately 100 positions from the Department of State to the Department of Commerce.

With this extraordinary fragmentation of authority in Washington and in the missions abroad, the energies of our Ambassadors have been dissipated so deeply that it is hardly surprising that they have not been able to respond in a timely manner to anticipate such crises as the Iranian debacle, the disasters we have suffered in Angola, Ethiopia, Somalia, and the current civil war in Afghanistan. Unless this dreadful dissipation of resource is stopped, they will not be able to respond in a timely fashion to the brewing crises in, among others, Morocco, Yugoslavia, Albania, South Africa, the Middle East, Central America, Cambodia, and Thailand, and the overwhelming challenges to world order arising from the extraordinary dislocations of trade and commerce resulting from the civil and international wars all over the world which now are a daily occurrence.

I submit to you that this is the prospect which you should bear in mind when drafting new legislation for the foreign service. The Department bill is lengthy and many of its provisions deserve specific comment. In the interest of time, we will focus our testimony on major areas that concern us. As attachments to our testimony are our sectional commentary as Annex I and material dealing with other major areas of concern which we would like to bring to your attention.

LABOR-MANAGEMENT RELATIONS

It is evident that the foreign service should be placed under the provisions of Title VII of the Civil Service Reform Act of 1978. Unfortunately the labor-management title in the proposed bill does not grant full collective bargaining to members of the Foreign Service.

We believe in universality of protection for all employees. As we hope you will perceive from our report on the origin of the Foreign Affairs Specialist program, the only assurance that such bizarre undertakings are prevented is to have labor-management relations governed by the same principles as those which apply everywhere else where there are American employees of the Federal government.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

As seen with the implementing legislation for the Panama Canal Treaties, where coverage of Title VII was extended to employees of the Panama Canal Commission employees who are not American citizens, it is feasible to extend coverage to those categories previously not incorporated.

We favor the incorporation of foreign service personnel under the very fine provisions of Title VII by an amendment to that act deleting the following language under exclusions:

"(iv.) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development or the International Communication Agency."

We believe this would be the most judicious and appropriate manner to proceed. We oppose the provisions of the Administration proposal for labor-management relations because it is redundant and would deprive foreign service personnel of the protections and the procedures established by the Federal Labor Relations Authority, and the Federal Service Impasses Panel.

You will hear, with justification, of two problems which concern members of our union and of the American Foreign Service Association with such a simple action. One concerns the issue of "world-wide" representation; the other concerns so-called "supervisors" being in the unit.

Both problems arise from the ambiguities in the "rank-in-person" and "world wide availability" requirements of foreign service personnel. Consequently, these need to be perceived in their fundamental relationship to the subject of appropriate unit and supervisor.

Under the "rank-in-person" system an individual is not tied to any position in the foreign service, but is reassigned with regularity. Even at the highest rank, a position does not involve *per se* any supervisory function, since even the highest ranking officer cannot rank anybody in relation to any other officer. Only the selection panels can do that. Nor is there an exercise of any other of the managerial functions in hiring, assigning, and dismissing foreign service personnel. These are all handled by centralized or collegial bodies.

The problems of management, and the abuses of management, consequently reside in the anonymities of centralized administration and collegial bodies. These are the real managers of the foreign service. It is against their anonymous action that even the most senior foreign service officers and personnel need the protections of the world wide unit in which all foreign service personnel are members.

The Congress no doubt has in mind the protection of the clerical and technical and professional personnel from the abuse of power by senior career personnel. The question can be asked: How can a secretary or typist speak up in a meeting of the union representing foreign service personnel if the supervisor or manager can sit by right in the same meeting? Does this not reduce labor-management relations to management manipulation? We have not found this to be the case. Common interests, particularly in working conditions overseas, create a collegiality among Foreign Service employees. Conflicts can be resolved by resort to the Grievance Board.

We recognize and concede there are problems. It is precisely for this reason that we wish to have the entire foreign service placed under the jurisdiction of Subpart F,—Labor-Management and Employee Relations of Title V of the U.S. Code, to assure that the fullest measure of supervision over the activities of both management and labor in the foreign service takes place by the Federal Labor Relations Authority. We can think of no better way to assure that abuses are avoided and that collective bargaining rights are at least equivalent, and preferably identical, with those of other employees of the Federal government, who are not in the Foreign Service.

Having said this, we believe that it is necessary to permit the retention of the present world-wide units and the present membership in the units and leave all other matters to the jurisdiction of the Federal Labor Relations Authority. For the reasons we have given and the weaknesses which we perceive, we oppose totally the enactment of legislation such as that proposed by the Administration as Chapter 10 of its draft bill, entitled Labor-Management Relations. Such a separate Foreign Service Labor Relations system would be both administratively redundant and, we fear, not serve the best interests of either management or labor.

THE FOREIGN SERVICE GRIEVANCE BOARD

The push for a grievance procedure for Foreign Service employees began in the early 1970's when the absence of due process in the system was fast becoming

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

a public scandal. Senator Bayh first introduced a bill in 1971 establishing an independent grievance board. The State Department resisted and opposed this measure, successfully arguing to Congress that a procedure should be negotiated under the new Executive Order 11636, providing for labor-management relations in the Foreign Service. However, the Department failed to engage in meaningful negotiations with the employee representative—instead it proceeded to establish its own "interim" procedure which was seriously flawed. Agitation for an effective grievance procedure grew, spurred by the tragic suicide of Charles William Thomas, a Foreign Service officer selected-out without due process, and the formation of the Thomas Legal Defense Fund which began litigation that resulted in the court decision in 1973 holding the selection-out procedures unconstitutional. AFGE and AFSA continued to press for a bill in Congress and Senator Bayh persistently introduced his bill in each session of Congress. Finally, the pressure became irresistable when all public members of the interim board resigned in 1974 after AID refused to abide by a Board decision. In 1975 Congress enacted the grievance legislation that now exists. The text is the product of the collective efforts of the employee representatives, Congressional staffs and foreign affairs agencies. The procedure has wide acceptability among members of the Service. The Foreign Service Grievance Board consists of prestigious arbitrators from the labor field and retired Foreign Service officers—all of whom are subject to selection and renewal by unanimous agreement of the parties using the Board—AFGE, AFSA, AID, USICA, and the State Department. Its operating regulations were negotiated with the unions, and conferral on issues relating to the operation of the Board occurs on a regular basis. We have been generally satisfied with our experience—grievants have a full and fair opportunity to be heard, the union has been able to establish a good working relationship with Board members and staff, transcripts are available on a timely basis without cost, and decisions are published regularly. We welcome the addition made in section 1024 to the Board's jurisdiction of union grievances concerning violations of negotiated agreements—such a mechanism has been lacking in our labor-management system. On the other hand, we do not favor the State-originated proposal to make the union the exclusive representative for grievants within the bargaining unit. The Foreign Service Grievance Board is a statutory appeal body set up by Congress for all members of the Service. Its jurisdiction covers many matters which a Civil Service employee would have the right to appeal through statutory procedures. This proposal would result in bargaining unit members having fewer rights than non-unit members who would have access to the Board with any representative of their choosing. The State Department proposal is evidently aimed at over-taxing the resources of the unions and at limiting the number of grievances. We ask that Congress reject this effort. After serious consideration of this issue, we firmly believe that freedom of choice with regard to representation is most compatible with the nature of the Foreign Service Grievance Board. It is therefore our request that the present language of subsection (b) of section 1103 be deleted and replaced with the following:

"The grievant has the right to a representative of his or her own choosing at every stage of the proceedings. The grievant and his/her representative(s) who are under the control, supervision or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, be present and to present the grievance. Where the grievant is not represented by the exclusive bargaining representative for Foreign Service employees of the agency, the exclusive representative shall have the right to be present during the grievance proceedings."

Having expressed our endorsement of the existing procedure we would like to point to one area where the procedure could be significantly strengthened and made comparable to the binding arbitration that is generally used by unions and management. The procedure currently provides that with respect to certain matters, particularly assignment, promotion and discipline, the Board may only recommend a remedy to the agency head who may consider whether to follow the recommendation based upon "the needs of the Service." We have found this provision troubling and not infrequently resorted to; refusal of the agency to follow a recommendation leaves the grievant with only the choice of going to court, a choice that may not be realistic in terms of cost and the issues at stake. We therefore would propose the following amendment to chapter 11, section 1113: delete subsection (d) and add to subsection (b) a new paragraph (5) stating, "to promote an employee who is found to have previously failed to re-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ceive proper consideration. Promotion may be retroactive where the Board finds that, but for the failure to be considered, the grievant would have been promoted."

THE SENIOR FOREIGN SERVICE

This feature of the proposed legislation is clearly patterned after Title IV of the Civil Service Reform Act establishing the Senior Executive Service. The opportunity to create this executive corps was obviously a major incentive for developing the bill. But there are significant areas where the SFS proposal departs from the SES model, and in our view these departures are to the detriment of the Foreign Service. Passage of the SFS provisions as now written would, in our view, have unfortunate consequences for not only the Service, but also for the conduct of the nation's foreign policy. Among USICA Foreign Service officers there is overwhelming concern with the possibility that the SFS as now designed will permit wholesale politicization of the Foreign Service and discourage discussion, dissent and professional development. This concern should not be difficult to understand. The combination of variable time-in-class and the so-called limited extension could be used to eliminate an entire class of officers not satisfying a Director's political bent, within a period as short as two or three years, by establishing time-in-class at one or two years and permitting no, or few, limited extensions. While no one accuses the drafters of the bill with such intentions, there have been in the past, and there will be again, administrators who are capable of such action. Even absent the most extreme situation, the lack of certainty about one's status is going to foster caution, not courage. We are not opposed to making advancement and retention more directly dependent on performance. But the proposed SFS goes far beyond what is either necessary or adviseable. Let me make specific reference to those aspects of the SFS which are without parallel in the SES and which we find objectionable.

(1) The absence of a "parachute clause" for those removed from the Senior Foreign Service after expiration of time-in-class or non-renewal of a limited extension. The SES system provides that a member who is removed for reasons of performance (not misconduct or malfeasance) is entitled to placement in a non-SES position at the GS–15 level or above. This safeguard is a natural companion to the stringent provisions regarding retention and removal. In our view no less should be provided in the SFS. As in the Civil Service, an employee in the Foreign Service may be fully capable of work at the FS–1 yet be deemed unsuitable for the SFS, possibly for reasons not in the least reflecting on the employee's abilities. As the bill is now written, an officer who is particularly able could reach, enter and be dropped from the SFS before the age of fifty while still retaining skills and knowledge important to the agency. The disincentive for achievement for the employee is as obvious as the disadvantage to the agency. We therefore propose that section 641 be amended to allow officers dropped from the SFS by expiration of time-in-class or non-renewal of limited extension to retreat to the FS–1 level for the time remaining, if any, in the time-in-class period for class 1 (counting time previously served in class 1 and in the SFS). This could be achieved by adding a new subsection (c) to section 641 as follows:

(c) Members of the Senior Foreign Service who are not granted a limited extension or whose limited extension is not renewed shall be entitled to return to the FS–1 level and assigned to a non-SFS position for the period, if any, remaining to be served in class 1 under applicable time-in-class rules for class 1. In determining the time remaining, periods previously served in class 1 and periods served in the Senior Foreign Service shall be subtracted from the time in class period.

(2) The "limited extension." This concept has no equivalent in the SES. It is a mechanism which will give enormous power to the agency head in retention decisions for those in the SFS and discretion to exercise that power without regard to performance factors. It is true that decisions granting and renewing extensions will be made upon selection board recommendations, but the agency head will determine the number of extensions to be given and could allow none or very few. In combination with the authority to set and change time-in-class limits it will therefore be possible for the agency head to keep SFS members in a constant state of uncertainty about their future. At that point, dissent and creativity will be a luxury few will be able to afford. For a profession in which performance is not easily quantified, and where personal integrity and courage

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

are vital to the national interest, we think such measures are particularly ill-advised. It is our view that the provision in section 641 for "limited extensions" be deleted, that a minimum time-in-class period be established for the SFS.

(3) Section 602(b). The Department indicates in its sectional analysis that the objective of the SFS is to create a corps with rigorous entry, promotion and retention standards based on performance, but provides in this section that consideration should be given to the need for attrition. The necessity and purpose of this provision are not immediately clear, but the provision appears to conflict with the merit principles incorporated into the bill. Under merit principles, employees are to be retained on the basis of the adequacy of their performance. When agency managements determine the number of promotion opportunities and selections into the SFS, they will surely consider this factor without a legislative mandate to do so. In our view, this section should be deleted.

With the modifications we suggest the Senior Foreign Service would still give the agencies the flexibility desired but without the sacrifice of legitimate interests of both employees and the public. The stringent measures sought in the bill have not been justified to our satisfaction. For USICA, the Director himself made the case, in a March 26 letter to Mr. Read in which he reported:

"Attrition and shorter promotion lists at USICA in the last two years have brought us a long way toward removing the surplus of senior officers. . . . Today, the number of officers at the class 1–3 levels and the number of jobs classified at those ranks are at parity and the historic imbalance has been resolved. I'm convinced, therefore, that current legislative authority and internal administrative practices are sufficient to deal with any potential future problems of senior officer impactment."

Without modification, the SFS proposal will result in damage to the integrity of the Foreign Service and worsen rather than improve the personnel system.

PAY COMPARABILITY

One of the most critical problems, associated with proper classification, in the area of personnel practices is appropriate pay. The Administration draft is silent on its specific character and we consider this one of the many serious weaknesses in the bill.

Our union endorses fully the principle that Foreign Service personnel be assured of proper classification, equivalent to those provided civil service employees. We feel that, just as civil service employees now enjoy overtime pay, foreign service employees should be entitled to the same provisions. Consequently, we request that you include in your legislation the provision that both base and premium pay for foreign service personnel shall be determined in the same manner as pay for civil service employees by proper "linkage" established by the Federal Pay Agent and Federal Employees Pay Council. The simplest way to achieve this would be to restate that the provisions of Title V, U.S. Code, which incorporates the authority of the Pay Agent and Pay Council, apply to the foreign service.

However, even if this were done, foreign service employees would not have pay comparability because civil service employees are not subject to world wide service, to the attendant disruptions in their assignments, to the stresses in their personal and family lives. For this reason, we propose that foreign service personnel be paid, at all times, a tax exempt allowance to compensate them for this aspect of their governmental service. I should like to suggest the following language as a model or outline for your consideration.

"The compensation of all foreign service personnel shall be the same as the comparable grade in the General Schedule excepting that foreign service personnel shall be paid a further tax-exempt allowance of 15 percent additional because of their availability to serve world-wide; PROVIDED THAT, IN NO CASE SHALL THIS ALLOWANCE BE LESS THAN $2,000 AND NOT MORE THAN $5,000. This allowance shall be in addition to any other allowance which may be authorized."

The minimum and maximum allowances I have suggested are to assure that clerical and other personnel in the higher grades, particularly in the Foreign Senior Executive Service if it is established, do not benefit disproportionately from other members of the Foreign Service.

The foregoing tax exempt allowance is to take official notice of the element of incomparability between the foreign service and the civil service, the element

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of personal commitment to sacrifice which cannot be computed in terms of hours at the desk or office but is written in the burdens of foreign service life where terror and disability and strife is attendant twenty-four hours a day. In this exposure to attack the youngest and the least in time and grade share the trauma with the wisest, the most mature and the most senior in rank. All have this together in the foreign service as a part of their tours abroad, outside the office, outside official hours. Thus this allowance compensates them not primarily for that in which they are comparable to the civil service but for that in which they are incomparable.

I should like also to address the issue in which they are comparable—work at the desk, at the guard house, in the pouch room.

When testifying before the joint hearing of two House committees, we had been asked to comment on the Hay Study, which was then not available to us. In the interval, we have received copies also of a Report of the Task Force on the Foreign Service Salary System, dated November 20, 1979. Unfortunately, we had not been consulted when either of these reports was being prepared. Had we been, we would have commented that both reports ignored the function of fulcrum, or locus of movement, in reconciling the particular problems in promotions based on rank-in-person with a civil service system based on promotions where rank-in-job exists. Consequently, the findings of the Task Force, as well as the Hay study, resort to extraneous, tangential remedies, rather than intrinsic factors, and do not recognize that movements upward in rank-in-person systems have different institutional and chronological characteristics than those in the civil service.

As a tentative proposal, provided largely as a model, we suggest that your Committee consider a classification and pay system, comparable in general terms with the civil service but reflecting intrinsic foreign service structural differences. One model, which we have developed, which seeks to meet both these criteria, would be the following:

New class	Old class FSO/ FSIO/FSR	Old FSS class	CSC equivalent
1	FSO-3	FSS- 1	GS-15
2	FSO-4	FSS- 2	GS-14
3	FSO-5	FSS- 3	GS-13
4	FSO-6	FSS- 4	GS-11
5	FSO-7	FSS- 5	GS- 9
6	FSO-8	FSS- 6	GS- 8
7		FSS- 7	GS- 7
8		FSS- 8	GS- 6
9		FSS- 9	GS- 5
(10)		FSS-10	(GS- 4)

The foregoing table recognizes that there will be important career determinant decisions before the selection boards and that, on either the 9 or 10 rank system, certain promotion decisions will be more crucial than others. Moreover, it seeks to motivate and reward employees seeking upward mobility by a larger increase in pay resulting from promotions to Class 4 and to Class 3 under the new system. On the other hand, it seeks to require greater attention and selectivity from management in promoting employees of lesser performance while still permitting employees to be rewarded by increases in pay through step increases.

As to the number of steps, we prefer the 10-step system as comparable with the civil service. Moreover, we find it quixotic that the Hay report has proposed 14 steps, adding four steps at the end of each civil service grade, ostensibly to compensate employees for service abroad, late in grade and not throughout the employee's total foreign service. Under the Hay concept, only the less competent would begin to be compensated at the end of a long period of ten years in grade while the more competent would not be rewarded at all since they would have been promoted to the next higher grades and never reached steps 11 to 14. We believe that our proposal for a Foreign Service Allowance achieves the commendable goal sought by the Hay report without the awkwardness and inequities its 14 step system introduces.

Our criticisms of the findings of the Task Force relate to the backward-looking perspectives on which its judgments were predicated, and we have preferred to anticipate the managerial as well as the employee motivations in a reformed, revitalized foreign service.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

In any case, we submit our proposals as another possible alternative to the Hay and Task Force options which are being circulated.

PERFORMANCE PAY IN THE SENIOR FOREIGN SERVICE

Since the initiation of this legislation we have not been very happy with the concept of "performance pay" as now proposed for the Senior Foreign Service. Our objections are based on several considerations.

First, the evidence thus far is that the Executive Departments authorized to utilize Senior Executive Service personnel in the Civil Service have not devised any standard method for implementing performance pay. In fact, millions of dollars have been expended in consultant fees seeking to obtain some rational methodology, and the Office of Personnel Management has no proposals of its own.

Second, some reports from the private sector indicate that the concept of "performance pay" is being abandoned by many of those private enterprise firms which had instituted it. Instead of better management, through cooperative team work, the system has produced intrigue and rivalry at managerial levels where cooperation and mutual support are the most important. The result has been to fragment and dissipate managerial initiative.

Third, we note that the new Civil Service Senior Executive Service being a rank-in-person system is an anomaly, from a systemic standpoint, in the civil service. Consequently, there was some plausibility to press the anomaly in the compensation area. However, the entire foreign service operates under a rank-in-person system, and we believe, it would be more prudent to continue to pay the Senior Foreign Service according to the general practices of the rest of the Foreign Service. We would therefore suggest that the Senior Foreign Service have distinct steps in each class so that its members know in advance the discrete amount of monetary reward they would receive in terms of their own performance without their having to contrast their own records with those of their colleagues for purposes of receiving compensation. One system might be to have five steps in each class, with one step increase annually for good performance and two or three step increases for exceptionally meritorious service in grade.

Fourth, we believe that a performance pay system would be much more difficult to operate in the Foreign Service than in the Civil Service due to the wide variation in assignment (i.e. an assignment to a private organization, or a small and peaceful country versus an assignment to a large and influential or an unstable but strategic country), the isolation of officers at many overseas posts, the inducement this would provide for "cronyism" and the difficulty of administering such a system through the selection board process.

SPECIFIC PROPOSALS ON RETIREMENT AND SELECTION OUT

There is a myth that "selection out" and early mandatory retirement at age 60 is a feature of the foreign service alone. It exists in the civil service as well for special categories, particularly the officers of the Federal Bureau of Investigation, other law enforcement groups, firefighters and air traffic controllers and employees of the Alaska Railroad. In fact, for most of them, mandatory retirement is at a lower age than 60. I request permission to include as Attachment II hereto extracts from Title V, sections 8335 and 8336 on Mandatory Separation and Immediate Retirement. But there are two major differences. First, these persons can continue to stay in the civil service in other functions besides their original specialties. Second, their annuities are computed, for the first twenty years of service at 2.5 percent, and not the 2.0 percent offered foreign service personnel. To qualify for this larger annuity, they contribute 7.5 percent to their retirement annuity instead of 7.0 percent.

I should like to suggest that all foreign service personnel required to serve world wide be brought under provisions similar to those afforded these categories I mentioned.

Under my proposal these computation formulas would be portable, so that any separated foreign service officer would be eligible for the higher 2.5 percent rate for all their actual foreign service.

In summary, the following retirement provisions would apply to all persons in the foreign service: First twenty years computed at 2%; remainder at 2 percent, with voluntary retirement at any age after five years service abroad.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

SPECIAL PROBLEMS AT THE INTERNATIONAL COMMUNICATION AGENCY

There are several problems at the International Communication Agency which are the result of past errors made by the Department of State in seeking to establish a domestic foreign service. The one most frequently mentioned in testimony by Administration spokesmen concerns the so-called Foreign Affairs Specialist category, a term of art for "domestic foreign service" personnel. Among the other problems are such matters as employment rights at the Voice of America, retirement credit for former Radio Free Europe/Radio Liberty personnel and for retired Bi-National Grantees, and the employment of spouses of ICA personnel abroad.

FAS: ITS ORIGINS AND ITS AFTERMATH

None of the Administration spokesmen have informed you that our union was adamantly opposed to the introduction of the Foreign Affairs Specialist program. In fact, we were so much opposed that we spent $50,000 in legal fees bringing a suit against James Keogh, Director USIA, and Henry A. Kissinger, Secretary of State, to declare its installation to be illegal.

We had a partial superficial victory, in as much as Judge Howard J. Corcoran required that the only persons who could be appointed to the Foreign Affairs Specialist catgory had first to serve three years as Foreign Service Reserve Officers or Foreign Service Reserve Unlimited Officers. However, since Judge Corcoran did not specify that these three years had to be served overseas, we lost the essence of our suit and the Foreign Affairs Specialist program was installed both at the State Department and at the United States Information Agency, over our strongest objections. With your permission, I should like to append hereto, at the very end of all the other attachments, a copy of the court decision on the FAS programs.

Let us be frank about this program. Its main purpose was to entice civil service personnel out of the civil service category in order to free management from the civil service safeguards provided to all civil service employees.

Why then did our members join the Foreign Affairs Specialist program? Because concurrently with its introduction, positions in the higher grades were withdrawn from civil service competition and restricted only to personnel who were in the FAS or other foreign service category. Civil service category personnel had available only "dead-end" jobs. If one did not join FAS, one would not get a promotion. If one did join, one was assured an immediate increase in pay and greater opportunity for promotion as a reward for voluntary entry.

Why did the State Department want to use this peculiar Foreign Affairs Specialist program—why did it insist that the Attorney General oppose our suit? For one simple reason. It was opposed to the existence of personnel rights based on some outside authority or statute to which its employees could appeal.

You may recall that this is the period when the State Department waged war on its personnel. This is the period when Charles William Thomas committed suicide because the management of the Foreign Service did not wish to admit it had committed a grievous error in selecting him out. This is the period when the Charles William Thomas Legal Defense Fund brought a successful suit, also costing $50,000, to assure that the personnel records of foreign service personnel did not contain false or ex parte information. This was the period when the Congress finally passed the grievance procedures which became self-evidently necessary following our suits.

After our union achieved victory over a rival organization to represent foreign service personnel, we proceeded to attack the inequities of the system from the inside. Ultimately we reached an agreement with a new administration in USICA to bring the program to an end. This is the "contract" about which there has been so much discussion. Management agreed to stop hiring FAS employees. We agreed to eliminate selection boards for FAS employees and to permit these personnel to exercise the right all other civil service personnel have—to bid on jobs in the civil service category. On the other hand we obtained reaffirmation of the commitment, an enticement by management, that retirement would be under the foreign service, including mandatory retirement at 60, if a person chose to remain under such an appointment. For those preferring otherwise, we obtained a guarantee that they could convert to Civil Service status essentially as a matter of right until June 30, 1981.

I want to emphasize these were concessions made to us for the manipulation and coercion of our personnel under the FAS program.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

To our Local 1812, this agreement represents the considered judgment of both the union and management as to the fairest way to phase out the FAS program. Obviously the agency concluded that the existence of a residual force of domestic foreign service employees was something that could be lived with. In the case of both the union and the agency, the desire was to find the most equitable ending to the unhappy history of FAS. Should there be reasons why the Congress would feel it could not continue this arrangement, we would petition that the principal elements of the contract be preserved for the individual FAS members after their mandatory conversion as personal perquisites. These are:

(1) Right to retire voluntarily on present foreign service computation formula (2 percent for all years of service). They would not have the right to invoke the 2½ percent retirement formula which I have proposed for persons who serve overseas.

(2) Right to retain permanently, their classification and pay under the FAS rank-in-person formula in the event of downgrading of any position they may occupy.

(3) Exemption from "selection out" except for reasons identical with dismissal for cause in the civil service.

(4) Full access to the protections afforded all civil service employees under the Civil Service Reform Act of 1978.

(5) Right to voluntarily convert to the civil service at any time up to June 30, 1981.

THE AUTONOMY OF USICA

From the beginning of public discussion on a proposal to reform the Foreign Service personnel system we have been concerned with the role of USICA. The proposal was solely a State Department initiative—discussion with USICA management and employee representatives was, from our perspective, minimal at the early stages. By the time our comments were seriously solicited and by the time the Director submitted his comprehensive response to the Department, the issue was not whether there would be a reform bill, but only what form specific measures would take within the general format *already* adopted by the Department. We found very persuasive the arguments made by Director Reinhardt in his March 26 letter to Under-Secretary Read, that certain problems at which the proposal was aimed do not exist in USICA or are well on their way to solution. But obviously the Department was beyond the point of willingness to either reconsider its decision to move ahead with omnibus legislation, or seriously depart from its proposals. Thus, the record should be clear that this legislation was not designed with USICA in mind. Our task, and that of the agency, in the last few months has been to try to modify the bill to a form that at least can be lived with. That effort has only been minimally successful. We agree that improvements have been made, particularly in the area of returning to each agency head the authority to make specific provisions with regard to such things as length of the SFS threshold. And we appreciate the addition of section 202(d) which provides that the statute shall not be constructed as to diminish the authority of the Director of USICA. Nevertheless we are still concerned with provisions in the bill that suggest a different intention, specifically the requirement that the foreign affairs agencies achieve "maximum compatibility." We agree that a degree of compatibility must exist to facilitate personnel exchanges and to allow for reasonable personnel administration abroad, but the adjective "maximum" transforms "compatibility" into "uniformity."

Our concern on this issue can only be appreciated in the context of the historical relationship between the Department and USICA. The employees of USICA have over the years been subject to various disruptions and manipulations, the FAS program being a timely example, most of which originated with the Department of State and were transmitted to, or imposed on, that agency. The failure of the Department to try to bring order to the resulting chaos in recent years is in sharp contrast to the efforts made in USICA by both management and the union. While we have agreed and still agree that personnel reform is necessary in USICA we believe that reforms are most likely to occur and to be constructive when the independence of USICA in personnel matters is assured and the agency is freed from the necessity of accommodating the special personnel and political problems current in the Department of State.

The issue of the integrity of the news, educational and cultural programs of USICA was a major concern of Congressman Fascell's Subcommittee is discussions on the reorganization plan which established USICA. We hope that this

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

concern will manifest itself again in careful scrutiny of this legislation to insure that neither the agency, the Director, nor the FSIO corps is compromised. To this end we propose amending section 1203 to delete the word "maximum" modifying the word "compatibility." The same deletion would be made in section 2403. We would also ask for assurances that section 204 is intended to give no authority to the Director General over the personnel system of USICA. In addition we request amendment of section 441(d) to provide that the determination of nominations for performance pay for meritorious or distinguished service be made separately *within* each agency, not by an interagency board whose recommendations will ultimately be reviewed by the Secretary. The Director of USICA should be able to submit nominations to the President, or if considered appropriate, to a third party, such as OPM, without going through the Secretary of State. The present formulation represents, in our view, a first step toward a single, interagency SFS, a creation we would strongly oppose since it would undermine not only the autonomy of the agency, but also of the separate FSIO corps.

VOICE OF AMERICA—ITS FAILURES

A. Broadcasting Mission

The Voice of America continues to be beset with certain failures, some resulting from its basic philosophy of international communication, others from its treatment of personnel. In a sense, these are interrelated.

One of its principal failures in the last year is in the area of foreign language broadcasting. During the entire period of the Iranian crisis, prior to and after the Shah's departure from Iran, while the Soviet Union was intensifying its broadcasts, the Voice of America was silent. Not one word, not one minute was broadcast in Farsi, the majority language in Iran, until April of this year, when a half hour of service was begun. On November 6, two days after the seizure of our embassy, broadcast time was increased to one hour.

An analogous situation appears to exist in the broadcasts to Yugoslavia—these are in "Serbo-Croat", angering the indigenous Croatian population of more than six million who wish to have broadcasts in "Croatian". Similarly, the few VOA broadcasts to Haiti are in French, not Creole, the language of 95 percent of the people. Consequently, Haitians listen to Radio Havana and Radio Moscow, not to the Voice of America.

These unhappy situations result from a policy which many past Administrations, apparently with the acquiescence of Congress, have pursued in the foreign language broadcast area, in the apparent belief that one can ignore those people who are friends. Apparently, so far as the Voice of America goes, the assumption is that the people we regard as friends today should listen to our broadcasts in English, not their own language.

For this reason, it appears, there were no broadcasts to Iran, just as there are today no broadcasts to Japan. Our union urges the Congress to review this policy, particularly since the many crises which we confront show that even our friends do not always understand our foreign policies. There is just as much concern, we have learned, in Japan about our positions in Ethiopia, Somalia, Eritrea, South Africa, Cambodia as there is in these countries which are directly affected.

I submit to your consideration the advisability of Congress raising with the Administration, as an oversight function, the introduction of broadcasting to our "friends", while they are still "friends" and not merely broadcasting to areas where we believe we do not have "friends." In fact, such a tacit policy as we now have suggests to many people that our primary goal is propaganda and not communication, propaganda in competition with that of the Soviet Union rather than a means of positive communication from our nation to all peoples of the world.

B. Broadcasting Personnel Policies

A second failure of the Voice of America relates to its personnel practices in foreign language broadcasting.

Last February we raised this issue with the Senate Foreign Relations Committee while commenting on a section of the 1980–1981 USICA authorization bill which amended the statutory authority of the Voice of America to hire non-citizens to work in the United States and is now enacted in law.

The problem which this provision addressed was the under-classification of alien VOA broadcasters who under previous statutory language could not receive

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

a grade higher than GS–11. We pointed out that this was a factor in creating the present situation where grade levels of American national foreign language broadcasters, we believe, are unfairly depressed below those of the English language broadcasters.

This situation has led to morale problems among foreign language broadcasters—citizen and alien—who believe they are being denied the basic constitutional right of equal pay for equal work. I am happy to report that since last February, the agency, responding to initiatives from AFGE, has made serious progress with a Task Force Study aimed at rectifying unjustified classification disparities. It is our hope that the final results, both at the agency level and within the Office of Personnel Management, will be a constructive resolution of the issue. We would like to return and report to the Congress when those results are known.

C. Fringe Benefits for its Employees

The Agency has not made an effort to obtain proper retirement benefits for a certain group of its employees; specifically those who formerly served as international broadcasters with Radio Free Europe, Radio Liberty and the Armed Forces Network, Europe.

This year we raised the issue again in connection with 1980–1981 USICA authorization bill, but the Senate Foreign Relations Committee decided to consider it in connection with the personnel bill which is now here as the proposed Foreign Service Act of 1979. This subject has a direct impact on the morale of certain USICA employees. Admittedly, it is a matter of past mistakes in seeking to make covert what has, since then, become overt.

The number of these RFE/RL employees who are still alive and employed in the Federal Service cannot exceed fifty. Of these the greatest number, perhaps thirty, are now with the Voice of America, which has benefitted greatly by having had them available as trained RFE/RL broadcasters and not having had to give them any training. Thus, VOA and the American taxpayer have benefitted far more already than the costs of the additional annuities.

We estimate that the additional cost, at the very most, of these additional annuities would reach approximately $100,000 annually, provided that the purported beneficiaries first paid into the retirement fund an amount of approximately $125,000 to purchase these benefits. Considering the interests rates now being earned, considering that the beneficiaries would be receiving back in the first three years of retirement only their own contributions, considering the age of these prospective beneficiaries, our estimate is that the actual retirement cost over the life of these employees may be not more than $500,000 at the most and might be as little as $250,000.

All these Federal employees for whom we petition equity have in common prior service with those radio operations established and funded by the Federal Government in the late 1940s and early 1950s—and still funded today by the Federal Government under Congressional authorizations and appropriations. All formerly served with either the American Forces Network, Europe; Radio Free Europe; or Radio Liberty (one former employee or RL also served at Radio Free Asia).

As you know, the American Forces Network is operated world-wide by the Department of Defense. Employees of the Network in Asia were paid by the Department from Appropriated funds. They were thus Federal employees, and were entitled to Civil Service retirement credit. Employees of the American Forces Network, Europe, however, were paid by the Department from Non-Appropriated Funds. In these circumstances they were not considered to be Federal employees, and were deprived of Civil Service retirement credit. We believe that simple justice and equity call for eliminating this discrimination for former employees of AFN(E) who are now in the Federal Government, so that they may obtain Civil Service retirement credit for the time served with AFN(E).

The Free Europe organization and Radio Liberty were, of course, funded by the Central Intelligence Agency for the first two decades of their existence. The CIA's funding was clandestine. This arrangement sought to achieve two things: to allow listeners to believe that the Radios were not United States Government agencies, and to allow the United States Government to say things which could not then be attributed to it. In the circumstances of the day, these were no doubt legitimate aims. It seems to us not to be legitimate, however,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to perpetuate those aims today by penalizing those who served them loyally in other circumstances in the past.

Denial of Civil Service retirement benefits to employees of RFE and RL was part and parcel of the clandestine funding arrangements (although, curiously enough, those benefits were not denied to CIA officers, or to U.S. Foreign Service Officers, assigned to the Radios). Because the Radios were originally viewed as short-term operations, undertaken in what appeared to be imminent danger of war (broadcasters were in fact inaugurated during the Korean War), a pension plan and retirement benefits for the Radios' employees were not even contemplated by the Radios' managements and clandestine funders until a whole decade of operations had passed. Even then they were only accepted by those who directed the Radios on the initiative of the unions involved.

Notwithstanding the absence of retirement benefits, no effort was made by the Radios' managements to compensate employees for their disadvantaged position in comparison to others serving the Federal Government. In fact, the union initiative which eventually led to establishment of a retirement system began in 1957 with a concerned—and unsuccessful—effort to raise the level of staff pay to that prevailing at the Voice of America (with no hope of achieving levels equal to comparable private industry).

In 1957 the first union contract at Radio Free Europe, for example, set salary scales and provided for a 15% general increase in salaries, either through those salary scales or a general increase, whichever was greater. The new RFE salary scales gave a Deputy Desk Chief $115 a week, a Senior Editor $100 a week. The comparable Voice of America figures at that time (GS–12 and GS–11 or GS–10) were $145 and $122 or $133 a week. The 1958 RFE contract brought increases of $5 per week in Radio salaries—still below the comparable VOA pay.

The union negotiators of that time tell us that the Radio managements, in the discussions which eventually produced a retirement plan, never once suggested that introduction of such a system should involve some reduction in pay or benefits originally given to the Radios' staffs to compensate for the lack of retirement benefits. Indeed, in view of the facts of staff compensation, any such claim would have been untenable.

When the Radios finally agreed in 1959 to the introduction of pension plans, they imposed a requirement of 10 years' service as a full-scale employee for the vesting of an employee's rights in the plans. This meant that those who left the Radios with less than 10 years' service and entered other Federal employment lost those years so far as credit for their retirement is concerned. As for former employees of the Radios whose service equalled or exceeded 10 years (there are about 10 such persons in Federal employ) their Radio pensions—available to them at age 65, or in reduced amounts at ages down to 60—would be based on their lower earnings when much younger, and on salary scales a fraction of today's. They would thus represent a considerable loss compared to giving them full credit for all of their Federal service.

Depending on their category of employment, some persons now Federal employees made contributions to the United States Social Security System while at the Radios. Others did not. (In the case of a number of former Radio employees now in Federal employ, they achieved American citizenship, and with it the possibility of Federal employment, including VOA, while serving the Radios abroad only thanks to an Act of Congress which specifically permitted them to count time serving the Radios abroad towards the residence requirement for naturalization.) Even among those who made Social Security contributions, there are those whose contributions were below the minimum required for vesting in the Social Security System. That time and their contributions are now lost to them.

There are approximately 50 current employees of the Federal Government who are affected by the inequities we are addressing. Some 44 are now working at the Voice of America. The other half-dozen are employed by such other Federal agencies as the ICA, the Trust Territories of the Pacific, the Board for International Broadcasting, the Department of Energy, the National Endowment for the Humanities, and the General Accounting Office.

On behalf of these 50 current employees of the Federal Government we would therefore like to solicit your support for an amendment to Title 5, United States Code. It concerns Chapter 83—Retirement, particularly Section 8332, Creditable service.

We are offering some suggested rewording of that Section which would specifically forbid use of prior service with the Government-funded Radios for benefits

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

under any other retirement system if used for credit under the Federal retirement system. This means that Federal employees who credit their service with the Radios for Federal retirement benefits cannot also credit that same time for benefits from the Radios' retirement plans or from the Social Security System.

But there are other concerns, besides the possibility of "double dipping," which need to be addressed. One is to the effect that however equitable or just this remedy might be, it risks creating a "precedent" that would open the floodgates to a deluge of demands on the Federal retirement system by great numbers of persons formerly associated in one way or another with CIA clandestine operations, and therefore these particular inequities should be continued.

We believe that the Congress of the United States, which sets no precedents if it does not wish to do so, is not as powerless to remedy inequities as this viewpoint suggests.

Beyond that, the suggestion of "precedent" merits closer examination: there are specific features of the Government-funded Radios that make them entirely unique—and inapplicable as "precedents."

For one, although RFE and RL were "clandestinely funded" by the CIA, they were not "clandestine organizations." Their functions, indeed, the organizations themselves, were openly and publicly espoused by Presidents of the United States, and by leading members of the Legislative and Executive Branches, of both parties. This cannot be said of any CIA "clandestine operations."

This unique status of the Government-funded Radios made it possible for their clandestine funders to avoid—indeed, it precluded—the special incentives, awards, or bonuses characteristic of CIA "clandestine operations." The employees of the Radios were thus not only disadvantaged in comparison to those in other regular Federal service—in terms of their employment—but, precisely because of the unique status of the Radios, they (except for the CIA agents in their midst) were deprived as well as any possible special benefits that might accompany CIA employment.

For another, and even more importantly, the existence of RFE and RL, after more than 20 years of clandestine funding, was openly and fully debated by the United States Congress in 1971–72. The Congress decided, by a very large majority, that the two Radios should be continued in the national interest, and that they should be funded by the regular and open Congressional procedures. There is no other case of the Congress mandating the continued existence and assuming the funding of activities previously funded by the CIA.

These unique features of the Radios, of course, refer to the past. To a past of ambiguities and improvisations. Our appeal to you concerns—indeed, is specifically limited to—leftovers of that past. For this reason our suggested rewording of Section 8332, Title 5, United States Code, confines the remedy we seek to those presently affected, i.e., to persons employed by the Federal Government only as of the date of enactment of the amendment.

We therefore, hope that this Committee, as a matter of justice and equity, will see fit to grant the remedy sought, which it appears can be achieved most simply by amending Section 8332 of Title 5, United States Code, as follows:

Retirement Credit for Service With Government-Funded Radios

Sec. ____. (a) Section 8332 (b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and";

(3) by inserting immediately after paragraph (9) the following:

"(10) subject to sections 8334(c) and 8339(i) of this title, service (other than service performed before July 1, 1946) in any full-time capacity for at least 130 working days a year, beginning after December 1, 1945, to the National Committee for a Free Europe, Free Europe Committee, Incorporated, Free Europe, Incorporated, Radio Liberation Committee, Radio Liberty Committee, Radio Free Europe/Radio Liberty, Incorporated, RFE/RL, Incorporated, Radio Free Asia, the Asia Foundation, the American Forces Network, Europe, or any part thereof, if such service is not credited for benefits under any other retirement system."; and

(4) by inserting between the second and third sentences immediately following paragraph (1), as added by paragraph (3) of this subsection, the following: "The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning service for the purpose of this subchapter of the type described in paragraph (10).".

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(b) The provisions of subsection (a) shall apply only with respect to an employee, as defined in section 8311 (1) of title 5, United States Code, who is so employed on the date of enactment of this Act.

RETIREMENT EQUITY FOR BINATIONAL CENTER EMPLOYEES

The BiNational Center Grantee problem arose in the United States Information Agency many years ago, but it has had its solution frustrated repeatedly and obsessively by the Secretary of State who administers the Foreign Service Retirement Fund and has been unsympathetic to the needs of USIA (now ICA) employees. Even though USIA management agreed that these employees were entitled to retirement credit, the State Department, supported by the Civil Service Commission, objected and suit was brought by our union. On May 2, 1974, Federal Judge Albert Bryant ruled in Taylor v Hampton (Civil Action No. 1178–72) that BiNational Center grantees met all the criteria of Federal government employment and were entitled to credit under the Federal retirement system. The court order read as follows:

U.S. District Court For The District of Columbia

WAYNE W. TAYLOR,
PLAINTIFF

ROBERT HAMPTON, ET AL.,
DEFENDANT

CIVIL ACTION 1178–72

ORDER: Upon consideration of Defendant's motion for summary judgment and Plaintiff's cross motion for summary judgment, and of the entire record herein, and it appearing to the Court that there is no genuine issue as to any material fact involved in this cause, and that Plaintiff is entitled to judgment herein as a matter of law, it is by the Court this second day of May, 1974.

ORDERED: That the Defendant's motion for summary judgment be denied and Plaintiff's cross motion for summary judgment be granted.

(Signed) WILLIAM B. BRYANT, *Judge.*

All those persons who were still in Federal employment were automatically able to benefit from this ruling. The Secretary of State interpreted the court order as applying only to personnel still on the rolls of the Foreign Service at the State Department and the United States Information Agency. For this reason the case was again taken to the court, on September 11, 1975, at which point the Secretary yielded to our view that the retirement credit also applied to all those who had been already retired either under Civil Service or Foreign Service and their annuities were adjusted retroactively.

This brought equity to almost all the persons except those who had been hired directly as BiNational Center grantees and were not ever shown, for that reason, as employees of the Foreign Service. Of these there are only a few still alive and equity would suggest that they also be entitled to credit under the foreign service retirement system. The Secretary of State, however, still interprets the court ruling to their prejudice despite the obvious fact, now conceded by ICA, that they were foreign service employees.

An example of the problem is the case of Paul Johnson of Newport, Rhode Island. Because of an administrative USIA ruling against "cancer" employment after age 60, he was given further "limited indefinite FSS" status which excluded him from the retirement system even though he had previously served nearly six years as a BiNational Center grantee. Had that BiNational grantee been recognized, he would have been considered to be in the career foreign service and his subsequent FSS appointment computed as part of the foreign service retirement system. Thus he was doubly denied retirement credit.

For the reasons given, I request equity for those very few persons, such as Paul Johnson, and petition you to incorporate the following text in the legislation you are drafting.

"Any person who was appointed as a BiNational Center Grantee and who has completed at least five years satisfactory service in that capacity or any other appointment under the Foreign Service Act of 1946, as amended, shall become a participant in the Foreign Service Retirement and Disability System and shall

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

make an appropriate contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of Section 652 of the Foreign Service Act of 1946, as amended.

ICA SPOUSES ABROAD

We favor the employment of spouses abroad in all non-career positions. However, complaints have been received that the spouses of senior Foreign Service Officers, who write the efficiency reports of more junior Foreign Service personnel officers at post abroad, manage to get much better positions much faster than the spouses of Foreign Service Information Officers. Our complaint here appears to parallel the general complaint of many women that the spouses of influential senior government officials somehow manage to get higher level grades in Washington than an equally competent wife of a private citizen or a lower ranking civil servant. We would wish to have equal affirmative outreach action among wives, especially since those married to lower ranking males probably need the money more than the spouses of senior officers. This complaint, by the way, is even more true of the spouses of personnel employed by the Agency for International Development.

SPECIAL PROBLEMS AT THE AGENCY FOR INTERNATIONAL DEVELOPMENT

The most immediate problem at the Agency for International Development relates to the developments initiated by the so-called Obey Amendment and the "Regulations" submitted to the Congress on May 1, 1979.

We consider the Regulations most mischievous, and rather than repeating arguments which we have employed earlier, we should like your permission to attach them as Annex III to this statement and to summarize some, expatriating only on those issues which treat with equity, particularly for women, minorities and all other persons now in the clerical or technical positions who are qualified to assume professional and administrative roles when opportunities arise.

THE MISCHIEF OF THE PROSPOSED REGULATIONS

The Agency for International Development, concedes that the Regulations will not result in a single additional position becoming available abroad. These positions are set by ceilings imposed by the Secretary of State and unless the Congress mandates by legislation more positions abroad, the Regulations will not achieve the alleged legislative purpose of the so-called Obey Amendment. Consequently, the Regualtions fail to achieve the very purpose for which they were intended by Representative Obey. That in itself is mischievous behavior—pretending to be able to achieve something which will not be possible.

The second mischief is worse. Prior to issuing the regulations, the Agency for International Development had been spared one of the acute problems that have plagued the Department of State and the International Communication Agency—this is the pretense to a higher personnel status arising from an established exclusive right to certain so-called "prestige" jobs in Washington. Unlike the Department of State and the International Communication Agency, AID had formerly assigned foreign service personnel and civil service personnel to any and every position as it became available and claimed that it sought the best qualified person to fill that position. Because foreign service experience is an important, sometimes the most important, factor in filling certain positions, many of these have been regularly assigned to members of the foreign service. However, in the event some civil service person was more qualified than the available foreign service personnel, the position could be filled immediately by that person in the civil service. This advantage to both management and employees is now lost. Already 809 positions in Washington have been designated exclusively for occupancy by Foreign Service personnel.

The impact of the change will be unfortunate. In the past, as more and more younger women, particularly persons of black (African) and Hispanic background, became educated in foreign policy matters, they discovered that, while they still had to enter at the clerical and technical level they could at least aspire to professional and administrative functions. The past system could facilitate

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

such an upward mobility if applied consistently because the best qualified person, irrespective of foreign or domestic service, could apply for assignment. The new regulations frustrate this because these "prestige" professional jobs are now designated as foreign service and thereby they are segregated, by administrative decision. Only persons who serve abroad now are entitled to fill them. This places a premium on, and gives an inordinate advantage to, past foreign service. Some person, let us say a white male, who entered the AID foreign service ten years ago and served mostly in Afghanistan or Pakistan, now knows that certain prestige positions are in effect restricted by regulation to white males in the AID foreign service, even in areas not related to their own experience. The most educated married black woman, in the General Schedule, who has a graduate degree in West African affairs and who is much more qualified than anyone else in AID, would have difficulty in obtaining an assignment, for example, on the Ghana desk, because that position now has been "reserved" to the foreign service. She might have to remain a typist or secretary or computer operator all her career at the Agency.

We believe this situation leads to a caste system, institutionalized supposedly to send more people abroad, but actually serving only as an additional barrier to equal opportunity and affirmative action at home. For this reason we continue to oppose these regulations as being mischievous and because we consider them questionable and not in compliance with several Constitutional and statutory requirements seeking to foster equal employment opportunities and genuine competitiveness based on merit principles.

The Regulations have been in force long enough for AID employees to experience their discriminatory impact. For example, GS employees have applied for conversion to the Foreign Service and have been denied conversion due to the alleged non-availability of actual foreign service positions abroad. Nevertheless, individuals are being hired as new employees into the foreign service and assigned to Washington positions newly designated for the foreign service.

This relates to the right of present AID employees of access to foreign service positions. But even in the matter of their rights to remain in their present positions, General Schedule employees are suffering discrimination. Many of those who encumber positions that are now being designated Foreign Service are not permitted to retain their jobs, as the Agency assured Congress when submittting the Regulations. Instead they are being reassigned to other General Schedule positions.

Unless the Congress reviews the highly questionable, reactionary policies now being carried out at the Agency for International Development, we fear that the morale and efficiency of that Agency will further decline to the level of a likely scandal. We most earnestly urge that the Congress review this situation at the very earliest possible date to ascertain whether these Regulations are compatible wtih the fundamental purpose of Foreign Service reform as perceived by the Administration in its own bill or as defined by Congress in its legislative wisdom.

In the interim, it might be reassuring to the employees of the Agency for International Development if your Committee requested the Comptroller General and the General Accounting Office to prepare a report as to the proprieties of the actions taken in the management at AID in drafting these regulations and in implementing them in a fashion inconsistent to commitments made to the Congress when they were issued.

CONCLUDING REMARKS

I should like to reiterate our most sincere appreciation for your invitation to testify before this Committee and to assure you of the fullest cooperation of our two locals and our national headquarters in your enterprise.

I would like to take the opportuniity to stress that good foreign policy decisions depend not only on good personnel but on proper institutional structures. I share the view of many persons, including the members of the so-called Murphy Commission, that these are now in disarray and that it is important to relate the operations of the Departments of Agriculture, Commerce, Energy, Labor and Treasury more closely to those of the recognized foreign affairs agencies, AID, ICA and the State Department.

And I would like to again emphasize that it is critical at this time that due recognition be made of the commitment and personal sacrifice of members of the foreign service to the nation.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ANNEX 1 TO STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

1. SECTION 204. THE DIRECTOR GENERAL

This section gives the Director General a vague jurisdiction over the Foreign Service employees of USICA which does not currently exist. Neither the State Department nor the Director General has an obligation to consult with USICA employees or their exclusive representative. Therefore, the greater the role of the Director General in USICA personnel matters, the less meaningful is our collective bargaining relationship with the agency. In addition, the authority of the USICA Director is undermined. We ask for clarification that the Director General will exercise no authority over the Foreign Service personnel of USICA or AID.

2. SECTION 206. THE BOARD OF THE FOREIGN SERVICE

We do not understand what function the Board is expected to fulfill now that labor-management relations and other adjudicatory functions have been assigned to other authorities. For the same reasons discussed above, we cannot accept a situation where the Board is making personnel rules and regulations. If the Board is to be retained purely as an advisory body, it should be insured some degree of independence by a provision that administrative services will be provided to it upon request of the Chairman.

3. SECTION 421. FOREIGN SERVICE SCHEDULE

We are disturbed that the Department of State apparently does not intend to make available its pay proposals during the period that this bill is under discussion. We object to this since from the beginning, the Department has enlisted support for its legislative effort by suggesting that it would improve Foreign Service pay. Since the Hay Study Report is complete, the State Department and OMB should make known its proposals for pay linkage.

4. SECTION 441. PERFORMANCE PAY

Subsection (c)—We have misgivings about selection boards making recommendations for performance pay. The same board will be determining pay, promotion and retention. Different factors are involved in each of these determinations. Selection boards already work under the pressure of time and limited resources. Adding this function will worsen that situation. If performance pay must be instituted, we suggest that an alternative mechanism be devised for administering it.

Subsection (d)—As written, this section provides that recommendations for the highest performance awards to SFS members in all three foreign affairs agencies must be reviewed by the Secretary of State before going to the President. We propose amending the section to allow the Director of USICA and AID Administrator to make recommendations directly to the President or to a third party such as the Office of Personnel Management.

5. SECTION 462. SPECIAL ALLOWANCES

This provision was passed by Congress as a substitute for premium pay after the latter was prohibited to all Foreign Service Officers and Foreign Service Information Officers by the Pell Amendment (section 412, P.L. 95–105). We opposed the Pell amendment and have sought its repeal. Junior and middle level officers should be entitled to overtime compensation on the same basis as other government employees. Special allowances are not an adequate substitute. Only seven positions in USICA are currently certified as eligible.

6. SECTION 603. SELECTION BOARDS

Item (2) should be deleted, per our comments regarding section 441, performance pay.

7. SECTION 602. PROMOTION AND RETENTION IN THE SENIOR FOREIGN SERVICE

Subsection (b)—This section should be deleted. By making the need for attrition a prominent factor, this section conflicts with the provision that promotions will be made based upon merit principles.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

8. SECTION 641. RETIREMENT FOR EXPIRATION OF TIME-IN-CLASS

Subsection (a)—Provision should be made for a minimum time-in-class for those in the SFS if the "limited extension" is retained, to assure to officers a reasonable expectation of continued employment for a given period. Periods of five and eight years have been suggested.

Subsection (b)—Deletion should be made of the "limited extension". This provision has no equivalent in the Civil Service Senior Executive Service. It places awesome power into the hands of management to eliminate senior level officers for any number of reasons, and to keep them in a constant state of uncertainty and conformity. In our view this device will not enhance performance considerations but will expand the area for non-performance factors.

Subsection (c)—We propose amendment of this section to provide a "parachute clause" similar to that in the SFS to entitle a SFS member to retreat to the FS–1 level for the remainder of time-in-class. Addition would be made of the following language:

"Members of the Senior Foreign Service shall, upon election, be entitled to return to the FS–1 level and assigned to a non-SFS position for the period, if any, remaining to be served in class 1 under applicable time-in-class regulations. In determining the length of time remaining, periods previously served in class 1 and periods served in the SFS shall be subtracted from the time-in-class period."

9. CHAPTER 10. LABOR-MANAGEMENT RELATIONS

Our position is that the labor management chapter of the Civil Service Reform Act should apply to the Foreign Service except with regard to definition of unit and unit membership. The existing units reflect the unique characteristics of the Foreign Service although admittedly they do not conform with normal labor relations principles. Should the present legislation go forward with a separate labor management system for the Foreign Service, we have the following specific objections or comments which in large part, simply point to areas in which the proposed bill is not equivalent to the Civil Service Reform Act.

Section 1005(a) Management Rights—In paragraph 1, deletion should be made of the words, "of types and classes". In paragraph 2, deletion should be made of the word "promote". Paragraph 5 should be deleted in its entirety.

Section 1011. Foreign Service Labor Relations Board—The Board should be made independent from the Secretary of State. Establishment of an independent third party whose members are removable only by the President for cause was a major objective of the labor management section of the Civil Service Reform Act. We would point out that the Foreign Service Labor Relations Board does not include a General Counsel to prosecute unfair labor practices.

Section 1014. Foreign Service Impasse Panel—In subsection (e) deletion should be made of the words, "or the Secretary finds that the Panel's action is contrary to the best interests of the Service". As written, the Panel's final orders are not binding on the foreign affairs agencies.

10. CHAPTER 11. GRIEVANCES

Section 1103. Freedom of Action—Subsection (b) represents a departure from current procedures which we do not favor since we believe that with regard to a legislated appeal procedure, individual choice of a representative is most appropriate. The Foreign Service Grievance Board has jurisdiction over matters which in the Civil Service system would be considered adverse actions and appealable to the Merit Systems Protection Board. Therefore, we propose deletion of subsection (b) and substitution of the following:

"(b) The grievant has the right to a representative of his or her own choosing at every stage of the proceedings. The grievant and his/her representatives who are under the control, supervision or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare be present and to present the grievance. Where the grievant is not represented by the exclusive representative for Foreign Service employees of the agency, the exclusive representative shall have the right to be present during the grievance proceedings."

SECTION 1113. BOARD DECISIONS

The Statute should abandon the distinction between those cases in which remedies may only be recommended by the Board and those cases in which rem-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

edies may be ordered. The procedure should be made equivalent to binding arbitration. This would be achieved by making the following amendments to section 1113:

Delete subsection (d).

Revise subsection (b) as follows: add a new paragraph (5), "to promote an employee who is found to have previously failed to receive proper consideration. Promotion may be made retroactive where the Board finds that, but for the failure to be properly considered, the grievant would have been promoted."

11. SECTION 1203. COMPATIBILITY AMONG AGENCIES EMPLOYING FOREIGN SERVICE PERSONNEL

Deletion should be made of the word "maximum" in the third line of the section. While we agree that the personnel systems of the foreign affairs agencies should be compatible enough to permit interchange of employees and reasonable personnel administration at overseas posts, the word "maximum" implies much more, and perhaps, uniformity. There are any number of reasons why each agency should be able to manage its own personnel: different promotion patterns and rates of attrition, special needs for specialists, varying degrees of political sensitivity. Congress recently affirmed its belief that USICA should be an autonomous agency. To insure that autonomy, references to "maximum" compatibility should be eliminated.

12. SECTION 1205. EXCLUSIVE FUNCTIONS OF THE SECRETARY

Deletion should be made of part (6) in accord with our comments on section 441 (nominations for performance awards).

Deletion should be made of part (12) in accord with our comments on section 1011 of Chapter 10 (Foreign Service Labor Relations Board).

13. SECTION 2102. CONVERSION TO THE FOREIGN SERVICE SCHEDULE

Subsection (f)—Deletion should be made in lines 16–17 of the words, "not more than three years after the effective date of this Act", and substitution made of the words, "the time-in-class period to be determined by the Secretary which in no case shall be less than five years". This provision has no equivalent in the Civil Service Senior Executive Service where a person not opting into the SES may remain in grade without loss of pay or benefits and does not face termination. The section as proposed is coercive; an individual not within three years of retirement will have no choice but to enter the SFS. Entry into the SFS is supposed to be voluntary.

14. SECTION 2103. CONVERSION INTO THE CIVIL SERVICE

Subsection (b)(1)—Deletion should be made of the words, "prior to July 1, 1981". This date does not represent the expiration date of the AFGE 1812/USICA agreement regarding domestic Foreign Service employees.

15. SECTION 2104. PRESERVATION OF STATUS AND BENEFITS

Under Secretary of State Read testified on June 21 that employees converted to the Civil Service will not be subject to loss of pay or grade as long as they do not voluntarily move to a different position. This guarantee does not appear in the bill.

16. SECTION 2403. REPORTS

Deletion should be made of the word, "maximum" in lines 7–8 on page 203 in accord with comments made on section 1203 (Compatibility among agencies employing Foreign Service personnel).

This section assigns solely to the Secretary of State the duty of reporting to Congress and making recommendations on the progress of achieving conformity. The Director of USICA and Administrator of AID should be given access to the Congress to report and recommend. Foreign Service employees in USICA fear that this section is an invitation for a recommendation to eliminate the separate FSIO corps, a step that we would vigorously oppose.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ANNEX II

§ 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary of Transportation, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary of Transportation shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

(b) A law enforcement officer or a firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(c) An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Company or the Canal Zone Government, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(d) The President, by Executive order, may exempt an employee from automatic separation under this section when he determines the public interest so requires.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 571, amended Pub. L. 92–297, § 4, May 16, 1972, 86 Stat. 144; Pub. L. 93–350, § 4, July 12, 1974, 88 Stat. 355; Pub. L. 95–256, § 5(c)(1)–(3), Apr. 6, 1978, 92 Stat. 191.)

§ 8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(d) An employee who is separated from the service—

(1) involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.

(f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

50–236—80——20

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is enitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.

(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(i) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title. (Pub. L. 80–554, Sept. 6, 1966, 80 Stat. 571, amended Pub. L. 90–83, § 1(75), Sept. 11, 1967, 81 Stat. 214; Pub. L. 92–297, § 5, May 16, 1972, 86 Stat. 114; Pub. L. 92–382, § 1, Aug. 14, 1972, 86 Stat. 539; Pub. L. 93–39, June 12, 1973, 87 Stat. 73; Pub. L. 93–350, § 5, July 12, 1974, 88 Stat. 356; Pub. L. 94–183, § 2 (40) and (41), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1147, 1175.)

ANNEX III

PREPARED STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The American Federation of Government Employees appreciates the opportunity to comment on the proposed regulations, "22 CFR Chapter II, Agency for International Development, subchapter B—Personnel."

Because of the peculiar genesis of these regulations, the many versions in which they have been successively cast, and the exegesis by legal authorities and ultimately by the courts which may be placed on their complex and troubled origins, I shall try to simplify the presentation of our concerns as much as possible. For that reason, I should like to comment on the regulations under the following headings:

1. The Date of Submission of the Regulations;
2. The Regulations as "Law";
3. The "Best Personnel System" Using Two Personnel Authorities;
4. Specific Comments on the Regulations as Submitted;
5. Recommendation that the Congress Disapprove the Regulations.

THE DATE OF SUBMISSION OF THE REGULATIONS

I note that the regulations purport to have been submitted under Section 401 of Public Law 95–424, 92 Stat. 956, 22 USC, enacted on October 6, 1978. If I am not incorrect, it appears that that law required the proposed regulations to be submitted not later than March 15, 1979. Yet, to my knowledge, they were submitted on, or approximately on, May 1, 1979.

It appears that, with respect to these regulations, there may be a legal deficiency arising out of that fact alone. This concern appears to be shared by the House of Representatives which has, reportedly, taken some action by amending H.R. 3324 (the 1980–1981 Authorization Bill for the Agency for International Development and the Peace Corps), seeking to overcome this deficiency by substituting the words "May 1, 1979" for "March 15, 1979". As to whether this action by the House is sufficient to remove the legal handicap, I am unable to judge because H.R. 3324 has not yet received consideration by the Senate and, certainly, it has not been enacted.

All of us then, at this hearing, are confronted with certain exceptional legal fictions which appear not to have been anticipated by the Founding Fathers, the drafters of the Constitution, and the judges of the courts. A shadow of illegitimacy falls over the very submission of these regulations even before the Congress has had the opportunity to reflect on them as to their Constitutionality or their intrinsic merits.

That this shadow may be more than an insubstantial shade of the moment is suggested by a recent action of the Congress in passing judgment on D.C. Act 2–10 which presented a similar problem in law. That Act, creating a new person-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

nel system for the District of Columbia, included a series of provisions apparently in conflict with the statute establishing Home Rule for the District of Columbia. Among others, to which the Senate Governmental Affairs Committee took exception, was the inclusion within it of provisions similar to H.R. 10, the Hatch Act amendments passed by the Congress but vetoed by the President. These provisions would have entitled D.C. employees to greater rights to participate in political activities. The legal conflict which the Senate Committee perceived arose from the curious juxtaposition of effective dates. Although forbidden by the Home Rule Act to legislate in this area, the D.C. Council incorporated H.R. 10 in Act 2–10, on the stipulation that it would not become effective until the Congress lifted the prohibition to legislate. Even though this was clear and repeatedly reinforced in the legislation at many points, the Senate Committee insisted that the D.C. Council be convoked in emergency session and repeal this provision, because of the failure of the D.C. Council to comply *literally* with the Home Rule Act. The governing date was held by the Committee to be the date of approval of Act 2–10 and not the date on which the Congress lifted the prohibition.

In our opinion, the regulations submitted to you by the Agency are under a cloud at least as somber as that involved in Act 2–10 of the D.C. Council. Thus, it appears that the chronological date of the 90 days for Congressional consideration is highly ambiguous. Will these 90 days be different in the House and Senate? Do the 90 days begin from the date of hearings in each House of Congress? Or do they begin on the date on which the Senate accepts, if it does, the House amendment in H.R. 3324, or the date on which the President signs it?

This factor might not have been so important if the provisions of Section 401 of Public Law 95–424 required both Houses to approve the regulations. However, the opposite is true. If neither disapproves, the regulations are to have the force of law. Can one House of Congress now deny another House the right to deliberate action? Would that be the case if the Senate did not have the opportunity to review these regulations, or even legislate on H.R. 3324 within 90 days?

In any case, we urge that these issues be clarified so that all the interested parties have the same understanding of fact and law. For our part, we can state now that this very circumstance of confusion has seriously disturbed the employees of the Agency for International Development. Quite frankly, they fear that, if this kind of ineptitude awkwardness, and inefficiency accompanies these regulations at the outset, when one would hope for clarity, the future will probably bring manipulation, deviousness, and policies based on *ad hoc* and *ad personem* arrangements violating the most fundamental precepts of merit personnel systems. The prospects for likely appeals to the Office of Personnel Management, to the Special Counsel of the Merit Protection Board and to the courts already loom large in the visions of these employees.

This certainly does not indicate a well-managed Agency with high morale among its managers and employees.

THE REGULATIONS AS "LAW"

Obviously, all Regulations issued pursuant to statutes have the "force and effect of law," even if the Regulations do not so state. There is, however, an order of precedence in "law," the highest being the Constitution. Next are statutes enacted by Congress. Lowest are Regulations and Executive Orders. The highest cannot be transgressed by the lower and the Congress cannot change this order and cannot divest itself of its own proper powers, rights, or duties nor the Executive arrogate Congressional rights to itself.

Statutes can be passed only by the Congress of the United States and no regulation can supersede or nullify any statutes unless the Congress has previously specifically modified or repealed those statutes which had the force of law. Otherwise, we would confront the Constitutional issue that the Congress had permitted the abrogation of its own inalienable rights under the Constitution to legislate and had invested unconstitutionally the Executive Branch with the exercise of these rights by Executive Regulations or Orders.

The text of the Section 401 of Public Law 95–424, which is cited in these Regulations, does not reveal such a Congressional intent to set aside the statutes which apply to Federal employees nor does the legislative history indicate that such a possible intent was even considered. Moreover, since the Civil Service Reform Act of 1978. Public Law 95–454 was enacted later than Public Law 95–424, it is the statutory standard by which the courts will determine Congressional intent regarding the legality of any Regulations issued at this time. Con-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

sequently, all the rights of Federal employees which have not been altered by statute are applicable and any regulations issued pursuant to Section 401 of Public Law 95–424 may not transgress civil service law, least of all the provisions of Public Law 95–454.

THE BEST PERSONNEL SYSTEM USING TWO PERSONNEL AUTHORITIES

As to the best system, it is my view that all personnel who serve in the United States and who, in the normal course of their assignments will not be serving abroad, should be in the General Schedule.

I am pleased to be able to cite in support of my judgment the views of the Commission on the Organization of the Government for the Conduct of Foreign Policy. I recommend that portion of its Report dealing with personnel to you and enclose a photocopy of pages 171–175, entitled "Improving Departmental Personnel Management," as an Annex to this Statement.

The model suggested by the Commission has become the standard used by all departments and agencies dealing primarily in foreign affairs including the Department of State and the International Communication Agency. As you know, our union represents both the civil service and the foreign service components of the latter Agency and we participated actively in the recent Reorganization Plan which restructured that Agency.

On the basis of our own involvement in seeking solutions for personnel problems in agencies having foreign affairs roles and programs, it is our view that all clerical, technical, administrative, professional, policy, and "other" (guards, etc.) personnel, whose employment will be primarily or exclusively in the United States, should be under the classified civil service, where positions are based on rank-in-job. These should include those professional employees (lawyers, accountants, contract specialists) whose main function is to deal with domestic counterparts (such as domestic universities, domestic private institutions, consulting firms).

On the other hand, all those personnel whose sole or primary function will be to deal with foreign governments, more specifically to reside abroad and supervise programs carried out abroad, should be in the foreign service. We state this on the premise that the exigencies of foreign service abroad can be better met, in very many cases, by a rank-in-person personnel system. For the sake of simplicity, and uniformity, it is logical to recognize these frequent exigencies and assign persons regularly serving abroad to a specialized foreign service which has readily available special authorizations and appropriations to meet these exigent needs.

Both for rotational reasons, and to assure their proper influence on the policies, both substantive and personnel, of the Agency, adequate positions in the United States should be reserved for foreign service personnel.

It has been suggested by some persons that all "policy" positions should be in the foreign service because the Agency is involved in foreign operations. Although this attitude may appear to be based on self-evident principles, I should like to point out that such a claim has not been recognized for selecting even the Secretary of State and that the recent Administrators of the Agency, the persons in its top policy making positions, seem not to have emerged from the foreign service of that Agency. Instead, it appears, the intention in appointing and confirming the A.I.D. Administrator was to assure that U.S. policies, the wills of the Congress and of the President, were carried out in the administration of these aid programs.

As to other senior "policy" positions, I should like to inquire whether the recent authorities established under Public Law 95–454, the Civil Service Reform Act of 1978, for the "rank-in-person" and "policy related" Senior Executive Service appear to be totally inadequate for the needs of "policy making" in the Agency and whether there is a real need to establish a novel and unprecedented Foreign Senior Executive Service to discharge these functions.

I raise this point because it has been held by legal counsel of the Civil Service Commission, now the Office of Personnel Management, that every Department head, even now, has the basic legal right to order the transfer of any Federal employee, whether civil service, excepted service, foreign service, or any other service, anywhere in the world. Of course, the transfer must be reasonable and must not be discriminatory or capricious or serve ulterior purposes. For the vast majority of Federal employees, Department heads do not exercise these rights because they can achieve their personnel missions more easily and less expensively by other means, such as voluntary reassignments or local hire or tem-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

porary duty or detached service assignments. However, in those cases where Departments need, in fulfillment of their missions, to transfer personnel to other geographic locations, including service abroad (as in the case of various auditors or inspectors, the immigration service, the customs service), they do so under the civil service authorities made known in the job descriptions of their employees or posted as a condition of employment. Just as in the foreign service, civil service employees may refuse to serve, of course, in which case, if insubordinate, they can be reprimanded, disciplined, or terminated. Consequently, it is a serious misstatement that the authority to assign or transfer personnel abroad resides only in the foreign service.

Regarding the best personnel system, I should like to reiterate that all positions, clerical, technical, administrative, professional, policy making and "other," when the function will be primarily to discharge duties in the United States, should be under the authorities established in Title V of the Federal Statutes, governing the Civil Service in its various denominations (Senior Executive Service, Excepted Service, Classified and Competitve General Schedule and Prevailing Wage Rate). All functions which will be discharged by regular assignments abroad should be in the foreign service, as they are in the Department of State and the International Communication Agency, with positions reserved in Washington, D.C., for foreign service personnel on rotational assignment in the United States. All policy making positions requiring explicit foreign service experience should of course be reserved to experienced foreign service personnel, but all senior policy positions which do not require primary foreign service experience should be in the Senior Executive Service under Subchaper II of Title V, United States Code, since these personnel can be required to go anywhere when needed.

SPECIFIC COMMENTS ON THE REGULATIONS AS SUBMITTED

Our first observation is that the Regulations do not conform to the instructions in Section 401 of Public Law 95–424. This is simply a statement of fact, of course, because we do not believe that that passage is legally sufficient to bring into being its purpose.

Consequently, for the rest of this testimony, I shall set aside the legal issues and discuss the personnel proposals solely in terms of merit.

Earlier, in describing the "best" system I had made the point, and adduced the views of others, to the effect that sufficient positions should be reserved to accommodate foreign service personnel on rotation. This is a very different issue from designating specific positions, that is, reserving them exclusively for foreign service personnel. This makes for inflexibility, an inflexibility which harms both management and employees.

First, such designation is in effect a further affirmative action criteron in its worst form, the quota system. Second, it is an administratively determined affirmative action criterion which takes in fact precedence over all the statutory affirmative actions mandated by Congress, including Veterans Preference, laws against discrimination because of sex, race, or national origin.

Thirdly, the regulations violate the most important purpose of Section 401—to get personnel overseas. The regulations submitted by the Agency do the reverse. They will mandate an increase in the number of foreign service personnel in Washington, D.C. All the correspondence and comments which we have read indicate that currently there are 470 foreign service personnel in Washington whereas, under the Regulations, there will be eventually nearly 800, 700 in designated positions and another 100 in General Schedule positions.

I note that, for some reason, the Agency's personnel tables seek to obscure this eventual development by limiting the identified foreign service positions to a time span of five years. We regret this obfuscation, because a careful reading reveals that 700 positions will be "designated" and another 100 positions will, in fact, be "reserved" for foreign service personnel within the General Schedule grades.

I have already stated that we believe it is illegal to impose conditions by regulation which violate rights granted by statute. We believe such illegal situations will be created in every case where civil service personnel will be told they must join the foreign service or will be denied the normal promotions in the career ladders in which they are situated. The mere fact that a position in a higher grade has been "designated" foreign service will not, in our opinion, be a barrier to the civil servant obtaining redress and in fact obtaining the promotion. We are sure that the rights of Veterans, of women, of minorities, will not be foreclosed by any such devious administrative action.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Thus, in the end, it appears that the regulations will collapse as soon as they are tested by the rule of statute.

We hope, that, for the sake of the interim morale and efficiency of the Agency, the Congress will not permit such an anguished demise of proposals whose birth have all the characteristics not only of illegitimacy but unviability.

RECOMMENDATION THAT THE CONGRESS DISAPPROVE THE REGULATION

For all the reasons which we have cited, I recommend that Congress disapprove these regulations as inconsistent with the requirements of Section 401, inconsistent with Constitutional criterion, violative of statutes, and unworthy in their conception and formulation as measured by the standards of a merit personnel system.

In their place, we recommend that the Congress draft a new set of statutes applicable to all Foreign Affairs Agencies, including the Department of State, the International Communication Agency, and the Agency for International Development.

Such a Congressional initiative would provide viability and legitimacy to the sound purpose for which Section 401 was written—to get foreign service personnel abroad as quickly and as long as possible.

In conclusion, I should like to state once again our appreciation for the opportunity to comment and to assure you that we will cooperate with the Congress to the fullest extent possible in seeking new, better legislation for the personnel of all the foreign affairs agencies.

The FSO in our view, though now recruited as a generalist, becomes potentially a specialist in conducting bilateral relations. In today's world, he is not a "foreign affairs generalist" in the sense of seeing national policies in Presidential and Secretarian perspectives. There are too many streams of consideration and competences which must be integrated with bilateral competence to produce foreign policy in a world where multilateral issues will increasingly predominate. However, the FSO should have the opportunity to earn the broader designation by solid achievement in many subject matter areas, by reaching out to broaden himself through assignments and training and by competing with others within and outside the Departments.

In one area in particular the FSO must intensify his efforts and develop his talents: the rigor and depth of foreign assessment. Some analysis and assessment is now performed in connection with political, economic, military, and technological reporting. But studies for this Commission and others indicate that present reporting, while voluminous, too often focuses on description of events and conversations and too little upon the meaning and longer-term possibilities. In Chapter 9 we have discussed in considerable length the nature of this assessment role.

An increase in analysis and in the ability to explore and present bold policy and program options does not come simply by willing it at the Secretary's level. It can only be the product of a broad, well-conceived strategy which includes: recruiting, developing, promoting and encouraging people who are at home in this task. If we want innovators and free systematic exploration of ideas, management must set a new framework and behave in a way which demonstrates its commitment. The Commission recommends that:

The Foreign Service should be recruited, trained, and sized to its historic mission—that of representing U.S. interests in foreign countries. This requires people willing to and psychologically attuned to serve in alien and difficult situations and who have strong basic competence in area studies and language.

A major change in emphasis, however, should be directed toward improvement in rigorous short and longer term assessments of U.S. interests and analytic reporting.

The officers should be broadened by experience and training for the new assessment emphasis, particularly in the area of economics.

Improving Departmental Personnel Management.—The problems of personnel management, whether those of the functional bureaus or the Foreign Service, are symptoms of a more fundamental problem. The top management of State is of necessity so policy and externally oriented that it has little time for sustained attention to internal management. All Secretaries of State have shown interest in management and a desire to make lasting improvements in the working of the Department. But sustained attention to internal management strategy and implementation has been lacking since the era of Marshall and Acheson.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Past studies have focused on the number two man in the Department, now the Deputy Secretary. Many have felt he should play the role of "Mr. Inside," and preeminently concern himself with Departmental management. As the alter ego of the Secretary, however, he faces heavy policy pressures. He serves as Acting Secretary when the Secretary is out of the country. He is on tap with the White House and bears a large share of the burden of Congressional testimony. He is also absorbed in interagency problems, particularly with Defense. This problem is frequently exacerbated by fuzzy delineation of duties between the Secretary and his Deputy. The "one-two relationship" is always difficult, even with experienced managers involved.

The greatest need is to develop a clear Secretarial view in the management of the Department. We conclude that it is feasible and logical to use the Deputy Under Secretary as the major vehicle for meeting this need. There should be a clear Presidential and Secretarial charter as to what is to be done. The individual selected for this position must have the management and foreign policy stature and closeness to the Secretary to do the job; there must be adequate arrangements for reporting to the Secretary through the Deputy and for keeping abreast of the evolving substance of foreign policy.

It is important to emphasize that the Secretary remains responsible for the management of the Department and its personnel and that the Deputy Under Secretary is acting for him. Also, personnel management should be coupled with budget management under the Deputy Under Secretary for Management. The combination of budget and personnel provides the necessary strength to plan and carry out this difficult assignment.

The vacuum in consistent management direction from the top has been filled by the Foreign Service, the continuing body which cares most. Today, it dominates the Department through the personnel management function. The assignment process is of course, a critical element in this control.

The chief of personnel in the State Department is the Director General of the Foreign Service, who by law, must be a Foreign Service Officer. The rotation in the job is high; there have been 13 Directors General in 28 years. The person with the title of "Director of Personnel" reports to the Director General and is also an FSO. Moreover, the four Deputy Directors of Personnel heading the major personnel functions are FSOs, as are most of the other major subordinate jobs in the personnel area.

This condition makes for a tendency to visualize personnel policy for the Department in terms of the needs and aspirations of the Foreign Service Corps. It results in high turnover and lack of professionalism in personnel activities. It must be changed if the Department wants to develop a professional personnel function which meets in optimum fashion its needs for special competence and continuity.

The Board of the Foreign Service is advisory to the Secretary of State on procedures and policies related to administration of the Foreign Service. It is established by Executive Order and all functions are vested in the Secretary. The Board is composed of four officials of State, one representative each from AID, USIA, Commerce, Labor and the Chairman of the Civil Service Commission. OMB has observer status. The current chairman is the Deputy Secretary.

In light of the proposals herein to strengthen Departmental personnel management, the role, functions and membership of the Board of the Foreign Service should be renewed. Its main continuity function might be to advise the Secretary on cross-agency aspects of overseas representation and reporting by the Foreign Service. Perhaps it should be given a wider role in advising on executive development and coss-agency exchange and training.

The Commission recommends that:

Responsibility for Department-wide personnel management functions should be centered in the Deputy Under Secretary for Management, who should be made Under Secretary.

A modern, professional personnel function should be established at the Department level, with a Director reporting to the Under Secretary for Management. His task would be to see that viable careers are developed within all personnel categories and that all systems work to the full benefit of the Department.

The Director General of the Foreign Service should report to the Director of Personnel and should focus upon the administration of the high mobility officer component (FSOs) within prescribed Departmental policy.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The Board of the Foreign Service should be reviewed and reoriented to a new cross-agency mission as discussed above. The Under Secretary for Management should lead the review and be designated Chairman of the reconstituted board.

The Under Secretary for Management should be responsible for developing, for the Secretary's approval, an annual Department manpower plan as a vehicle for determining the needs for and deployment of people and skills over 3–5 years.

The Policy Planning Staff should play a key role in developing for the Secretary's approval basic guidance as to the policy directions, shifts in deployment emphasis at overseas posts, and critical competences to be acquired.

Executive Department.—The Department needs a strong extensive development program to produce the pool of career executives to fulfill its policy leadership role. The program should be based upon the following key principles:

All personnel in all systems in the Department should have the opportunity to rise to the top career jobs in Washington and overseas based upon merit and performance.

The GS, FSR/U, FSO, and FSS, and the major career ladders create within each, would be considered "feeder systems" leading to a Foreign Affairs Executive Service at the top (GS–16 and FSO/R, 0–2 and above).

Jobs in the Executive Service, as designated by the Secretary, would be filled, when vacant by a special "selection-in" process involving full review of all potential candidates and recommendations by line managers and the proposed Executive Development Staff.

Key "stepping-stone" jobs throughout the Department would be identified and used for career development purposes for candidates from all systems.

Supervisors at home and abroad would be made responsible for identifying and developing candidates with executive potential, and the supervisors would be evaluated on the performance in this score.

The responsibility for administering State's Executive Development Program on behalf of the Secretary should be placed on the Under Secretary for Management. Based upon the experience in industry, a professional Executive Development Staff should be established reporting directly to the Under Secretary and separate from the Department's regular personnel activities. This staff, which might number 10–12, would work with the Director of Personnel and other Departmental officials in performing the following functions:

Knowing in depth the best promotion candidates in all systems in the grades just below the executive level who might be qualified for designated jobs:

Recommending to the Secretary candidates for designated executive job openings;

Developing overall policy and procedures for an executive manpower system;

Assisting units of State in defining executive jobs accurately and in developing annual executive manpower reviews; and

Monitoring the operation of the program from the perspectives of the Secretary.

The Executive Development Staff must be highly competent, objective professionals, and perceived as such throughout the organization. They are not kingmakers. Their recommendations on filling designated executive jobs, however, would supplement those of Department managers and would be based upon independent and extensive investigations, including interviews with the candidates, their subordinates, their peers, and their supervisors. This procedure would provide the Secretary with a new viewpoint in the selection of executive talent.

We further believe that the executive search and development process in State is so important that it should look beyond the confines of the Department. State's Executive Development Staff should be aware of high potential candidates for the Executive Service from other agencies and from outside the Government. This staff should also actively create and monitor interagency assignments and private sector exchanges for State personnel which contribute to the broadening of experience.

Presidential appointments to key Departmental posts including ambassadors would continue to be made from the White House. It is assumed, however, that the President would build his selection process on State's Executive Development Program and would use the pool of career executive talent to a large extent in making such appointments.

The Commission recommends that:

The Under Secretary for Management should establish an Executive Development Program administered by a professional staff reporting directly to him (outside but related to regular Personnel functions).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Promotions to designated executive jobs (largely FSO–2 and GS–16 and above) should be subject to special procedures of a Foreign Affairs Executive Service (FAES).

Candidates would be "selected in" to executive jobs in the FAES by the Secretary on the basis of recommendations from line managers and the executive development staff.

The purpose of the Executive Development program would be to find the best talent from all categories within the Department based on the Secretary's defined needs. It should be part of a community-wide approach.

ANNEX IV–A

United States District Court for the District of Columbia

Civil No. 3141–71

(Filed, June 12, 1973, James F. Davey, Clerk)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ET AL., PLAINTIFFS;

v.

WILLIAM P. ROGERS, SECRETARY OF STATE, ET AL., DEFENDANTS

Memorandum and Order

This action is before the Court on the cross motions of the parties for summary judgment. Hearing on the motions was held on April 27, 1973. Upon consideration of the complaint and answer, the motions, the affidavits, exhibits and statements of material facts not in dispute filed herein as well as the memoranda and oral argument of counsel heard in open court, and the entire record in this cause the Court concludes that the motion of plaintiffs must be granted in part and denied in part, and that defendants' motion must be denied. The findings of fact and conclusions of law which led to this determination follow.

I. FACTUAL BACKGROUND

A. The Parties

Plaintiff, American Federation of Government Employees (AFGE) is a national union affiliated with the AFL–CIO. It represents employees of various agencies of the Federal government pursuant to Executive Order No. 11491, "Labor-Management Relations in the Federal Service," 34 Fed. Reg. 17605 (1969). Plaintiff Local 1812, AFGE, has been accorded exclusive recognition under the said Executive Order to represent "all non-supervisory domestic General Schedule (GS and GG) and Wage System [Civil Service]" employees in the United States Information Agency (USIA). Plaintiff Local 1534, AFGE, has been accorded exclusive recognition under the said Executive Order to represent non-supervisory Civil Service employees in the Publishing and Reproduction Division of the Department of State, as well as language instructors at the Foreign Service Institute, Department of State.

Intervenor plaintiffs Josephine C. Campbell, Bruce N. Gregory and Rose F. Kobylinski are Civil Service employees of USIA. Intervenor plaintiffs William P. O'Brien and Nancy R. Schroeder are Civil Service employees of the Department of State.[1]

Defendant William P. Rogers is the Secretary of State, charged with the responsibility of supervising and directing the affairs of the Department of State, including the supervision and direction of the activities of the personnel of the Department, both Civil Service and Foreign Service.

[1] None of the named plaintiffs represent personnel of the Foreign Service under the provisions of Executive Order 11636, governing representation of Foreign Service personnel. Foreign Service personnel of both the Department of State and the United States Information Agency are exclusively represented by the American Foreign Service Association, which is not a party to this action. The standing of the plaintiffs is discussed below at p. 9.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Defendant James Keogh is the Director of the USIA. He is charged with responsibility for supervising and directing the affairs of that agency, including the supervision and direction of the activities of the personnel of the agency, both Civil Service personnel and personnel of the Foreign Service.

Defendants are responsible in their respective agencies for the conduct of Foreign Affairs Specialist Corps (FAS) programs challenged in this action.

B. The FAS Programs

On February 16, 1971, the Department of State issued a document styled "Management Reform Bulletin" which purported to establish a new "Unified Personnel System" in State to be known as "The Foreign Affairs Specialist (FAS) Corps." [2] The bulletin stated that the Foreign Affairs Specialist Corps was to parallel and complement the Foreign Service Officer Corps. State's employees were advised that "Its establishment grows out of the conclusions of . . . Task Forces and earlier management study groups that a unified Foreign Service personnel system would give the Department the advantage of greater management flexibility." [3]

The Management Reform Bulletin stated further that, with exceptions not here relevant, all existing Foreign Service and Civil Service officer positions in State, whether located in the United States or overseas, had already redesignated "as either FSO [Foreign Service Officer] or FSRU (FAS) [4] [Foreign Service Reserve Unlimited, (Foreign Affairs Specialist)], "i.e., as positions suitable for staffing by personnel from the Foreign Service personnel system by the provisions of the Foreign Service Act, as amended (Title 22 U.S.C. § 801 *et seq.*)

The new FSO and FSRU (FAS) system is distinct from the Civil Service system established and maintained pursuant to the various Civil Service laws contained in Title 5 of the United States Code.

Accordingly, the Department notified all of its Civil Service officer employees and all of its Foreign Service Reserve Officers and Foreign Service Staff Officers that "under the authority of Public Law 90–494, (22 U.S.C. Section 922–32) State would immediately accept applications for conversion of all such employees to the new Foreign Affairs Specialist Corps," the applicant in each case to be removed upon approval of his or her application, from their existing employment categories in either the Civil Service or the Foreign Service to "FSRU (FAS) or FSO."

The Management Reform Bulletin continued:

"(i) Civil Service applicants for conversion, not previously subject to service abroad in their Civil Service positions now resdesignated "FAS," would continue to be exempt in most cases from service abroad after conversion to the Foreign Service;

"(ii) Civil Service applicants for conversion, not theretofore subject to "selection out" procedures of the Foreign Service Act (22 U.S.C. § 1003, et seq.), would upon conversion to the Foreign Service, be "exempted from selection-out" for periods up to 10 years or until their first promotion after conversion; and

"(iii) Civil Service applicants for conversion would, upon conversion to the Foreign Service, "become eligible for earlier retirement at a slightly higher annuity under the Foreign Service Retirement System."

The Reform Bulletin made it clear that Civil Service employees who failed to apply for conversion or who were ineligible for conversion under the terms and conditions of the new FAS program, would gradually find deminished-opportunities-for future promotion. In this regard, the bulletin stated:

"As the plan for implementation of a Foreign Affairs Specialist Corps progresses, however, it must be expected that promotional opportunities for those

[2] On July 1, 1971 the Director of the USIA, acting on the same legal authority as the Secretary of State established a new FAS Corps in USIA which was patterned in all substantial aspects on the State Department program. The discussion which follows is accordingly directed at both programs.

[3] It is undisputed that at numerous times in the past the implementation of a unified personnel structure at the Department of State has been urged by various and distinguished groups charged with the task of exploring ways to improve the efficiency of that department. The most comprehensive and detailed of such studies were included in the reports of the Hoover Commission of 1949, the Rowe, Ramspeck, DeCourcey Committee of 1950, the Wriston *Committee* of 1954 and the Herter Committee of 1962.

[4] "FAS" (Foreign Affairs Specialist) is a creature of defendants making. It is only a program and not a personnel designation found in the Foreign Service Act as are FSO (Foreign Service Officer) and FSRU (Foreign Service Reserve With Unlimited Tenur). FSRU is the personnel category utilized by defendants to create and execute the FAS program.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

[Civil Service employees] remaining in positions designated for FSO or FAS staffing are bound to decrease * * *"

Those who would be ineligible for transfer to the new FAS Corps included:

(i) Applicants unable to obtain the necessary "medical clearance" from the Department's Medical Director;

(ii) Applicants who were not citizens of the United States "for at least 5 years" or who did not possess "3 years of satisfactory service with the Department;"

(iii) All applicants who were over certain specified ages and;

(iv) All applicants under 59 years of age who failed to convert by December 31, 1973."

The bulletin further indicated that FAS personnel would normally be expected to spend some time abroad and would be "encouraged to acquire some foreign language proficiency." Because of the likelihood of overseas duty, members of their family would also be required to obtain "medical clearance" from the Department's Medical Director.

In 1971 when State and USIA announced their intentions to proceed administratively[5] with the creation of the above described unified Foreign Affairs personnel systems in their respective agencies, their programs, reduced to essentials, consisted of three elements: *viz* (1) the designation of officer-level positions within the Department of State and USIA for future staffing by Foreign Service personnel; (2) the assignment of Foreign Service personnel to such designated positions and (3) the appointment of present Civil Service and Foreign Service personnel as Foreign Service Reserve officers with unlimited tenure.

To evaluate the effect of the personnel shifts inherent in the programs it must be kept in mind that the Foreign Service personnel system is administered exclusively by top grade State Department and USIA management officials (22 U.S.C.§§ 811a, 821, 826; Executive Orders 10477, 10522). These officials are authorized to keep "efficiency records" of all employees in the Foreign Service and they have unfettered discretion to decide which employees should be promoted and which should be subject to "selection out" (22 U.S.C. §§ 991, 993) for failure to achieve promotion within time periods devised and enforced by their superiors. (22 U.S.C. § 1003)

The Foreign Service system is oriented only toward personnel classification by grade and persons in a particular grade may be assigned to wherever the Secretary or Director determines they will be most effective.

Civil Service employees on the other hand are appointed to their positions in accordance with Examination, Selection, Appointment and Placement laws administered by the Civil Service Commission (5 U.S.C. § 3301 et seq.). They hold their positions subject to the protections afforded by the Veterans' Preference Act (5 U.S.C. §§ 3309–3313, 3363, 3501–3504, 7511–12 and 7701), the Adverse Action statutes (5 U.S.C. § 5115 et seq.). They are promoted under the Civil Service Merit System and the Performance Ratings Act (5 U.S.C. § 4301 et seq.)—all of which are subject to the overall jurisdiction and administration of the Civil Service Commission.

If the three-part program outlined above is put into effect the comprehensive hoped-for result will be that all "officer" positions will ultimately be either FSO's or FAS's at State and FSIO's or FAS's at USIA. For the purposes of the Foreign Service Act, all FAS's will be in the category of FSRU, and the positions they fill at State and USIA will no longer be included in the Civil Service System. The defendants will be vested with broader discretion and greater flexibility in the management of personnel within the State Department and USIA by eliminating virtually all Civil Service "officer" grade positions.

As a practical matter, personnel transferring from the Civil Service to the Foreign Service will find that the statutory guarantees which adhered to the positions they held previously have disappeared with the change. The gain by their superiors of considerable flexibility in discharging their executive functions will be accompanied by diminution in the job security of the Civil Service transferees. The effect on the promotional opportunities of those remaining in the Civil Service has been noted above.

It is thus evident that the new FAS programs, if put into operation by defendants in the manner just described will directly affect and will continue to affect

[5] An earlier attempt to accomplish essentially the same result legislatively in 1965 failed when the Senate Foreign Relations Committee failed to report out the so-called "Hays Bill" after strenuous objection by such groups as the AFGE, the Government Employees Council, the AFL–CIO, the American Legion and the Veterans' of Foreign Wars. The measure initiated by Congressman Wayne Hays of Ohio had been approved by the House of Representatives on September 9, 1965.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

thousands of employees of State and USIA who hold Civil Service positions typical of those found throughout the Executive Branch.

II. LEGAL CONSIDERATIONS

For the purposes of this discussion the Court accepts defendants position that the creation of a unified personnel system will culminate in heightened morale and more efficient operations of State and USIA. However, we must still determine whether the specific steps they propose to take to achieve that added efficiency violate the laws under which State and USIA operate.

A. Standing

Earlier in these proceedings the defendants challenged plaintiff AFGE's standing to bring this action. On February 16, 1973, the Court, by oral ruling, denied defendants' motion to dismiss for lack of standing. In the interest of formulating an adequate record, the Court deems it expedient at this time to detail its reasons for that order.

It is axiomatic that an organization whose members are injured may represent those members in a proceeding for judicial review, *NAACP* v. *Button*, 371 U.S. 415 (1963). Furthermore, it is established in this circuit that a union composed of federal employee members has standing to sue on behalf of those members when they are injured or threatened with injury by the federal agency which employs them, *Lodge 1858, AFGE* v. *Paine*, 436 F.2d 882 (D.C.C.A. 1970) *United Federation of Postal Clerks* v. *Watson*, 409 F.2d 462 (D.C.C.A. 1969). If there were any question that organizations in the position of plaintiff AFGE may have standing to sue on behalf of aggrieved members it was conclusively answered in the affirmative by *Sierra Club* v. *Morton*, 40 U.S. 727 (1972). Because AFGE brings this action in its representative capacity, the Court looks only to the question of whether the members it represents are "injured" or "aggrieved" by the proposed agency action of the defendants in instituting the new FAS program. *Association of Data Processing Organizations* v. *Camp*, 397 U.S. 150 (1970).[6]

On the question of the individual's standing the Court notes that since "[E]ach case turns to the nature of the parties, the grievances and the statutory provisions involved * * *," the Court must determine *de novo* whether individual AFGE members employed by the Department of State and USIA have standing to complain that the defendants have acted illegally and have "arbitrarily disregarded [their] statutory mandate" to administer provisions of the Foreign Service Act. *Curran* v. *Laird*, 420 F.2d 122, 125 (D.C.C.A. 1969). The entire thrust of the personnel programs under consideration is toward the concept of an orderly personnel system characterized by statutorily defined rights to pay, allowances, retirement benefits and to a lesser extent, promotional opportunities and job security. It follows that the institution of a pervasive personnel program—some aspect of which may be illegal—in the two agencies may do violence to that concept, and since the interests of the complainants in the maintenance of an orderly personnel regime are arguably within the zone of interests to be protected by the statutes in question, they have standing to bring this action. *Association of Data Processing Service Organizations* v. *Camp, supra*, at 155. *See also Flast* v. *Cohen*, 392 U.S. 83 (1968). The Court is persuaded that their interest is such that it ensures that the dispute they seek to adjudicate will continue to be presented in an adversary context and in a form historically viewed as capable of judicial resolution. *Sierra Club* v. *Morton, supra.* "[A] person aggrieved in fact may * * * [avail himself of] * * * a broad conception that congress is 'hospitable' to the maintenance of complaints against officials charged with disregarding its substantive mandate." *Curran* v. *Laird, supra*, 126. *See also*, 5 U.S.C. § 702, Pub. L. 89–554, Sept. 6, 1966 80 Stat. 392.

B. Merits

There is no specific statutory authorization for the establishment of the "FAS" personnel program at either USIA or the State Department. As was noted earlier (note 2 *supra*) "FAS" is merely an acronym for a personnel program—it is not an individual personnel designation.

[6] The Court considers the standing of the plaintiff union only in terms of its representative capacity and does not address the problem of whether or not the union itself has such a stake in the outcome as to enable it to bring this action on its own behalf. Since only the union's representation of the individuals is pertinent to this discussion the question of whether the plaintiff AFGE locals remain recognized bargaining agents for affected employees is not relevant to the Court's conclusion.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Of course the fact that a program has not been specifically authorized by statute does not necessarily mean that it is forbidden. There is no law against the use of imagination by the heads of executive departments in discharging their responsibilities. But if and when their imagination, no matter how inspired, carries them outside the boundaries of their statutory authority, an injunction will lie.

As was noted above at p. 6 the FAS program is to be implemented through a three-step procedure. We examine each step in light of the statutory provisions bearing thereon.

(1) *The designation of officer level positions within the Department of State and USIA for future staffing by Foreign Service Personnel.*

22 U.S.C. Section 886(b) (Section 441(b) of the Foreign Service Act) reads as follows:

"(b) Under such regulations as he may prescribe the Secretary may, notwithstanding the provisions of Chapter 51 and Subchapter III of Chapter 53 of Title 5, classify positions in or under the Department which he designates as Foreign Service Officer positions to be occupied by officers and employees of the Service, and establish such positions in relation to the classes established by Sections 867, 869 and 870 of this title.[7]

This section clearly deals with the classification of positions, not the status of individuals. If a position is presently occupied by an individual who is part of the Civil Service personnel system, then nothing in Section 886(b) directly affects the incumbent's rights guaranteed under Title 5. Defendants agree with this and specifically include in their memoranda a portion of the House Committee on Foreign Affairs Report which interpreted this section as follows:

"When a position, subject to the Classification Act of 1949 (i.e. Title 5) is filled by a person other than an officer of the Foreign Service, it would continue to be classified in accordance with the provisions of the Classification Act. Classification under the provisions of this section would be inoperative until such position is filled by a Foreign Service Officer." [8]

Since the redesignation of positions envisaged by the defendants' programs applies only to future staffing—not to present personnel designation—there is no limitation in Section 886(b) which precludes such action. Moreover, despite plaintiffs' position that such redesignation may be arbitrary and capricious in some instances (i.e. those where personnel qualified for certain positions might gain no advantage from overseas assignment and inclusion in the Foreign Service), the administrative advantages to be gained from implementation of a unified Foreign Service personnel system have been amply spread upon the record and not effectively rebutted. Accordingly, the Court finds as a matter of law that the redesignation of officer level positions in the Department of State and the USIA for future staffing by Foreign Service and Foreign Service Information personnel is a reasonable exercise of the defendants' statutory powers and expressly permitted by 22 U.S.C. 886(b) (Sec. 441(b)).

(2) *The assignment of Foreign Service Personnel to positions redesignated under 22 U.S.C. 886(b).*

We touch only briefly on this aspect of the proposed FAS Program, because it is clear from the statutory language throughout the Foreign Service Act that the Secretary of State and the Director of USIA have unusually broad powers to assign Foreign Service Personnel throughout the government.

As one point the statute reads:

"Any officer or employee of the Service may in the discretion of the Secretary, be assigned or detailed for duty in any government agency for a period of not more than four years * * *" [9]

Elsewhere it indicates that reserve officers may be

"* * * assigned to a class and not to a particular post, and such an officer may be assigned to posts and may be transferred from one post to another by order of the Secretary as the interests of the Service may require." [10]

Furthermore the legislative history of the 1960 Amendment to the Foreign Service Act, Pub. L. 86–723, indicates that it was prepared in conjunction with

[7] These provisions are also applicable to USIA. The statutory references to Title 5 concern the Civil Service classification law. Sections 867, 869 and 870 establish the categories of Foreign Service Officers. Foreign Service Reserve Officers and Foreign Service Staff Officers, respectively.

[8] H. Rep. No. 2104, Foreign Service Act Amendments of 1960, Committee on Foreign Affairs, 86h Cong., 2d Sess., pp. 16–17.

[9] 22 U.S.C. Sec. 961. (a).

[10] 22 U.S.C. Sec. 923. The Court notes in passing that, "reserve" officers would make up the FAS program corps.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

existing broad redesignation power vested in the Secretary and Director by 22 U.S.C. 886 discussed, *supra*.[11]

Accordingly, this second step to implement the FAS Program is within the statutory power of the defendants. Furthermore, since the Court has found the goal of defendants to be a reasonable one, there are no grounds for enjoining continuation of this activity.

(3) *The appointment of present Civil Service and Foreign Service personnel as Foreign Service Reserve Officers with Unlimited Tenure.*

The designation Foreign Service Reserve Officer with Unlimited Tenure (FSRU) is authorized by 22 U.S.C. Sec. 929 which reads:

(a) Any officer appointed as a Foreign Service Reserve Officer after August 20, 1968 may serve as such for no longer than five years. During such period (no sooner than the expiration of the third year but no later than the expiration of the fifth year) such Foreign Service Reserve Officer shall be appointed as a Foreign Service Officer, Foreign Service Information Officer, Foreign Service Reserve Officer with Unlimited Tenure, Foreign Service Staff Officer, or shall be terminated as a Foreign Service Reserve Officer." Pub. L. 90–494.

The language of this provision yields only one interpretation, *viz*, that only Foreign Service Reserve Officers with more than three but less than five years in the Foreign Service Reserve can be made Foreign Service Reserve Officers with Unlimited Tenure.

Defendants urge that the provision should be interpreted to permit them to appoint directly to the FSRU category any and all personnel whether Civil Service or Foreign Service with three years satisfactory service and who have been citizens of the United States for five years. Their argument is that the Congressional "purpose" behind the enactment of Section 929 would be frustrated by a narrower interpretation; *i.e.* a requirement of three years service as a Foreign Service Reserve Officer before a person becomes eligible for FSRU appointment. They cite the example of a hypothetical qualified regular Foreign Service officer who for reasons of his own determines that he would rather become part of the new FAS program, thus necessitating his change from FSO to FSRU status. It would be senseless, they argue, to require such a person to go through the three-year "initiation period" before according him FSRU status.

This may well be so. But the short answer is that Section 929 was not written to facilitate a FAS program. Section 929 was designed simply to afford the Secretary and the Director the power to offer some degree of security to those who had joined the Foreign Service Reserve.[12]

It may well be wise to permit free transfers of personnel from FSO designation to FSRU designation; and it may also be advisable to permit Civil Service personnel with a record of long and capable service and who otherwise meet statutory requirements to move immediately into the FSRU category. However, at the present time, a statutory basis for such movement does not exist. The Court will not modify statutory language by construction to achieve a goal the Congress did not contemplate or seek to accomplish through legislation.

The Court therefore finds as a matter of law that the defendants' appointment of any personnel, other than those who have served as Foreign Service Reserves for three years as Foreign Service Reserve Officers with Unlimited Tenure is action which lies outside the authority of the defendants as defined by 22 U.S.C. 929(a).

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[11] Sections 961(c) and 886(b) were part of the same statutory scheme. (Pub. L. 86–723). The former gave the Secretary broad power to reassign his Foreign Service personnel while the latter gave him equally broad power to redesignate positions within the Department to conform with such reassignment. The need for sweeping redesignation power stemmed in part from the earlier practice of paying a "salary differential" to Foreign Service personnel of a relatively low paying grade who had been assigned to a Classification Act position carrying a higher salary. The "differential" was the difference between the two amounts. It is clear that Congress intended to vest the Secretary with broad powers to determine how best to use his Foreign Service Officer corps and that these two sections were intended as concurrent steps giving him greater flexibility in utilizing that power.

[12] Previously these personnel were permitted to remain in this status for only five years. They could be reappointed to a term only if they were not regularly employed by the State Department and the head of the agency regularly employing them approved, but thereafter they could be reappointed further only after a minimum of one year in another capacity. 22 U.S.C. 922, 927.

22 U.S.C. § 931, also relied upon by the defendants, confers no additional power to make FSRU appointments. It permits appointment to FSRU status only of Foreign Service *Reserve* officers with three years service "*as such*." (emphasis added)

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

III. FINDINGS, CONCLUSIONS AND ORDER

The foregoing constitutes the Court's findings of fact and conclusions of law and, in the light thereof, it is this 12th day of June 1973.

ORDERED that the defendants, the Secretary of State and Director of the USIA, their officers, agents, employees and attorney be and hereby are permanently restrained and enjoined from offering or extending appointments to the Foreign Service Reserve with Unlimited Tenure category created by Pub. L. 90–494 (22 U.S.C. 922–32) to any but Foreign Service Reserve Officers possessed of at least three years of continuous satisfactory service in that capacity only; and it is further

ORDERED that the Secretary of State and the Director of the USIA their officers, agents, employees and attorneys shall, and hereby are directed to take any and all necessary steps to rescind in a fair and equitable manner and without undue delay any actions heretofore taken to offer or extend Foreign Service Reserve with Unlimited Tenure appointments under the provisions of Pub. L. 90–494 (22 U.S.C. 922–32) to any employees of the two agencies who were not, when appointed to the FSRU category, Foreign Service Reserve Officers with at least three years of continuous, satisfactory service in that category; and it is further

ORDERED that in all other respects the plaintiffs' motion for summary judgment is denied, and the defendants' motion for summary judgment is denied, and that the preliminary injunction heretofore granted by the Court prohibiting the continued implementation of the FAS except as indicated above is dissolved.

————, *Judge.*

Counsel:

Edward L. Merrigan, Smathers & Merrigan, Washington, D.C., attorney for plaintiffs.

Harold H. Titus, Jr.
U.S. Attorney,
Michael A. Katz,
Assistant U.S. Attorney,
U.S. Courthouse,
Washington, D.C., attorney for defendants.

ANNEX IV–B

United States District Court for the District of Columbia

Civil Action No. ——

Filed April 30, 1975

LOCAL 1812, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), c/o U.S. INFORMATION AGENCY, WASHINGTON, D.C.; LOCAL 1534, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), 21ST AND C STREETS, WASHINGTON, D.C.; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), 1325 MASSACHUSETTS AVENUE, NW., WASHINGTON, D.C.; BRUCE N. GREGORY, SILVER SPRING, MD.; JOSEPHINE CAMPBELL, MT. RANIER, MD.; DOROTHY A. BODEEN, WASHINGTON, D.C.; GORDON M. CONNELLY, GARRETT PARK, MD.; ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

JAMES KEOGH, DIRECTOR, U.S. INFORMATION AGENCY, WASHINGTON, D.C.; HENRY A. KISSINGER, SECRETARY OF STATE OF THE UNITED STATES OF AMERICA, DEPARTMENT OF STATE, WASHINGTON, D.C., DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT, MANDAMUS, INJUNCTION AND OTHER RELIEF

I. INTRODUCTION

1. This is a class action seeking a declaratory judgment, mandamus and injunctive relief for plaintiffs and members of the class they represent, consisting

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of all those past, present and future employees of the United States Information Agency (hereinafter USIA) and the Department of State who have been, are being, or will be denied Civil Service appointments, classifications, job security, veterans preference, assignments, and/or promotional opportunities as the result of management decisions and practices aimed deliberately and illegally at permanently replacing all GS–7 level and above Civil Service (defined as officer level) employees in domestic staffing positions in these agencies within the territorial United States through the misuse of the Foreign Service Reserve officer category created under the Foreign Service Act of 1946.

2. Plaintiffs contend that the USIA and the Department of State have engaged in, and are engaged in, a planned, deliberate and purposeful program to phase out all Civil Service positions from their agencies, through the use of Foreign Service Reserve appointments for domestic staffing positions as well as other programs, policies and practices, in order to accomplish this objective. Plaintiffs contend that by so doing, the defendants have violated the statutory and constitutional rights of the plaintiffs and of the class they represent. In seeking to achieve their objective, the defendants, without any legislative authorization, have done and continue to do the following:

a. Appointing Foreign Service Reserve officers, under a synthetic category labeled Foreign Affairs Specialists, to perform essentially and traditionally domestic staffing functions for which Civil Service General Schedule officer level employees previously have been, and in many instances, are still being employed.

b. Ignoring the basic requirement that all jobs in the competitive service in the Executive Branch must be filled in accordance with Civil Service laws and related statutes unless specific legislation provides otherwise.

c. Ignoring and violating the limitations under which appointments of Foreign Service Reserve officers may be made under the Foreign Service Act of 1946, namely to make available to the Foreign Service such specialized skills as may from time to time be required.

d. Amending by Departmental and Agency declarations, the primary objective of the Foreign Service Act "(t)o enable the Foreign Service effectively to serve abroad the interests of the United States," in order to authorize the eventual ouster of all Civil Service personnel from employment with the USIA and the Department of State within the territorial limits of the United States.

e. Inducing and coercing Civil Service employees to convert to Foreign Service Reserve officer status through offers of preference for promotional opportunities, advantageous assignments, and the financial advantages inherent in "lateral conversions" and in eventual higher annuities under the Foreign Service Retirement and Disability Act, and through the fear of potential separations by reductions in force at some future date if still in Civil Service status.

f. Restricting all new appointments to officer level positions only to those individuals, even if on Civil Service registers, who can be persuaded to accept Foreign Service Reserve officer status for domestic staffing functions in which the possibility of ever being sent overseas is virtually nonexistent and, in so doing, applying limitations as to age which are prohibited under Civil Service laws and regulations and the Fair Labor Standards Act and also depriving such employees of any job security for a minimum of three and a possible maximum of five years.

g. Ignoring and violating the provisions of the Civil Service Act of 1883, the Lloyd-LaFollette Act of 1912, the Classification Act of 1949, the Veterans Preference Act and other statutes for the protection of career Civil Service employees in domestic staffing positions, insofar as those under Foreign Service Reserve appointments are concerned, while exposing those who obtained Foreign Service Reserve appointments with "unlimited tenure" to the hazards of a "selection out" for time-in-grade or low ranking as well as mandatory retirement at age 60.

h. Applying a double standard as to terms and conditions of employment to those who are appointed Foreign Service Reserve officers for Departmental or Agency domestic staffing as contrasted to those who are appointed Foreign Service Reserve officers legitimately to provide specialized skills needed in the Foreign Service to serve abroad, the interests of the United States.

3. Plaintiffs seek redress for these past and continuing violations of their statutory and constitutional rights by means of a declaratory judgment as to the rights of plaintiffs and the class they represent and for a preliminary and permanent injunction restraining defendants from maintaining policies, practices, customs or usages under which:

a. Employees are appointed or assigned as Foreign Service Reserve officers to occupy Agency or Departmental staffing positions within the United States

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

except insofar as may be required to provide occasional "home tours" as required by statute for officers on overseas duty; and

b. Civil Service employees are induced, coerced or pressured to convert to Foreign Service Reserve officer status even though employed on a continuing and permanent basis within the United States.

II. JURISDICTION

4. This action arises under the laws and Constitution of the United States and the jurisdiction of this Court is based upon 28 U.S.C. § 1331(a), which gives District Courts jurisdiction over cases involving federal questions in which the total amount in controversy is over $10,000; upon 28 U.S.C. § 1361 which gives District Courts jurisdiction of any action in the nature of mandamus; upon the Administrative Procedure Act, 5 U.S.C. §§ 702–706 which provides for judicial review of actions of federal agencies; upon 28 U.S.C. §§ 2201 and 2202, which gives District Courts power to issue declaratory judgments; upon the All Writs Act, 28 U.S.C. § 1651(a); and under the Fifth Amendment to the United States Constitution.

III. PARTIES

A. Plaintiffs

5. The American Federation of Government Employees (hereinafter referred to as AFGE) is a national labor organization affiliated with the AFL–CIO composed of federal civilian employees of the United States and the District of Columbia. The plaintiff, AFGE, in its own right and through its various local union affiliates, holds some 1,541 exclusive recognitions throughout the Executive Branch of the government and represents approximately 650,000 federal employees under those recognitions. Among its purposes is the protection and strengthening of the job rights and security of its members and all government employees under regulations, statutes and the Constitution.

6. Local 1812, AFGE, has within its membership all members of the AFGE who work for the United States Information Agency, whether Civil Service General Schedule (GS) or Wage System (WS or WB) employees, Foreign Service Information officers (FSIO), Foreign Service Reserve officers (FSR), or Foreign Service Staff officers (FSS). They number 950 at present. AFGE Local 1812 has been recognized by the United States Information Agency as the exclusive bargaining agent for nearly 2,000 eligible federal Civil Service employees employed at the USIA in such capacity is a party to a collective bargaining agreement with the USIA. This recognition of AFGE Local 1812 as the exclusive bargaining representative for employees at the USIA is pursuant to the provisions of the Executive Order 10988 (27 Fed. Reg. 511) and E.O. 11491 (34 Fed. Reg. 17605) since July 27, 1971. All GS–7 or above Civil Service employees (defined as officer level) at USIA are subject to having their jobs taken over, their job security, tenure, promotions and classifications undermined and destroyed and being replaced by Foreign Service Reserve officers.

7. Local 1534, AFGE, has within its membership all members of the AFGE who work for the Department of State, whether Civil Service, General Schedule (GS) employees, Foreign Service officers, Foreign Service Reserve officers, or Foreign Service Staff officers. They number at the present time 473. In addition, Local 1534 is the exclusive bargaining agent for those Civil Service employees of the Department of State who are employed in the Foreign Service Institute School of Language and in the Publicity and Reproduction Division. All GS–7's or above Civil Service employees (defined as officer level) at the Department of State are subject to having their jobs taken over, their job security, tenure, promotions, and classifications undermined and destroyed and being replaced by Foreign Service Reserve officers.

8. Plaintiff Bruce N. Gregory is the President of Local 1812, AFGE, and is a Project Officer, GS–13, employed by the USIA in Washington, D.C. Plaintiff Gregory has been a USIA employee since 1967 when he joined as a GS–11. He is presently assigned to the Foreign Policy Staff of the Information Center Service, USIA. Plaintiff Gregory was the recipient of an outstanding performance evaluation in 1973. As President of Local 1812, AFGE, he is suing in that capacity, as a representative of the class, as well as individually.

9. Plaintiff Josephine Campbell is Vice-President of Local 1812, AFGE and is a writer-editor, GS–13, employed at the USIA in Washington, D.C. Plaintiff Campbell has been a USIA employee since 1956 and is presently assigned to the Africa Branch of the Press and Publications Service, USIA. As Vice-President

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of Local 1812 she is suing, as a representative of the class in that capacity, as well as individually.

10. Plaintiff Dorothy Bodeen is Vice President of Local 1534, AFGE and is a GS–9 Intelligence Assistant in the Bureau of Intelligence and Research, Department of State in Washington, D.C. She has been a Department of State employee since 1956 and has worked for the federal government for twenty-seven years. As Vice President of Local 1534, she is suing, as a representative of the class in that capacity, as well as individually.

11. Plaintiff Gordon M. Connelly is a shop steward of Local 1812, AFGE, and is employed as a Foreign Service Reserve officer with limited tenure, FSRL 3/1 on a five year appointment at USIA. He was formerly employed as a GS–13 Social Science Analyst, Office of Research, Media Division, USIA, until his conversion to FSRL in March, 1974. Plaintiff Connelly has worked at the USIA since 1960. He is suing individually, as well as a representative of the class of all those similarly situated who were formerly General Schedule Civil Service employees who were induced or coerced to accept Foreign Service Reserve officer appointments.

12. Defendant James Keogh is Director of the United States Information Agency and is sued in his official capacity. As such, he is responsible for the employment practices and policies of the USIA and the necessity that these practices and policies conform to the regulations of the USIA, the Civil Service Commission and the laws and Constitution of the United States.

13. Defendant Henry A. Kissinger is Secretary of State and Head of the Department of State and is sued in his official capacity. As such he is responsible for the employment practices and policies of the Department of State and the necessity that these practices and policies conform to the regulations of the Department, the Civil Service Commission and the laws and Constitution of the United States.

IV. CLASS ACTION ALLEGATIONS

14. Pursuant to Rules 23(a) and 23(b)(2), Federal Rules of Civil Procedure, the organizational and individual plaintiffs bring this action on their behalf and on behalf of all past, present, or future similarly situated Civil Service employees at USIA and the Department of State. Each of them is fully entitled to the protections and benefits which are afforded to such federal employees by the Civil Service laws, by other related statutes of the United States, by regulations of the Civil Service Commission, by regulations of the defendants, and each of them is directly and immediately threatened by grave and irreparable harm, damages, and loss of job rights and opportunities by reason of the policies, programs and practices complained of herein.

15. In support of this claim, plaintiffs allege the following facts:

a. *The Size of the Class.*—The class is defined as all those Civil Service employees of the USIA and the Department of State whose jobs have been filled in the past, are being filled and are threatened to be filled in the future by Foreign Service Reserve officers, or who will be denied job assignments and promotional opportunities as the result of the placement of Foreign Service Reserve officers in domestic staffing positions in the United States and whose careers and jobs as Civil Service employees have been, are being and will be adversely affected by this practice, as well as those AFGE members in domestic staffing positions who continue to have reemployment rights to Civil Service status, although now under Foreign Service Reserve appointments. There are, at the present time, 1,906 Civil Service employees at the USIA and 1,083 Foreign Service Reserve officers in domestic staffing positions. There are at the present time 3,421 Civil Service employees at the Department of State and 2,213 Foreign Service Reserve officers in domestic staffing positions. Plaintiffs will seek to discover through interrogatories (i) the total number of Foreign Service Reserve officers serving in domestic positions who were induced or coerced to convert from their General Schedule (GS) positions; (ii) the total number of GS employees whose jobs have been filled, are being filled and are threatened to be filled in the future by Foreign Service Reserve officers. These persons are so numerous that joinder of all would be impracticable. All members of the class possess common rights and seek a common relief.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

b. *Basis on which plaintiffs claim to be adequate representatives of the class.*

Plaintiff American Federation of Government Employees (AFGE) is a national labor organization of federal civilian employees. It, and its locals 1812 and 1534, included within their membership, Civil Service and Foreign Service employees of the USIA and the Department of State whose employment, positions, assignments, careers, and rights as federal employees have been directly affected or will be affected as a consequence of defendants' program for the phasing out of Civil Service positions and filling them with Foreign Service Reserve officers. They include among their members individuals who have been employed, are employed or might be employed at the USIA and at the Department of State and have been affected, are being affected or might be affected by the activities herein complained of by defendants. Plaintiffs Gregory, Campbell, and Bodeen are competitive Civil Service employees whose chances for advantageous assignments and promotions have been diminished and whose careers and rights as federal Civil Service employees have been threatened and damaged by defendants' policies, programs, and practices of appointing Foreign Service Reserve officers to domestic, competitive Civil Service positions. In addition, plaintiff Gregory is the President of Local 1812 of AFGE, and plaintiff Campbell is a Vice President of said local. Plaintiff Bodeen is Vice President of Local 1534, AFGE. Plaintiff Connelly is a shop steward of Local 1812 AFGE and is a former Civil Service employee who is now employed as a Foreign Service Reserve officer of limited tenure. In those capacities they will represent the interests of the members of their union and all other federal empolyees at USIA and the Department of State, as well.

c. *Questions of law and fact that are common to the class.*—There are common questions of law and fact protecting the rights of the members of the class which include, but are not limited to the following:

i. Lack of legal or statutory authority for defendants to employ Foreign Service Reserve officers to occupy domestic staffing positions within the United States.

ii. Lack of legal or statutory authority for defendants to eliminate competitive Civil Service classifications for such domestic positions.

iii. The disadvantages suffered by federal Civil Service employees who have been, are being affected or might be affected with respect to job opportunities, promotions, assignments, career advancement and training as a consequence of defendants' actions.

iv. Violations of the rights of these Civil Service employees under the Civil Service Act of 1883, the Lloyd-LaFollette Act of 1912, the Classification Act of 1949 and/or the Veterans Preference Act.

v. Plaintiffs further allege that the above mentioned class is so numerous that joinder of all members is impracticable; that there are questions of law and fact common to the class; the claims of the above named plaintiffs are typical of the claims of the class; that they will fairly and adequately protect the interests of the class and that the defendants and their predecessors have acted and refused to act on the grounds generally applicable to the class. Under these circumstances injunctive and declaratory relief with respect to the class as a whole is appropriate, and a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

IV. FACTS

16. Congress passed the Foreign Service Act of 1946 in which its primary objective is set forth as the following:

"The Congress hereby declares that the objectives of this Act are to develop and strengthen the Foreign Service of the United States so as—

1. To enable the Foreign Service effectively to serve *abroad* the interests of the United States;

* * * * * * *

6. To provide for the temporary appointment or assignment to the Foreign Service of representative and outstanding citizens of the United States possessing special skills and abilities;" 22 U.S.C. § 801.

17. The Foreign Service Act of 1946 provided that among the categories of officers and employees of the Service were:

"Foreign Service Reserve officers, who shall be assigned to the Service on a temporary basis from government agencies or appointed on a temporary basis

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

outside the government in accordance with the provisions of Section 522, in order to make available to the Service such specialized skills as may from time to time be required;" 22 U.S.C. § 861(3).

18. Section 522 of the Foreign Service Act as amended (now 22 U.S.C. §922) provides for the appointment as Foreign Service Reserve officers of individuals with special skills from government service, as well as from the private sector, for periods of up to five years.

19. The above statutory provisions are applicable to the USIA under Reorganization Plan Number 8 of 1953 (18 Fed. Reg. 4542, 67 Stat. 642), as amended; Exec. Order 10477 (18 Fed. Reg. 4540, August 1, 1953), as amended; P.L. 90-494 §§ 5, 6, (82 Stat. 811); Exec. Order 11434 (33 Fed. Reg. 16485, Nov. 8, 1968).

20. Civil Service career officers and employees in the Department of State and the USIA have always enjoyed all of the protections of the Civil Service Act of 1883, the Lloyd-LaFollette Act of 1912, the Classification Act of 1949 and the Veterans Preference Act against unlawful, arbitrary and capricious separations from the federal service, demotions and reductions in rank or compensation; and their right to promotions and increases in compensation have been governed by the Civil Service Classification Act and by the Federal Civil Service merit promotion system.

21. Congress intended that there be duel personnel systems in the USIA and the Department of State so that the permanent domestic based personnel would be governed by rules and regulations of the Civil Service system and the personnel involved in the foreign based activities of these agencies would be governed by the Foreign Service Act of 1946, as amended, 22 U.S.C. § 801, et seq.

22. In 1965 President Lyndon Johnson called on Congress to create "a unified foreign affairs personnel system" in the Department of State and USIA. In his Presidential message to Congress President Johnson said "There will be a single Foreign Affairs Personnel System, broad enough to accommodate the personnel needs—domestic, as well as overseas—of the Department of State, the Agency for International Development, and the U.S. Information Agency, and to cover appropriate personnel of other agencies engaged in foreign affairs."

23. The President urged Congress to pass the so-called Hays Bill, (introduced by Wayne Hays, Dem. Ohio), H.R. 6277, 89th Congress, called "The Foreign Service Act Amendments of 1965" which would, among other things:

1. Amend 22 U.S.C. § 801 so as to broaden the "objectives" of the Foreign Service Act to serve interests "at home" as well as "abroad."

2. Amend 22 U.S.C. § 886 (§ 441 of the Act) as follows: "Section 6 of the Bill would amend Section 441 of the Act which now limits the Secretary's classification authority under subsection (a) to positions in the Service 'at posts abroad.' *This limitation would be repeated.*" [Emphasis added].

24. President Johnson further stated:

To carry out these principles, legislation is needed *to do a number of things.* Among these are: * * *

(2) Provide a transitional period of three years during which Civil Service employees of the foreign affairs agencies may decide to become participants in the new system without screening and without loss of compensation. Those who do not wish to participate will be assisted in obtaining suitable employment in other government agencies. *But after the transitional period, the dual Foreign Service—Civil Service personnel systems of the foreign affairs agencies would be ended and only the unified foreign service would apply.*" [Emphasis added].

25. The Hays Bill, H.R. 6277, in the face of overwhelming employee opposition failed to pass the Congress. It was tabled by the Senate Foreign Relations Committee after hearings and has never been revived.

26. In 1968 Congress passed Public Law 90-494, 22 U.S.C. §§ 922, 929-32.

27. 22 U.S.C. § 929 provides under the heading "Limitation on Tenure":

"(a) Any officer appointed as a Foreign Service Reserve Officer after August 20, 1968, may serve as such for not more than five years. During such period (no sooner than the expiration of the third year but no later than the expiration of the fifth year) such Foreign Service Reserve officer shall be appointed as a Foreign Service officer, Foreign Service Information officer, Foreign Service Reserve officer with unlimited tenure, Foreign Service Staff officer, or shall be terminated as a Foreign Service Reserve officer."

28. 22 U.S.C. § 931 provides under the heading "Limited Tenure":

"Any Foreign Service Reserve officer appointed before August 20, 1968, who has completed at least three years of continuous and satisfactory service as such on

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

such date or who will have completed at least three years of such service before the exploration of the 3-year period beginning on August 20, 1968, may be appointed as a Foreign Service Reserve officer with unlimited tenure."

29. On August 26, 1968 the USIA announced: "The new law does not affect the status or rights of Civil Service employees of the Agency."

30. No claim was advanced in 1968 or 1969 by either the USIA or the Department of State that the Foreign Service Reserve with Unlimited Tenure had any bearing on domestic staffing. Use of the new category within USIA was strictly restricted to certain categories of Reserve officers with overseas duty and no use was made within the State Department where some Foreign Service officers objected to the new category as a possible dual career corps.

31. Late in 1969 Department of State management undertook an elaborate internal self-examination of its personnel system.

32. On February 16, 1971, and allegedly in exclusive reliance on the provisions of Public Law 90-494 dated August 20, 1968 (82 Stat. 813, 814; 22 U.S.C. §§ 922-932), the Department of State issued a "Management Reform Bulletin" to all of its employees entitled "A Unified Personnel System—the Foreign Affairs Specialist Corps". The said "Reform Bulletin" announced the establishment of a new Corps composed of Foreign Service Reserve officers with unlimited tenure, and stated that the Department intended to seek "the conversion" to said corps, of all eligible career Civil Service officers and that the purpose of the new corps is the creation of a "Unified Personnel System."

33. A similar program was announced at USIA and is explained in USIA's Manual of Operation and Administration, Part V-A/V-B-1000.

34. Charts attached to the Department of State's "Reform Bulletin" demonstrated that 6,928 positions in the Department would be converted to the new corps, of which 2,556 would be simply "administrative" positions and 517 would be regular professional positions. Said charts also showed that of the administrative positions scheduled for conversion to the new corps, approximately half of 1,234 would be "positions in the United States" as distinguished from "overseas positions."

35. An April 9, 1971 USIA issued an "announcement" entitled "Agency Decision on FAS Program" which stated:

"The Director has decided to establish a Foreign Affairs Specialist (FAS) Corps and the Office of Personnel and Training (IPT) has been instructed to develop the details of an FAS Program for USIA similar to that published by the Department of State in its Management Reform Bulletin No. 8 * * *.

"The decision to establish an FAS Corps cannot be implemented until a detailed plan similar to that of the Department of State is developed for publication. The formulation of the details of the plan will take several months but it will be published as quickly as the necessary studies can be completed. * * *

"The long range goal of the Agency *is to staff all officer positions at home and abroad under Foreign Service personnel authorities.* All future officer appointments will be made under authorities of the Foreign Service Act and PL 90-494.

"All officer positions will be designated for FSIO or FAS staffing. *Present career CS employees will not be required to convert to Foreign Service appointments, regardless of the designation of their positions [as FAS].* The decision on whether or not to convert to FAS will be strictly voluntary. *However, the number of Civil Service (CS) officers will gradually decrease as present CS employees convert to FAS and those who do not convert leave or retire and are replaced by appointees under Foreign Service.*" (Emphasis added).

36. Thereafter, on July 1, 1971 Frank Shakespeare, then Director of USIA, allegedly acting exclusively on the basis of legal authority afforded to him by Public Law 90-494 hereinabove referred to, actually went ahead and established a new Foreign Affairs Specialist (FAS) Corps in USIA. USIA's Manual of Operations and Administration Part V-A/V-B Section 1000 A, issued on July 1, 1971 asserts "This plan for establishing the FAS Corps is based on the use of the FSRU authorities provided by P.L. 90-494." The plan provided for the direct and immediate appointment as FAS (FSRU) officers any Civil Service Officer who applied for it, subject to minimal qualifications.

37. On July 6, 1971 the American Federation of Government Employees and its Locals 1534 and 1812, AFGE filed suit seeking to enjoin the Foreign Affairs Specialist Program in either the Department of State or the United States Information Agency and to have it declared illegal. (Civil Action No. 3141-71, D.D.C.).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

38. On June 12, 1973 the Honorable Howard J. Corcoran, United States District Judge, issued a memorandum order in which he granted the plaintiffs cross motion for summary judgment in part and in which he held:

a. "* * * as a matter of law that the defendants' appointment of any personnel, other than those who have served as Foreign Service Reserve for three years as Foreign Service Reserve Officers with Unlimited Tenure is action which lies outside the authority of the defendants as defined by 22 U.S.C. 929(a)." He ordered that defendants be restrained and enjoined from offering or extending appointments to the FSRU category to any but Reserve officers with at least three years of continuous satisfactory service in that category."

b. "There is no specific statutory authorization for the establishment of the 'FAS' personnel system at either USIA or the State Department. As was noted earlier * * * 'FAS' is merely an acronyn for a personnel program—it is not an individual personnel designation. Of course the fact that a program has not been specifically authorized by statute does not necessarily mean that it is forbidden. There is no law against the use of imagination by the heads of executive departments in discharging their responsibilities, but if and when their imagination carries them outside the boundaries of their statutory authority, an injunction will lie."

Judge Corcoran found statutory authorization for the redesignation of officer level positions in the Department of State and USIA, as indeed the plaintiffs have recognized and not challenged.

39. Judge Corcoran, in his opinion, did not decide and left open, the question of whether it was legal under the Foreign Service Act of 1946, as amended, to appoint or assign Foreign Service Reserve officers with either limited or with unlimited tenure, to permanent domestic positions in the USIA and the Department of State.

V. CLAIMS

40. Plaintiffs assert for themselves and the thousands of federal employees in the USIA and the Department of State for whose benefit they sue herein:

a. That defendants have acted and are continuing to act contrary to law in attempting, by practices, programs and policies, including but not limited to the FAS Program, to phase out all Civil Service employees in the USIA and the Department of State and to replace them with Foreign Service Reserve officers in *domestic*, competitive Civil Service positions.

b. That the category of Foreign Service Reserve officer, whether with limited or unlimited tenure, was intended by Congress solely to serve the interests of the United States *abroad* and that no power was granted to the Department of State or USIA to assign them to permanent *domestic* positions within the continental United States.

c. Neither the Department of State nor USIA have the legal authority, arbitrarily and unilaterally, to remove or transfer positions permanently in the competitive Civil Service located in the territorial United States to the Foreign Service Reserve system or to determine that henceforth such domestic positions, when vacant, shall be filled on a permanent basis without reference to the Civil Service laws or to the Veterans Preference Act and regulations which govern selections and appointments to and promotions and retentions in such positions in the federal service; or

d. Neither the USIA nor the Department of State have the legal authority, arbitrarily, to decree that thousands of federal Civil Service employees who are satisfactorily performing their duties of employment in those agencies under the Civil Service laws and regulations must either "voluntarily convert" to the Foreign Service Reserve category, herein described, or effectively to waive or encumber their right to future promotions or advancement in the federal Civil Service.

41. Plaintiffs allege that the defendants have arbitrarily and capriciously deprived plaintiffs and the class they represent, of rights under applicable regulations, statutes and the Constitution and have continuously and permanently injured them in their chosen work in depriving them arbitrarily, capriciously and illegally, of training opportunities, promotions, assignments and other job opportunities by appointing Foreign Service Reserve officers to domestic, competitive Civil Service positions and discriminating against General Schedule employees:

a. More particularly, the creation of a second category of Foreign Service Reserve officers for the specific purpose of filling permanently the domestic

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

staffing jobs within the USIA and the Department of State, in contrast to the statutory category of "specialists to supply skills needed in the Foreign Service, * * *" and other policies, practices and programs of the Department of State and USIA threaten irreparably to injure, damage and ultimately destroy the vitality of the Civil Service system in both agencies.

b. More particularly, both these plans as well as other programs, policies and plans constitute an illegal, calculated capricious endeavor on the part of the individual defendants herein, and their respective personnel officials to entice, force and compel all Civil Service employees employed in other than clerical positions in the two agencies, mainly those employed exclusively here in the continental United States, to abandon all of their statutory rights and protections under the Civil Service laws (Title V, United States Code) and regulations, the Veterans Preference Act, (5 U.S.C. §§ 3309–3313, 3363, 3501–3504, 7511–7512 and 7701) and regulations thereunder, the Performance Ratings Act (5 U.S.C. §§ 4301–4308) and regulations, the Classification Act (5 U.S.C. §§ 5101–5115) and regulations, the Federal Pay Rates statutes (5 U.S.C. §§ 5301–5596), the adverse actions provisions of Title 5 U.S.C. §§ 7501–7512, and regulations thereunder, the Civil Service merit system for promotion, and the Civil Service Retirement System in favor of an illegally devised personnel scheme, which was flatly tabled and rejected by the Congress in 1966 and never again revived.

42. Unless enjoined by the Court in this action defendants and the federal agencies they administer, will continue to assign Foreign Service Reserve officers to permanent, domestic, competitive Civil Service positions; and that they will continue to coerce, induce and to bring pressure to bear on Civil Service incumbents in said positions, to force them "voluntarily" to waive all of their existing rights, protections under the federal Civil Service and Veterans Preference Laws and regulations, mentioned above, and to convert them from long standing Civil Service status to Foreign Service Reserve officer status; that they will continue unlawfully to narrow and foreclose statutory promotion and job retention rights for those Civil Service employees in permanent domestic jobs who fail or refuse to convert; and that they will ultimately succeed, contrary to the will of Congress expressed as late as 1966, in frustrating and defeating all of the Civil Service and Veteran Preference statutes and regulations mentioned above which were enacted and promulgated by the Congress to protect the integrity of the Civil Service system for permanent positions in the continental United States and to insure that Civil Service employees are not arbitrarily maneuvered or manipulated out of their positions. Finally, of course, unless the Court grants injunctive relief herein, it is clear that the Civil Service system will soon disappear, contrary to law, for all but clerical employees in both the Department of State and USIA.

43. No previous application for relief has been made. Plaintiff's allege that no adequate remedy of that law is available to prevent the severe, irreparable injury, damage and loss they and the class of employees in the USIA and the Department of State whom they represent, will sustain as a direct consequence of the unlawful, capricious actions of the defendants herein above recited.

WHEREFORE, plaintiffs on behalf of themselves and all other persons similarly situated pray:

1. For a declaration that the system, policy, and program of appointing Foreign Service Reserve officers to domestic competitive Civil Service positions is without legal authority and in violation of the Civil Service laws, applicable rules and regulations, the Foreign Service Act of 1946, as amended, and the United States Constitution and that any designation of such domestic staffing functions as Foreign Service Reserve officer positions is without basis in law and in violation thereof.

2. For a declaration that the permanent placing of Foreign Service Reserve officers, or only those willing to convert to Foreign Service Reserve officer status in domestic competitive Civil Service positions is in violation of Civil Service employees rights under applicable rules and regulations, laws and the United States Constitution.

3. For a declaration that plaintiff and other similarly situated have been unlawfully deprived of career advancement opportunities by reason of the placement of Foreign Service Reserve officers in domestic competitive Civil Service positions.

4. That all members of plaintiffs' class be immediately promoted to the grades and/or positions which they have been denied by reason of the placement of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Foreign Service Reserve officers and of those who were willing to convert to Foreign Service Reserve officer status in domestic competitive Civil Service positions.

5. That all members of the class who have been persuaded or coerced to accept the patently illegal status of domestic Foreign Service Reserve officers be restored to the GS grades and steps equivalent to their present levels in the Foreign Service Reserve.

6. Enjoin defendants from continuing any and all programs, policies, or practices which seek to replace and displace permanently qualified Civil Service employees with Foreign Service Reserve officers in domestic competitive Civil Service positions in the United States.

7. Order that all members of the class who have been denied appointments under the Civil Service law for domestic staffing positions because of the defendants' insistence upon recruitment of them as Foreign Service Reserve officers be given retroactive appointments under the equivalent General Schedule or Wage Systems to positions for which they are qualified.

8. Pay to plaintiffs their costs incurred, herein, including reasonable attorney fees.

9. Grant such other further relief to plaintiffs and the class they represent which the Court may consider just and proper.

Respectfully submitted,

LAWRENCE SPEISER,
Attorney for Plaintiffs.

VERIFICATION

DISTRICT OF COLUMBIA: ss

Bruce N. Gregory, being first duly sworn in oath, deposes and says that he is one of the plaintiffs herein; that he has read the foregoing complaint, and that he knows the contents thereof; that the matter and things therein stated are true to his personal knowledge, and those stated upon information and belief that he believes are true.

BRUCE N. GREGORY.

Subscribed and sworn to before me this 25th day of April, 1975.

MARTHA W. ROBERTS,
Notary Public, D.C.

My Commission expires April 14, 1976.

DISTRICT OF COLUMBIA: ss

Dorothy A. Bodeen, being first duly sworn in oath, deposes and says that she is one of the plaintiffs herein; that she has read the foregoing complaint, and that she knows the contents thereof; that the matter and things therein stated are true to her personal knowledge, and those stated upon information and belief that she believes to be true.

DOROTHY A. BODEEN.

Subscribed and sworn to before me this 28th day of April, 1975.

MARTHA W. ROBERTS,
Notary Public, D.C.

My Commission expires April 14, 1976.

DISTRICT OF COLUMBIA: ss

Gordon M. Connelly, being first duly sworn in oath, deposes and says that he is one of the plaintiffs herein; that he has read the foregoing complaint, and that he knows the contents thereof; that the matter and things therein stated are true to his personal knowledge, and those stated upon information and belief that he believes to be true.

GORDON M. CONNELLY.

Subscribed and sworn to before me this 21st day of April 1975.

PAUL F. FELLEMAN,
Notary Public, D.C.

My Commission expires Feb. 29, 1980.

DISTRICT OF COLUMBIA: ss

Josephine Campbell, being first duly sworn in oath, deposes and says that she is one of the plaintiffs herein; that she has read the foregoing complaint, and that she knows the contents thereof; that the matter and things therein stated are

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

true to her personal knowledge, and those stated upon information and behalf that she believes to be true.

JOSEPHINE CAMPBELL.

Subscribed and sworn to before me this 28th day of April 1975.

MARTHA W. ROBERTS,
Notary Public, D.C.

My Commission expires April 14, 1976.

The CHAIRMAN. In summation then do you oppose or support the bill, the legislation as presently written?

Mr. BLAYLOCK. We oppose most of the provisions of the bill as written.

The CHAIRMAN. So in other words if it was unchanged, you would rather see it not passed than passed?

Mr. BLAYLOCK. This is true.

The CHAIRMAN. You represent the ICA, the Information Branch. As you may know, the FSIO Corps came out of my legislation some years ago. I am coming to the conclusion that I may have made an error, or maybe not an error at the time, but that we would do better now if the FSIO Corps were part of the FSO Corps, as a separate cone, so you would then have a cone for administrative, consular, political, economic, and also for informational activities.

What would be your reaction to that?

Mr. BLAYLOCK. Well, basically we are opposed to it.

The CHAIRMAN. Is that a question of turf, because you might lose the representation of a group?

Mr. BLAYLOCK. No, really not, Senator. We as an organization, and I am sure that you are very much aware, we work through the civil service reform and others. We do not and have not by constitution taken postures for jurisdictional purposes. And we have a constitutional provision that mandates that our organization work for effective, efficient government.

And I think we are probably one of the few unions that so exist.

The CHAIRMAN. There is nothing wrong with turf. We fight for turf all the time in the Congress and executive branch but we own up to it. And I think that when that is an issue it should be mentioned.

Mr. BLAYLOCK. I would point out, Senator, if I may that with regard to the Civil Service Reform Act in which the administration developed many of these proposals such as the Senior Executive Service, performance pay, et cetera, our union's support of that piece of legislation—and we worked for many amendments of that piece of legislation as you may know; it did not come through the Congress as proposed by the administration—one of the conditions was for a strong labor/management title. Because we are convinced that when any agency or in this case the executive branch is given broad authorities by the Congress and that is transferred to an agency one of the best protections that we have is a strong labor/management program that gives the employees statutory rights to have a say in those personnel policies because the employees, if they are given those rights by the Congress, are going to be able to raise objections.

Without adequate employee protections you are going to have conformity. And that word replaces many other more sinister words. As I pointed out, in the Senior Executive Service under Civil Service Reform and the regular civil service, Senior Executive Service mem-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

bers are protected by the title I of that law, which spells out the prohibited personnel practice and the merit principles.

As a result it would be a violation of the statute under title I for the administration to take action against a member of the Senior Executive Service solely because he belonged to one political party or the other. It is a violation of the law. Explicit reference to prohibited personnel practices is not included in this proposed legislation by the administration for the Foreign Service. There are some additional protections that have to be included in the Senior Foreign Service there or we create a very dangerous situation.

The CHAIRMAN. Along that same line what is your reaction to the Senior Foreign Service performance pay concept?

Mr. BLAYLOCK. We personally don't think performance pay is going to work. We do not support the idea of performance pay. And if you look at the private sector—and you will see in our comprehensive statement we go directly to that issue—that the private sector itself is moving away from the experiment of performance pay because it is creating competition rather than cooperation. Witnesses before me have already talked about some of the problems of competition, of creating situations where employees are motivated to get the bonus pay or the performance pay.

We think that we must establish rates of pay by tenure and length of service, and that the employee's length of service must be based upon their performance. In addition, you have to compensate for the hazards, for the work assignments and for the level of responsibility. The employees who achieve levels are then promoted into higher ranks but they also get the differentials that compensate for hazardous duty.

We don't think performance pay is going to work.

The CHAIRMAN. Comparability with military or civil service. Do you think there should be a greater comparability of the Foreign Service—you don't represent the Foreign Service, but the Foreign Service Information officers in the ICA, greater comparability with the military service or with the civil service?

Mr. BLAYLOCK. If you say either/or, I would have to say that we think, first, that we should have comparability—we are talking in the area of pay I assume now. In the area of pay I would say obviously we need to have comparability with the civil service. That is where an awful lot of your recruiting comes from. And presently you do not have comparability in some areas. Now if you are talking about the overall structure, we have mixed reactions. And we have discussed this at our policy level. And at this point we have mixed reactions.

We see more a combination of the two, not saying one or the other. We see the uniqueness of the Foreign Service and the foreign affairs agencies we represent as needing a combination of some military structure and some civilian structure. And we pointed it out in our statement.

The CHAIRMAN. There is nothing wrong with the word elite as long as it is used correctly. And I have also thought that the Foreign Service was basically in our overall structure somewhat like an elite civil service. Like in the French they have, I have forgotten the name, the Inspecteurs de Finance, who can be moved around from agency to

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

agency. And I always thought the Foreign Service should be much the same thing. The people you represent in ICA——

Mr. BLAYLOCK. We agree with that totally.

The CHAIRMAN [continuing]. Are in that position and might well be moved to another governmental agency doing a special job and coming back somewhat like Ambassador Carlucii.

Mr. BLAYLOCK. Well, even if that function is moved into another agency though, Senator, we feel that the responsibility and the final authorities for the way the other agency carries out that program should be under the control of our Foreign Service. That is where the expertise is.

The CHAIRMAN. One of the problems with the FSIO corps now is that it has become very separate and you are not getting the cross-fertilization that we hoped for originally. I would like to see more of your people in political and economic jobs and becoming chiefs of mission. And this is not happening as things stand. And that is why I lean in the direction of thinking that it might be better, both from the national interest and from the interest of the people you represent, if they had a separate cone and then could spend two-thirds of their life in informational work and one-third of their life in other kinds of foreign affairs related work. That is my reasoning on this.

Mr. BLAYLOCK. Well, Mr. Chairman, in every meeting that I have had with representatives of our groups that we are discussing they bring that problem up and have the same feeling. That presently there are barriers in the system that don't allow the interchange that should be.

The CHAIRMAN. Exactly. I think you and I will find the number of your people who have been chiefs of mission, for example, is very limited, I think two or three. I may be wrong. Let us get that figure for the record and insert it.

[The information referred to follows:]

NUMBER OF FSIO'S WHO HAVE BEEN CHIEFS OF MISSION

Since 1961 when the first FSIO was named chief of mission there have been eight FSIO chiefs of mission and four FSIO deputy chiefs of mission.

The CHAIRMAN. Do you know by any chance how many of your people, FSIO's, have been chiefs of mission?

Mr. MEDD. No more than two or three.

The CHAIRMAN. I think that condition will stay as long as you have the present separation whereas if there is a fifth cone I think there would be a greater flowing back and forth. And frankly, I think diplomacy moves along very well when you have informationally sensitized, propaganda sensitized people engaging in it.

Mr. MEDD. If I may add to the subject, sir, you mentioned earlier or you questioned whether this is a matter of turf for AFGE. AFGE is a trade union and it also represents the Foreign Service, as you know, of ICA.

The CHAIRMAN. I emphasize as a labor supportive man, I have nothing against trade unions; quite the contrary.

Mr. MEDD. I understand. We also speak as a union representing the several hundred officers of the FSIO Corps. I think we speak for them when we are talking about maintaining the integrity of that

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

corps as officers who work for a specialized agency and who feel they have special skills to perform within that agency. I believe you know there is a concern that if they became just another cone within the Foreign Service personnel structure that there would be a great deal of dilution of the positions that they now have. I would not necessarily add to the number, to that two or three who have become chiefs of mission but that there might be some wholesale raiding into that cone from the Foreign Service officers themselves looking for ways to advance their own careers.

The CHAIRMAN. I see that. And I appreciate your views very much indeed. I would say your views are shared by the present director, Mr. Rheinhardt, because he shares those and does not agree with my thoughts. So I would say nothing is going to happen in the immediate future. I thank you very much indeed, Mr. Blaylock and your associates, for being with us and I wish you well.

Our next witness is Ms. Lesley Dorman, president, Association of American Foreign Service Women. Welcome, Ms. Dorman.

STATEMENT OF LESLEY DORMAN, PRESIDENT, ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN, WASHINGTON, D.C.; ACCOMPANIED BY PATRICIA RYAN AND MARCIA CURRAN

Ms. DORMAN. Thank you, Mr. Chairman.

I do have a longer statement, Mr. Chairman, which I request be put into the record. This is brief for everybody's benefit.

The CHAIRMAN. That will be inserted in the record after your oral statement.

Ms. DORMAN. Mr. Chairman, the Association of American Foreign Service Women [AAFSW] deeply appreciates the opportunity to testify before you today. We are especially grateful to the Senate Foreign Relations Committee for their concern and understanding of the human side of Foreign Service personnel matters demonstrated in the past.

Our independent volunteer organization has existed since the early sixties to meet welfare and education needs in the Foreign Service community, raising funds for scholarships and participating in many local community projects. Our members are women, both employees and wives, who spend the majority of their working lives in worldwide service representing the American people abroad.

While life in the Foreign Service is stimulating and has undeniable rewards of personal growth, travel, and international friendship, the darker side is spotlighted today. We experience the alienation of culture shock, the isolation of language inadequacy, the hazards of rigorous climate and endemic disease, the trials of evacuations, and the pervasive fear of terrorism.

Considerable energy has been expended by the women themselves in finding creative responses to the hardships. The AAFSW has organized seminars and workshops, and pressed for training to prepare individuals for life abroad, because we believe that the prepared individual is the self-reliant individual.

In 1976, the AAFSW began to recognize that changes in American society were creating stresses in the Foreign Service community. The

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association formed a forum committee on the concerns of Foreign Service spouses and families which subsequently presented a report to the Secretary of State based on responses to a mailing of 9,000 questionnaires. The forum report, which we have made available to each member of the committee, remains the most significant document to date on family life in the Foreign Service, and it continues to provide the basis of an ongoing dialog with the Secretary of State. We feel that without the sympathetic hearing accorded us by Secretary Vance, the human costs of family participation in the Foreign Service would have continued to go unrecognized.

Two major recommendations of the forum report which have been implemented by the Department are the establishment of the family liaison office and the spouses' skills/talent bank. The family liaison office, known as FLO, represents the nonprofessional interests of the Foreign Service community in the policymaking councils of management. FLO provides us, at last, with a recognized channel of communication. Since the opening of the office in March 1978, FLO has been inundated with requests for advice and counsel on such questions as schooling, allowances, dependent employment, divorce, medical and mental health. In the past 2 weeks alone, they have dealt with hundreds of evacuees.

FLO also operates the skills/talent bank, a computerized record of spouse employment resumes. We are concerned that FLO might be cut back or eliminated under a different Secretary of State. Even now, FLO needs additional space and staff. Therefore, we urge Congress to incorporate the family liaison office in the new act to guarantee the continued existence of this valuable service.

In its response to the forum report, the Department of State posed the question of "whether the Foreign Service, with its high international mobility and increasing demands on the time and energy of one family member, can accommodate the modern, highly educated American family in which both parents work and both share parenting and homemaking responsibilities.

We feel that if the Foreign Service is to be truly representative of American society today, which is stated as one of the basic objectives of the proposed act, then that accommodation must be made.

In the past two decades, the political, social, and economic role of women in America has changed significantly. Increased mobility, longevity, education, combined with economic necessity, brought about by inflation and soaring divorce rates, have radically altered the American woman's way of life. Census figures show that two-thirds of married women in America are presently employed. It is clear that the American woman needs and expects to have a broad range of work choices and to be able to pursue a meaningful career. The Foreign Service career spouse is concerned that long-term international mobility, combined with structural barriers to employment will continue to exclude her from establishing her own economic base through a career, or, at the minimum, through recent work experience. Pressures for spouse employment will continue to mount and must be met with imaginative programs.

No matter how earnest the desire to become economically independent through her own paid employment, many Foreign Service

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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wives will sacrifice the earning potential of their most productive years in helping their families make unending cross-cultural adjustments and in voluntary community responsibilities. The Foreign Service homemaker is a vital resource abroad, enriching the overseas communities with thousands of hours of donated service.

For these women, divorce exacts a heavy toll. Our association is deeply concerned about the hardships of the many divorced Foreign Service wives who are left after long years of unpaid Government service abroad with no employment record, no modern skills, no social security, no shared annuity, no survivor benefits, and exorbitantly expensive medical insurance. In order to protect these women, the foreign affairs agencies must recognize earned rights for spouses and former spouses to survivor benefits and shared pensions.

We have received support on this point from the Honorable Loy W. Henderson in a letter which we would like to read into the record. Ambassador Henderson says:

When I was Deputy Under Secretary for Administration of the Department of State, I appeared before a subcommittee of the Senate in 1959 and defended the position that Foreign Service wives make a different contribution from wives of civil servants. In referring to Foreign Service widows, I said "a surviving widow, in a very real sense, has earned her annuity."

The following year I spoke on the same issue before a subcommittee of the House of Representatives and told them, "It has seemed to us unfair that a woman who, for instance, has devoted 30 years of her life working for the American government abroad with her husband should lose her annuity if she should remarry after her husband dies."

Since that time, there have been many changes in society. Unprecedented numbers of marriages which have endured for years are ending in divorce. It seems just as unfair to deprive a former wife of many years standing of her survivor annuity as it seemed then to deprive a widow of any annuity should she remarry. They have "earned rights" to their modest recompense.

Most Foreign Service wives have spent their lives in accordance with ground rules laid down by the government. Government regulations "discouraged" them from seeking employment overseas. Until 1972 they were graded annually along with their husbands. Although no longer thus graded, the overwhelming majority of Foreign Service wives, realizing that their cooperation with their husband in a spirit of helpfulness adds to his effectiveness, have continued to work with him as a partner for the American government.

If, after years of joint work with her husband, the marriage of a Foreign Service wife should end in divorce, she has at present no "earned" rights. If the same woman were a widow, she would be provided for; if only a "former wife," she is a non-person so far as the government is concerned.

These women have given up the productive years of their lives following their husbands around the globe. It seems to me that they have clearly "earned their rights" and that the time has come for the government to honor such rights.

Ms. DORMAN. Moreover, we are concerned about the effects on families of OMB's proposed cuts in the current budget. The congressionally mandated Hayes Study shows that the middle and lower ranks in the Foreign Service receive lower pay than the civil service for equivalent work. Yet money for pay parity as well as funds for allowances already authorized by Congress would be denied. These costs will be absorbed by the family members, exacerbating family problems.

Although an employee has the option to resign if family concerns so dictate, let us consider the costs to the system. Not only does it cost more than $25,000 to test and train a new Foreign Service officer, but the accelerated loss of seasoned employees with expertise, languages,

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and, above all, personal contacts accumulated over the years could become a hemorrhage of irreplaceable assets.

We do not feel that it is appropriate for the AAFSW to take a position on the proposed Foreign Service Act of 1979 as a whole. We do feel that any new act should fully recognize the unique sacrifices and adjustments required of Foreign Service families so as to make clear the justification for the Secretary's authority to help families in special ways.

I have with me today two of my colleagues, both Foreign Service wives, Marcia Curran, chairman of the Forum Committee on Employment and Career Development, and Patricia Ryan, chairman of the Forum Committee on Retirement, who have submitted reports on their areas for the record. The three of us will be happy to respond to questions.

[Ms. Dorman's prepared statement and the information referred to follows:]

PREPARED STATEMENT OF LESLEY DORMAN

Mister Chairman, Members of the Committee: The Association of American Foreign Service Women deeply appreciates the opportunity to testify before you today. We are especially grateful to the Senate Foreign Relations Committee for their concern and understanding of the human side of Foreign Service personnel matters demonstrated in the past.

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In 1976, the AAFSW began to recognize that changes in American society were creating stresses in the Foreign Service community. The Association formed a Forum Committee on the Concerns of Foreign Service Spouses and Families which subsequently presented a report to the Secretary of State based on responses to a mailing of 9,000 questionnaires. The *Forum Report*, which we have made available to each member of the Committee, remains the most significant document to date on family life in the Foreign Service, and it continues to provide the basis of an ongoing dialogue with the Secretary of State. We feel that without the sympathetic hearing accorded us by Secretary Vance, the human costs of family participation in the Foreign Service would have continued to go unrecognized.

Two major recommendations of the *Forum Report* which have been implemented by the Department are the establishment of the Family Liaison Office and the spouses' Skills/Talent Bank. The Family Liaison Office, known as FLO, represents the non-professional interests of the Foreign Service community in the policy-making councils of Management. FLO provides us, at last, with a recognized channel of communication. Since the opening of the office in March 1978, FLO has been inundated with requests for advice and counsel on such questions as schooling, allowances, dependent employment, divorce, medical and mental health. In the past two weeks alone, they have dealt with hundreds of evacuees. FLO also operates the Skills/Talent Bank, a computerized record of spouse employment resumés. We are concerned that FLO might be cut back or eliminated under a different Secretary of State. Even now, FLO needs additional space and staff. Therefore, we urge Congress to incorporate the Family Liaison

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We have received support on this point from the Honorable Loy W. Henderson in a letter which we would like to submit for the Record. Ambassador Henderson says in part:

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REPORT BY MARCIA CURRAN, FORUM COMMITTEE ON EMPLOYMENT

THE FOREIGN SERVICE ACT AND DEPENDENT EMPLOYMENT

Many Foreign Service dependents wish to provide for their own economic security through employment. They find it difficult to sacrifice jobs, tenure and pension rights in the United States to face limited employment abroad. It is the continuous geographic mobility as well as bureaucratic restrictions on employment which put the Foreign Service family member who wishes to work at a special disadvantage.

Jobs abroad are scarce. Local work laws frequently mean that the spouse must look to the U.S. Mission for employment opportunities; yet, all such jobs are temporary, low in pay, carry no promotion potential, earn to credit toward government status and offer no adequate retirement program. It is these circumstances which justify more flexible and open employment programs for Foreign Service dependents.

The Department of State, the International Communication Agency and the Agency for International Development have begun to recognize the need for such programs, despite the long history of discouraging married women from working. This is evident in recent actions and in sections of the proposed Act. Encouraged by legislative authorization the Department has expedited, through the A–1/A–2 regulations, a program which could open up employment on local economies for official American family members. It has held widely attended career counseling workshops at the Foreign Service institute, and has begun to set up a Skills/Talent Bank to assist spouses in their search for employment. As a pilot program, it has approved spouse participation on a space available basis in FSI functional training courses; ICA and AID have offered to do the same for some of their training programs. These employment programs are discussed more fully in our recent *Report on Dependent Employment* which we wish to submit for the record.

Resistance to spouse employment

Unfortunately, there seems to be considerable attitudinal resistance to the idea of spouse employment among some members of the Foreign Service community. Marguerite Cooper King of the Women's Action Organization has carefully described, in testimony before the House Committees earlier, the situation faced by working women in the State Department and other Foreign Affairs agencies. From her testimony it is clear that women, and most Foreign Service spouses are women, have a very long way to go to achieve equality of opportunity even if they are already within the career system. AAFSW is grateful to WAO for its dedicated efforts to expand dependent employment opportunities, as it is to the Foreign Service Secretaries' organization for working toward improvement in the treatment of women employees.

We are saddened when we hear that Foreign Service staff, and particularly secretaries, are worried about job security and assignment opportunity because of spouse employment. We do not believe that spouse employment presents a threat to job opportunity for career members of the Foreign Affairs community. AAFSW will always be among the first to defend the rights of the Staff Corps against any real and substantiated inequities. In this connection, we fully support the Staff Corps' request, stated in the AFSA testimony before the House, for the opportunity to take orientation, language training, and professional training for upward mobility.

There are those in the Department of State who would discourage the trend toward families with two Foreign Service career employees, commonly termed the "tandem couple" because of the desire to find a pair of tandem assignments at the same post thus permitting families to live together. Some in the Department look upon this as a problem; AAFSW prefers to look upon it as a solution

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to changes taking place in American society. In the United States at the present time two out of three married women are working, and that trend is growing. Through tandem assignments the Department and the other Foreign Affairs agencies not only make significant savings in administrative costs, but also provide employment to both members of a two-career family. Employment opportunities are thereby expanded for those who are able to qualify for the career services. It is our conviction that such a view of tandem assignments acknowledges the present and long-run direction of American society. To discourage it, or to fail to encourage the two-career Foreign Service couple is to misread the future, and to substitute what is perceived as one problem for another.

On the other hand we have noted that if the spouse wants to practice a skill which is not perceived to threaten traditional Foreign Service career categories, there seems to be less resistance. For example, the Medical Division has recently endorsed the use in Foreign Service posts of the professional skills of spouses who are clinical social workers. A few months ago these spouses created the Association of American Foreign Service Clinical Social Workers, and took their cases to the Department. The resourcefulness of the spouses, combined with the growing awareness in the Medical Division of the need for such services abroad, resulted in this employment breakthrough.

AAFSW will continue to search for ways to expand work opportunities and will, at the same time, search for ways to reduce resistance to, and ungrounded fears of these job programs. Since pressures for more dependent job opportunities will inevitably increase, we hope that the Foreign Affairs agencies will actively work to create a more positive climate.

Section-by-section comment on the act

Sec. 332. We believe that this section might be the appropriate place to add language which would protect the Foreign Service spouse or dependent who must give up a government position in order to accompany the Foreign Service employee abroad. Reemployment right and/or credit toward government status should be offered in this section.

Civil Service status, a kind of reemployment right, can never be earned in temporary jobs. It is earned only in permanent jobs and then only if the person remains in such a position for three years or more without a break in service of more than three days. The mobility of Foreign Service life and the fact that all government jobs abroad are temporary (unless the person is already a member of the career service), make earning status extremly difficult. At present a spouse can work for as many as five years in a temporary job and still not earn status.

Sec. 333. The language, "renewable limited appointments", eliminates one inequitable aspect of the present employment situation for spouses. Under the old system a dependent could have only five years of cumulative temporary employment. This designation does away with that five-year time limit.

The language at the end of sec. 333(a) appears to allow flexibility in the choice of pay scales for American family member employees. This is an improvement over State's interpretation of present law authorizing American family member employment in certain vacant foreign national positions. In our *Report on Dependent Employment* (March 12, 1979) we outlined the inequities of paying local wages to American family members in foreign national positions: at one end of the scale you have wages below U.S. minimum wage; and at the other you have wages higher than that of comparable career Foreign Service personnel. We continue to take the position, as does WAO, that all official Americans employed by the Foreign Affairs agencies abroad be paid according to American pay scales.

This foreign national/American family member program took a long time to get off the ground. Now that the program has gone worldwide, fifty positions have been designated and twenty dependents hired as AFMs. We hope that the Foreign Affairs agencies will give it more publicity and more emphasis.

Sec. 333(a) refers to the employment of family members "abroad in positions to which career Foreign Service personnel are not customarily assigned." It is our understanding after discussion with Management that this language does not preclude the possibility that dependents may, on a temporary basis, fill positions which are usually filled by Foreign Service personnel. If the Committee interprets this language differently, we would want to seek changes.

Some of the more interesting jobs dependents are offered abroad are those which usually are filled by career personnel, but are vacant for several months

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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or longer, or are in less desirable posts and do not attract career personnel. It is our understanding and hope that the language of this subsection and that of subsection 333(b) permit the temporary hire of qualified dependents to fill such career positions. In this way no career personnel will be displaced, the Department's needs will be served (often at a lower cost) and dependents will be offered needed job opportunities. This would be no threat to the job security of career personnel.

Sec. 701(b). "The Secretary may . . . provide to members of families of such personnel [all Foreign Affairs personnel] in anticipation of their assignment abroad or while abroad . . . (2) functional training for anticipated prospective employment under section 333." This is new and we wholeheartedly support it. Dependents can fulfill vital, short-term staffing needs if they are trained to do so.

Under the present operating rules for this program some difficulties do arise: admission of dependents on a space available basis means that up to the last minute there is uncertainty about spaces; it also means that very few spaces are available for family members; initially, only the consular and the budget and fiscal courses, not the general services not the personnel courses were opened to spouse participation. In the next round at FSI the general services course will be made available. ICA and AID are also opening functional training courses to dependents on a space available basis.

Sec. 705(b). This section authorizes the Skills/Talent Bank. We believe that the first line should read: "The Secretary *shall* facilitate the employment of spouses of Foreign Service personnel . . ." It is our concern that under a different Secretary of State the Skills Bank may be phased out or starved for resources. Even at the present time, it needs additional staff and resource support to do its job. The Coordinator of the Skills/Bank holds only a parttime, temporary position (a six-month appointment).

Sec. 705(b)(3) refers to assisting spouses in obtaining "overseas employment." We agree with AFSA's testimony before the House that the word "overseas" should be removed if it means that Skills Bank personnel cannot counsel the spouse for stateside employment. It is just as essential to assist a dependent for employment in the States as overseas. The two go hand-in-hand. If in fact the Skills Bank operation is to serve the whole system, there can be no logical separation between stateside and overseas jobs counseling in the case of the Foreign Service dependent.

We are often asked if any of these programs assist male spouses. The answer is an emphatic "yes". There is, of course, no distinction made on the basis of sex. It may interest you to know that at the present time there are more than 25 male spouses represented in the Skills/Bank. Four will have gone through functional training courses at the Foreign Service Institute.

Additional recommendations

We would like to raise a number of matters which are not addressed by the Act, but which we feel must receive attention. We recommend that the Foreign Affairs agencies give serious consideration to the following:

(1) Need for administrative or legislative action to permit Foreign Service spouses to earn credit toward government employment status on an incremental basis. The Department has offered to assist us through cooperation with the Office of Personnel Management to find a solution to this issue. We think we are slowly making progress.

(2) Need to make available on a regular basis midlevel and senior level positions for spouse employment. The present system which offers nothing higher than an FS-8 is an anachronism, a hangover from the days when temporary jobs were always clerical. Regulations for temporary hires should be changed to permit hiring at higher grade levels. The Foreign Service agencies should look into the possibility of making parttime permanent GS positions available overseas for spouses hired at post. (We also recommend parttime permanents here in Washington.)

(3) Need to look for ways to recognize and compensate the highly involved U.S. Missions and community projects abroad, and without whose contributions of time and talent the quality of our presence abroad would be vastly diminished. (We would like to submit for the Record at this time the results of AAFSW's Time-Use Survey.) A first step to recognize this contribution is in the works: a senior spouse job description has been developed; it represents a career focused, skill oriented approach to diplomatic spouse activities. We would like to see more steps taken in this area.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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(4) Need for adequate retirement programs for spouses working in temporary, parttime or limited hire positions. We would like to see the renewable limited appointments permit participation in the Civil Service retirement system. Those who have left Civil Service jobs behind should be allowed to continue their participation in the Civil Service system while working abroad. Senior spouses who volunteer their efforts full time performing diplomatic and community services abroad should be permitted to pay into Social Security.

Some of these needs could be met by administrative regulations. Others will require legislation. For the AAFSW, spouse employment and career development will continue to be a priority concern. So long as these issues are manifest throughout American society, the Foreign Service community will feel their effects and must respond one way or another.

The demonstrated interest and concern by Members of this Committee earlier have already played an important part in the progress that has been made. We will continue to seek your support. We know how effective it can be.

REPORT BY PATRICIA RYAN, FORUM COMMITTEE ON RETIREMENT

THE FOREIGN SERVICE ACT AND ANNUITIES

I want to consider the problems of the divorced Foreign Service wife, and to begin by reminding you of some facts.

First, the concept of no-fault divorce has swept the country. There is no longer any defense against a unilateral decision by one partner to end a marriage.

Second, a recent study by the University of Texas projects that 38 percent of the young women now in their late twenties or early thirties will be divorced at some point in their lives.

Third, the divorce rate in marriages that have lasted longer than fifteen years has doubled in the past decade.

Fourth, despite mythology to the contrary, alimony is awarded in only 14 percent of divorces. To make matters worse, fewer than half the women receive payments with any regularity after the first year. In any case, payments cease when the husband dies, often leaving a divorced woman with desperately little money at the exact time in her life when she most needs it. Indeed, the fastest growing group of persons subsisting under the poverty line are older women.

Last, I draw your attention to a statistic that currently is not known: the divorce rate in the Foreign Service. For whatever reason, the State Department has never kept any record of this information. No one suggests that whether a particular employee has been divorced should be on the public record, but surely these data should be kept in numerical form to show how the Foreign Service, in comparison with other ways of life, affects marriages. The Family Liaison counselors tell us that much of their time is spent dealing with divorce cases.

Keeping these facts in mind, let us move on to the difficult problem of annuities for divorced Foreign Service spouses. Our approach is based on a concept of marriage as an economic partnership of co-equals. Contributions to this partnership may be in earned wages or in unpaid activities such as those traditionally delegated to the homemaker and mother. In assessing the value of these activities a Maryland court in 1975 awarded damages of $1,500,000 to a man and his two children for the loss of their wife and mother. The court assessed the value of the mother's services to the two children for a period of eight or nine years at $60,349. Society, however, generally ignores the economic contribution of the homemaker in questions of divorce.

Our view is, further, that the Foreign Service wife has special impediments to economic independence, resulting exclusively from the husband's employment. Cultural, legal and linguistic barriers prevent her from working overseas. When she can work, constant international mobility usually prevents her from vesting in any sort of retirement plan. Earlier government policy, as you heard from Ambassador Henderson, discouraged her from working at a paid job. It is the existence of these unique conditions which are the grounds for granting special relief to Foreign Service wives, not necessarily granted to members of other government services. We do not feel that we are in any sense better than other groups of wives, but rather that no other group shares all the ways in which we are disadvantaged in attaining economic self-sufficiency. The United States government has an obligation to compensate wives for this loss of opportunity to create their own economic base. This obligation is independent of the marital relationship.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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In addition, Foreign Service wives frequently perform hours of unpaid service for the government. Our time-use survey shows that wives of middle- and upper-rank officers donate from one to four weeks work per month. One ambassador's wife logged the equivalent of two full-time jobs in activities related to her husband's employment.

There is no present method for reimbursing wives for their work, because there is no satisfactory means of rating the work.

Let us turn now to the proposed Foreign Service Act of 1979, Section 821(b)(2). We are grateful to see this provision included which would require permission of the affected spouse to waive his or her survivor annuity. We would, however, like to see the protection extended to former spouses who have resided with the participants on assignments in the Service for the requisite ten years.

Next, let me simply mention Section 864(b) which authorizes payments of sums otherwise due to an annuitant or a participant to another person pursuant to the terms of a court decree of divorce. These provisions are similar to those in P.L. 95-366, enacted in 1978 for the Civil Service. This section begins to nibble at the problem. However, the court order approach is not satisfactory to us. I will discuss the reasons for this in a moment.

Now we turn to a section which has disappeared. An earlier draft or the bill contained a proposal to deal with the question of a survivor annuity for a divorced spouse, again pursuant to a court-ordered property settlement. It required that the former spouse be married to the participant for at least ten years during the latter's employment in the Foreign Service. OMB requested that the section be excised and placed in a separate bill. The Administration would prefer to consider the issue under the rubric of pensions in the Presidential Commission on Pension Policy. While this decision may be appealing from the standpoint of rationalizing effort, it is dismaying for divorced or divorcing Foreign Service wives because it will cause a three- to four-year delay at best. Some of these wives have almost nothing. Some live in terror that they will not die soon enough before rampant inflation or the death of their former husbands reduces them to abject penury. They need relief now.

There are grave disadvantages to the court-ordered approach to these issues adopted by the Department. There is the enormous expense of access to the courts, especially for appeals. There is the lack of precedent for awarding parts of pensions and survivor annuities. There are widely varying divorce laws from state-to-state which would result in different women receiving widely differing awards of a federal benefit for the same deprivations. There is little or no awareness among jurists of the special problems faced by Foreign Service wives. Furthermore, these women are frequently cut off from community roots or connections, and often rely on their husbands' lawyers or on ones they recommend.

For these reasons, we greatly prefer Rep. Schroeder's bill, H.R. 2857, which would automatically give a former spouse who was married to a participant for at least ten years a pro rated share of the retirement and survivor's annuity. The exact amount of the former spouse's annuity would depend on the number of years of marriage that overlap with credited years of service toward retirement.

The only drawback of Rep. Schroeder's bill is that it does not solve the problem of those already divorced, especially those whose participant or annuitant spouse has died. A possible solution may lie in the grantee approach used in P.L. 94-350 in 1976 which gave widows of Foreign Service employees retired before 1960 a minimum annuity.

If Rep. Schroeder's bill were made retroactive to cover existing former spouses, present second spouses of participants or annuitants would be adversely affected and would require some relief. Second marriages made in the future, however, would be protected by the knowledge of the exact entitlement of the former spouse.

I would like to discuss one last matter, the extraordinary hardship visited on the divorced Foreign Service wife by the withdrawal of medical insurance. At present, if she applies within a specified period after her divorce, her former carrier must accept her without a physical examination. However, she receives only limited hospitalization coverage, usually excepting existing health problems, and is charged up to $1,600 per year for this inadequate coverage.

Because so many health conditions are caused by or exacerbated by inadequate medical care overseas, this is a particular cruelty. We would like to have health insurance renegotiated to provide a better deal for divorced women so that the costs of the actuarial risk are spread over the entire system.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The expense of rectifying these inequities is negligible. On the other hand, the continued failure to protect these older women has hidden costs: payments for welfare and food stamps, the loss of tax revenues through deductions taken by family members who may contribute support, and increased costs to the health delivery system of the higher incidence of illness associated with poverty. There are human costs as well. The bitter sense of betrayal by a system which appears to exploit and discard participants is a contagion, spreading distrust and lack of commitment that will never appear on a cost/benefit analysis or a zero-based budget.

ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN,
Washington, D.C., March 12, 1979.

HON. CYRUS R. VANCE,
Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: In response to your reply of September 8, 1977, to the Report on the Concerns of Foreign Service Spouses and Families, the Association of American Foreign Service Women is pleased to submit the Forum's most recent study on the dependent employment situation.

Reports on other matters of concern to the Forum, such as mental health, orientation, and communication between families and the Department, are being prepared. However, because of the high priority and timeliness of the employment issue, we wish to submit this report separately at this time. Other reports will be sent along to you as they are readied.

Your personal interest in, and understanding of, the issues raised by the Forum have already given impetus to significant improvements in the life of the Foreign Service family. We greatly appreciate your support and look forward to a continuing and fruitful dialogue.

Sincerely,

LESLEY DORMAN,
President, Association of American Foreign Service Women.

TO THE SECRETARY OF STATE, A REPORT ON DEPENDENT EMPLOYMENT FROM THE ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN FORUM COMMITTEE ON THE CONCERNS OF FOREIGN SERVICE SPOUSES AND FAMILIES

We are encouraged that the Department recognizes the serious problems facing Foreign Service spouses, both male and female, who wish to pursue careers appropriate to their interests, experience and educational background. It is increasingly clear that inadequate employment for spouses is adversely affecting assignments, efficiency and morale in the Foreign Service. That men want careers of their own has never been questioned. Many female spouses now also want the opportunity to have careers of their own. This is not purely a matter of economic need, although that plays a strong role in times of rapid inflation. Women, now more than ever before, want the satisfaction of an independent career and the security a career provides them for weathering the uncertainties of middle and later years.

We are grateful to the Department for its efforts to improve employment opportunities for Foreign Service dependents. The setting up of a Skills/Talent Bank in the Family Liaison Office, the successful negotiation of new regulations governing employment of diplomatic and consular dependents in this country (A–1 and A–2 visa holders), the pilot implementation of Sec. 401 of the Foreign Relations Authorization Act (FY 1979) which converts some foreign national slots to American possibilities and morals at post. The Family Liaison Office itself is of great assistance in answering questions and providing advice on employment programs. The Career Workshops offer positive assistance for reentering the work force. PIT (Parttime/Intermittent/Temporary) and contract jobs can add to employment choices. Two programs recently initiated reserve support: the stateside use of the 90-day security clearance waiver to permit hiring spouses for emergency short-term needs of the Department, and the Service Institute so that they might be employed to fill administrative and consular needs abroad.

This report discusses the above programs and offers suggestions for changes. It will then turn to other key issues which the Forum and the AAFSW feel must be addressed by the Foreign Affairs Agencies in order to meet the needs

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

of Foreign Service dependents in today's world. These other issues include the special employment problems of the spouses of senior diplomats, the need for spouse participation in individual retirement benefit programs, and the need to earn career status.

The Skills/Talent Bank.—We applaud the Department's funding of a half-time position for six months to implement the Skills/Talent Bank and to promote its use within the Foreign Affairs Agencies and among firms doing business abroad. It is, however, unclear what will happen when the six-month period ends in June 1979. We do not see how the Skills Bank can continue to function as a useful service if there is not at least one part-time employee to manage it. We hope the Department would agree with this point of view and fund a permanent part-time position for the Skills Bank. The Skills Bank Coordinator not only answers requests for names of persons with geographic availabilities and skills, but also promotes the Bank with international firms and organizations hiring abroad. She is available to answer questions and counsel those going abroad on work opportunities at particular posts. In addition, the current Skills Bank Coordinator, working approximately thirty-two hours a week, has developed a job information resource packet for mailing to all posts, coordinates the semi-annual Career Planning Workshops at the Foreign Service Institute (discussed separately), conducts monthly meetings to assist spouses returning to the D.C. job market from overseas, and recruits spouses to fill PIT positions in the Department and for the pilot training program at FSI. These efforts must be continued to make the Skills/Talent Bank the valuable service that it should be, both to the Foreign Affairs Agencies and to the Foreign Service family.

As an adjunct to the services of the Skills Bank, a repository of full-up-to-date information on the employment situation at each post would enable every spouse going abroad to obtain valuable information on her/his job prospects. In some cases, the spouse/dependent might be able by using this information to land a job even before arriving at post, thereby making a happier transition to a new location. While we recognize that post reports and the Overseas Briefing Center generally have some information available, it is often incomplete and out-of-date. We urge the Department to set up a system for gathering this information on a frequent basis and to make it available both in the Overseas Briefing Center and in the Skills Bank. We recommend that posts collect this type of information by entering into a contract with a qualified dependent who will also seek job openings in the private sector for official American dependents.

A–1, A–2 visas and reciprocity.—The Department is to be congratulated on the dispatch with which it accomplished changes in the regulations permitting A–1 and A–2 visa holders in the U.S. to accept employment. We hope that the dependents of many embassies and consulates in the U.S. will take advantage of this new opportunity, so that our own dependents in the reciprocal countries may easily obtain permission to work. Although we do not have much information on the effectiveness of the new reporting requirements concerning ambassadorial permission for dependents wishing to accept work on the local economy, we feel that the new process should represent a change for the better.

Conversion of foreign national positions to FN/AFM.—We appreciate the difficulties encountered by the Department in its efforts to comply with Sec. 401 of the Foreign Relations Authorization Act of FY 1979. We hope that the Department, as it works out the final regulations will support the intent of the law which is to expand employment opportunities for family members of U.S. personnel assigned abroad. But for a few exceptions, the kinds of positions which were identified at pilot posts offer low-level jobs both in the skills demanded and the pay offered. The former may be a result of the fact that the pilot posts had a very short time to respond to the request for this information. There is some indication that at least in one post not all foreign affairs elements were consulted thoroughly and, therefore, did not designate jobs which might become available. It is possible that with more time to consult and focus on the program at post more positions and more interesting positions might have been selected.

Because, according to the present plan, the FN/AFM positions will remain on the local pay scale, many positions will pay far less than even the present U.S. minimum wage. In some cases the wage will be less than half of the poverty level wage. In a few geographic areas, such as the Persian Gulf and Europe, wages paid at the local rates will be higher than comparable positions in the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

U.S. It appears to us that in the interest of equity all FN/AFM positions when held by an American dependent should follow American pay schedules. We believe that this is what the law intends when it refers to compensation practices "consistent with the public interest." If this program mainly offers low-level jobs at pay scales unfair to Americans, then the program will not make a significant difference in the overall job picture and will not carry out the main intent of the law. If the Department determines that under the present language of the law it cannot legally pay American dependents in FN/AFM positions on an American pay scale, then we urge the Department to seek appropriate changes in the law.

Career Workshops.—We wish to underline the contribution made by the Career Workshops conducted at FSI by the Overseas Briefing Center and the Family Liaison Office. These workshops have provided invaluable guidance for those attempting to reenter the work force both here and abroad. Not only have the courses been extremely well run and well attended, but they have also created support groups for those trying to break into today's tight job market. The fact that the Foreign Service dependent must continually interrupt her/his career with each new assignment makes finding suitable employment difficult, if not impossible, in the States as well as overseas. Furthermore, it is not uncommon for a potential employer to turn down an applicant just because as a Foreign Service dependent she/he looks like a short-timer. The Career Workshops offer the spouse, whether returning or departing, an essential service in facing yet another job search. We urge the Department to continue funding these two-day workshop programs twice yearly.

Pit and contract programs.—We look forward to learning the results of the Director General's inquiry into the pros and cons of expanding the PIT program and of encouraging the use of non-personal service contracts and consultants drawn from the dependent community. We would welcome information on any expansion of these programs in the past year. Given the fact that there are spouses of U.S. employees abroad who have professional backgrounds in economics, political science, journalism and other areas, and who could perform important services in those areas, we suggest that the Department give full consideration to employing these individuals on contract or as consultants to meet the changing needs of the Department's work abroad.

As the PIT program is now designed, it presents a number of problems which we would like to bring to the attention of the Department: appointments are limited to one year, followed by a three-month break in employment before the employee can be given the same position again; the position can be terminated at any time; grade levels with rare exceptions are limited to FSS–8 and below; PIT jobs offer no career potential; and, unlike DOD hiring programs, no preference is given to official dependents. We propose that these deficiencies be examined. Specifically, we propose that the Department offer PIT positions at all grade levels, that the three-month break in employment be eliminated, that positions be offered for two-year periods, that official U.S. civilian dependents be given preference in this and other hiring programs, and the PIT employees be eligible for promotion and step increases. The question of status will be dealt with later in this report.

Two new Department programs.—The Forum is keenly interested in two programs recently approved by the Department: the temporary employment of Foreign Service spouses on an emergency basis under security clearance waiver of Executive Order 10450; and training for a pilot group of spouses in regular Foreign Service Institute administrative and consular courses on a space available basis. We fully support the first program and look forward to being of service in this way to the Department. The security clearance time lag works a hardship both on the Department and the individual waiting for final clearance. We urge the Department to apply the security clearance waiver to summer hire of teenage dependents.

As to the second program, we also strongly endorse the Department's idea of training spouses to handle designated administrative and consular tasks. Under this program spouses with appropriate training at post can fill staffing gaps, thus eliminating possible TDY expenditures and providing continuity of service. Such a program can also contribute markedly to the improvement of morale at post, not only because it will increase employment opportunities, but because it will demonstrate a realization on the part of the Department that the skills and experience of dependents are a valuable resource. We support the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

implementation of these programs by the Department and will urge the other Foreign Affairs Agencies to follow suit.

OTHER KEY ISSUES

The Forum is encouraged by the steps which the Department has taken to try to expand the employment opportunities for dependents abroad and at home. We view these adjustments to the increasing demands of women and male dependents for a fair chance in the job market as a very important beginning. Eventually, however, the issue of career status and benefits, and of employment for spouses of senior officials will have to be met.

Retirement.—Retirement puts the Foreign Service spouse in a particularly difficult situation. She/he is ill prepared for later years because of mobility and the failure of many job programs abroad to offer adequate retirement benefits. Even some U.S. Government jobs abroad do not provide retirement programs (i.e., English language teaching, commissary, and other contract work). The spouse who devotes full time to supporting the Foreign Service Officer's representational activities receives no monetary or retirement benefits in her/his own right. The spouse who leaves a job with paid-in retirement benefits in the States may find a job abroad, but it will probably not permit her/him to continue to pay into the retirement program of the agency which had employed her/him at home. The person who had been employed by a company where the retirement benefits were fully paid by the company may lose all retirement credit with that company. The dependent who left a retirement program at home usually must enter a different program when working abroad, but might not be in any program long enough to qualify for adequate benefits or any benefits at all. These are intolerable situations, and ones which, in some cases, may require new legislation in order to give the Foreign Service spouse a fair chance at earning decent retirement benefits. One suggestion which deserves study would be to permit the dependent spouse, even while unemployed, the option of paying into an independent retirement account or the Social Security system while abroad. (To offer adequate retirement income, these programs should permit larger contributions and benefits than at present.) Those who have a stake in another retirement system should be permitted to continue to pay into that system if they so desire.

Two concepts are central to understanding this problem: it is essential to recognize that the non-working person has the same retirement needs as the working person, and that each individual needs to have retirement benefits in her/his own right. We urge the Department to take the lead in requesting appropriate changes in laws and regulations to permit spouses more opportunities and greater flexibility for participation in retirement programs. We also recommend that all jobs connected with official missions abroad and held by official dependents offer adequate retirement benefit programs.

The Forum strongly supports the proposal to make Foreign Service spouses who are divorced or legally separated eligible for inclusion, along with Civil Service spouses, under P.L. 95–366. This law permits a spouse to claim a portion of the employee spouse's pension at retirement. The proposal meets an urgent need for those spouses now facing this circumstance.

Employment for spouses of senior officials.—Spouses of senior diplomatic officials face special employment problems. The officers position may make employment both within and outside of the mission awkward. Many may feel that under these circumstances the best use of their talents is in the representational area and that relinquishing these activities for other employment would not be in the best interests of the United States. Appropriate steps should be taken to recognize their efforts. Although we do not support the idea of honorary awards, we do support the request made by wives attending the recent Chiefs of Mission Regional Conference in Columbo (State 00317, Jan. 19, 1979) that COM spouses be given a job description which could be used as a model for inclusion in their resumes. There should be a form of appropriate certification, if requested by the spouse, for her/his efforts. Naturally, no spouse should feel compelled to fulfill the duties outlined in the job description. She/he should be free to accept or reject the traditional role.

We feel that those spouses who accept the responsibilities of the role as outlined in the proposed guidelines should be compensated by receiving a salary based on a percentage of the employee spouse's salary. Along with this should go

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the right to earn retirement benefits, or at least to pay into an independent retirement account. We realize that this idea will require serious study and changes in the law before it can be put into effect. Nevertheless, we think it has great merit. It would permit official recognition of the dedicated and expert services rendered by the spouse who takes on this traditional role. It would permit monetary reward to satisfy the spouse who objected to the two-for-one arrangement but who could not comfortably avoid it. We hope that this proposal will receive serious Departmental consideration and support.

Career issue.—The modern Foreign Service spouse who works in various U.S. government positions abroad, be they PIT, contract, or some other form of direct-hire, is, under present regulations, denied status regardless of how long she/he has worked for the Government. Under the plan for the new FN/AFM positions and PIT positions, the dependent is allowed to work for one year with a possible one-year extension. Present regulations permit acquisition of status even in career jobs only after three years of basically unbroken service, and under no circumstances when working in direct-hire, FN/AFM, PIT or contract positions. Thus. the limitations attached to such employment discriminates unfairly against a class of persons who have practically no other choice for employment but to work for the U.S. government. The fact that this employment offers no hope for career status also adversely affects the individual's employment opportunities in the U.S. Since the U.S. government, the largest employer in the Washington area, makes status a qualification for many positions, the Foreign Service dependent who returns without status is cut out of much of the job market.

The AAFSW Forum plans to do all it can to have regulations adopted which permit Foreign Service dependents to accumulate Civil Service status through credit for each month worked for the Government, both in the States and abroad, regardless of breaks in service. We will also request that this change be made retroactive. We hope that the Department will actively support us in this endeavor. It is our belief that, in the short and long run, increases in real career opportunities, not just work opportunities, will strengthen the Foreign Service by making it more attractive to all employees.

Spouse employment and career development will continue to be a priority concern of the AAFSW Forum. So long as these concerns are manifest throughout Americtn society as a whole, the Foreign Service community will feel their effects, and must respond one way or another. We are encouraged that the Department of State has, through its statements and actions, recognized this growing issue. We hope to continue to work with the Department to make needed adjustments, to eliminate inequities in existing and future programs, and to find new ways to expand dependent work and career opportunities.

[From the Association of American Foreign Service Women, Washington, D.C., May–June 1978 Newsletter]

WHAT ROLES FOR SPOUSES?

Time Use Survey: Lots of Hours

(By Margaret W. Sullivan)

"I knew I worked hard, but I was surprised at how many hours it really was", commented a wife as part of her response to a time-use survey undertaken this year by the Association of American Foreign Service Women *Newsletter*. The survey documents the hours of unremunerated work spouses contribute to the official functioning of U.S. Missions and delineates the ways these hours are spent. Time use—not opinions about if or how it should or should not be recompensed—is all the survey studies. The results do not so much present a new picture as fill-in, highlight and confirm areas of the commonly assumed one.

Although some respondents report no involvement at all in the official life of a Mission, a substantial majority contribute to it in some way. The degree of involvement—except in activities of a purely community-building nature—is generally related to the employee's position. The unique demands of the specific post and the variations of individuals personalities are also factors in the amounts of time invested.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Two findings stand out:

Being an Ambassador's wife is frequently a full-time job. An Ambassador's or Charge's wife probably devotes an average 167 hours a month—over four 40-hour work-weeks—to official functions. Some devote much more. The top number reported for 328 hours 30 minutes, or almost 11 hours a day, seven days a week; enough for two full-time jobs.

Being the wife of an officer with representational responsibilities is frequently equivalent to having at least a part-time job. The survey suggests that nearly half the wives of officers who have such responsibilities may contribute more than 40 and less than 120 hours a month—more than one and less than three 40-hour work-weeks. An additional fifth of such wives put in more than 120 hours a month.

THE SAMPLE

The survey was initiated in October 1977 when the questionnaire appeared in the *AAFSW Newsletter*. A later story about it in the Department of State *Newsletter* elicited a few requests for forms. At a number of posts, the survey form was reprinted and circulated. It is impossible to know, therefore, how many foreign affairs agency dependent spouses saw the form or knew that the survey was being undertaken. Nor is the total number of dependent spouses currently abroad with the various foreign affairs agencies known. Such statistics are not kept by the agencies involved. In 1976, the questionnaire for the AAFSW Forum Report was sent to some 8,000 people. Using a 60/40 abroad and home ratio, this would suggest that nearly 5,000 dependent spouses are at posts at any one time. Educational guesses based on other Departmental statistics tend to confirm this estimate. Clearly, more accurate statistics about spouses are needed.

One hundred sixty-nine responses to the survey were received. This number by itself is not statistically sufficient to more than suggest the range of involvement and hours some wives invest. The survey is important, however, as the first documentary study of the subject. Some sub-groups of the response are big enough to be statistically significant. Twenty Ambassadors' and Charge's wives responded, 14.38 percent of such possible responses. This, and the geographical and post-class distribution of this sub-group makes the picture of full-time involvement of wives at the top level of Foreign Service life statistically valid. A log kept in 1957 by an Ambassador's wife was also submitted. Very little has changed at that level. Two posts responded in sufficient numbers that a reasonably accurate profile of the contribution of spouse-time can be drawn for each of them. One, with a 24 percent response, is a Class 1 Asian post. The other, with a nearly 75 percent response, is a Class 4 post in South America. That the other responses to the questionnaire follow in the same basic pattern of these sets gives greater weight than otherwise might be the case of the profile suggested by the limited number of responses.

The number of responses as a whole is skewed toward spouses who are involved. This is not surprising in a self-selected group of respondents. People doing something are often quicker to talk about it than those who are not. The number of respondents who list their husbands as having representational or representational and post leadership responsibilities outnumber the responses from those whose spouses do not, three to one. While this may be larger than the ratio in the foreign affairs agencies married population as a whole, it is probably not substantially so. (As mentioned, however, observations about overall numbers must be educated guestimates rather than statistical fact.)

The responses come from 44 posts out of 240 (18.3 percent). The Department classifies its 139 Embassies as Class 1, 2, 3 and 4. There are 103 non-Embassy posts. Responses were distributed among the classes of post as follows:

Class 1, 8—44.4 percent.
Class 2, 3—17.6 percent.
Class 3, 12—42.9 percent.
Class 4, 12—15.8 percent.
Others, 9—8.5 percent.

The geographical distribution of responses has two major gaps: Eastern European countries and the London-Paris-Rome axis. The responses, therefore, could be and were analyzed to see if class of post makes any marked difference in time involvement for wives. A break-down by geographical area was not possible and was not attempted.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Other variables that appear to affect the time wives invest—the isolation and fish-bowl factors, and the political "sexiness" of certain posts—could only be judged on the basis of common knowledge. Were a broader-based, more detailed study to be undertaken at a later date, these aspects would need to be more carefully addressed.

Single responses were received from 24 posts. Multiple responses came from 20 posts. A block of 13 came from an Embassy and two of its Consulate Generals. Two male dependent spouses participated in the survery. Responses were solicited from any dependent spouse at post without regard to which agency or service the employee works for. A number of responses from military wives were received from the two posts which sent in substantial replies. Some women mentioned being regularly or intermittently employed themselves. Not enough information was consistantly available about this aspect, however, to draw any conclusions.

For this sample, percentages and average numbers of hours, are misleading. It seems more relevant to look at clusters of times reported and to talk in terms of 40-hour work-weeks. One hundred sixty hours constitutes a full four 40-hour work-weeks per month. Percentages and averages are cited primarily for those sub-groups with great enough responses to be meaningful in those terms.

Respondents were asked to keep a log for a month and from that to answer five questions giving the number of hours per month spent: preparing for and entertaining at home; attending official functions hosted by other Americans and host or third country nationals; assisting in official activities such as updating post reports, price surveys, escorting visitors, etc.; other time-consumers the respondent considers official rather than personal; and community building/supporting activities within the Mission. They were also asked to identify the post and give some general information about their spouse's position in it.

THE TOTAL PICTURE

Individuals reported monthly totals of unremunerated work time contributed to the official functioning of U.S. Missions abroad varing from 0 to 328.5 hours a month. Including those who reported no involvement, just over a quarter of the respondents reported under 39 hours per month total contribution—less than one work-week. More than half reported over 40 hours and less than 120 (between one and three work-weeks). Nearly a quarter of the responses reported over three work-weeks (120 hours) per month. Ten women reported over 200 hours for the month surveyed. A number submitted logs to substantiate their reports. There seems to be only minor variation in the pattern of the hours reported among the Class 1, 2, 3 and 4 posts. Constituent posts show a larger proportion of responses in the 80–119 hour range. Whether this is because the posts are smaller or because of the particular jobs of the husbands of those who took time to respond, is impossible to say.

Among those women whose husbands have representational responsibilities, nearly two-thirds reported more than one and less than three work-weeks total time (compared to just over half of the total sample). More than a quarter of them reported over three work-weeks while about 10 percent reported less than one work-week and only one person in this category reported no involvement at all. Conversely, of women whose husbands have no representational responsibilities (about a quarter of the sample) well over half reported less than one work-week's total contribution and over 10 percent reported no involvement of any kind.

The patterns of total time distribution of each of the two posts with substantial responses shows a similar picture, although at both posts the proportion of responses under one work-week is larger (38 percent of the Class 1 post, 34.2 percent of the Class 4 post). The hour range at the Class 1 post was from 0 to 309 although the second highest reported there was 169. At the Class 4 post, the range is from 0 to 235 hours per month. Of those whose husbands have representational/leadership responsibilities at the Class 1 post, 59.25 percent report between one and three work-weeks per month while 22 percent report over 120 hours for the month. At the Class 4 post, the same group reports 85 percent between 40 and 119 hours while 13 percent report over 4 work-weeks a month. Of those whose spouses have no representational responsibilities, at the Class 1 post, 23.1 percent show no involvement, 46.2 percent under one work-week and 30.8 percent between one and three work-weeks per month. At the Class 4 post,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

13.3 percent of the wives whose husbands have no representational responsibilities report no involvement while 46.6 percent contribute less than 39 hours a month and 40 percent report between 40 and 120 hours a month.

The Ambassadors' and Charges' wives, predictably, report larger number of hours. The totals range from 54 to 338.5 hours for the month. The average is just over 167 hours (more than four 40-hour work-weeks in one month). The wife who reports only 54 hours for the month surveyed, however, notes special circumstances which indicate that 130 hours per month would be more nearly normal for her. The distribution of time these women report is 30 percent between one and three work-weeks, 30 percent between three and four work-weeks, and 40 percent over four work-weeks per month.

While the responses do not always indicate other specific leadership positions beyond Principal Office and Deputy, occasionally internal evidence pinpoints an AID Mission Director's, Defense Attaché's or an ICA Director's wife. Uniformly, these women are among those reporting the most hours. The same is true to a lesser extent for Section Chief's and Cultural Affairs Officer's wives. However, not enough of these were pinpointed to make statistical analysis possible. Comments suggest that the time demands of posts are cyclical and seasonal. There seems to be about as much variation in the time ranges of posts within a single class as there is between posts of different class. This suggests that each post has its own dynamic or that there are other dynamics that the survey did not bring out. The length of time a person has been at post also seems to affect the amount of time spent on official activities. A few women mentioned deliberately restricting involvement either to spend time with children or to pursue other careers. No one cited these as reasons for total non-involvement although it may be the case. None of the "non-participants" gave reasons.

One woman wrote "Even though I expect to start work next month, I anticipate that I will still spend about 50 hours a month on representational and community activities". In looking at those responses which are well over four 40-hour work-weeks per month (235 hours, 240 hours, 260 hours, 273 hours, 294 hours, 309 hours, and 338 hours) one has to wonder if there is a point where the demands of the post stop and the needs of the individual to be constantly working take over.

OFFICIAL ENTERTAINING

One of the major, and traditional, contributions of time wives make is in preparing for and being hostess at representational functions in their own homes. The range of time reported for this function varied from 0 (about one-sixth of the response) to a monumental 205 hours per month on the part of one woman. Over half those responding spend between one and 39 hours a month (less than one work-week) preparing and entertaining. The hours for those whose husbands have representational responsibilities are slightly higher although they still primarily fall in the under one work-week a month range. Fifty-five percent of the Ambassador's and Charges' wives, however, report between 40 and 79 (between one and two work-weeks) spent entertaining and 10 percent report between 80 and 119 hours a month. The pattern for time invested in official entertaining at the two posts with substantial responses bears out these observations. Not unsurprisingly, those women whose husbands have no representational responsibility show little or no time spent in "required" entertaining. One woman whose husband's job is not representational reports doing a substantial amount of "effectively" representational entertaining because of their long-time and now high-level connections in the country. Personal as well as official relationships affect the number of hours spent. "It is our pleasure".

Much entertaining is done in the evening although many people also report daytime activities. One night a week entertaining officially at home is the pattern for about a third of the respondents. Almost as many report less—one, two or three evenings a month. For those whose husbands have representational responsibilities, two-thirds report between three nights a month and four nights a week. Twenty-five percent of Ambassadors' and Charges' wives entertain one evening a week, 25 percent report two evenings a week, and 30 percent report from three to five evenings a week. In addition, 25 percent also give one daytime social function a week and 30 percent give more than that.

The amount of time spent preparing for functions in the home varies with the function, the ease of shopping at the post, the availability of household help and the capabilities of that help. Women at one post report the necessity of crossing

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

one of the world's largest cities to shop for things needed for representational entertaining. At another post, the food supply is so bad that periodic motor trips on difficult roads to a neighboring country are necessary to be adequately supplied. Without these extreme cases, a minimum of two hours preparation time for every hour's entertaining time seems usual.

A number of women mention that their husbands do an increasing amount of representational entertaining at lunch in restaurants. Conversely, several say that at their present post the places to go out are limited and the quality poor.

Because almost a quarter of the wives at the Class 4 post which responded *en masse* are employed, they organized a special questionnaire which shows that 11 out of 13 spouses with jobs outside the home continue to entertain about the same amount when they start working. Seven of them are hiring more help for parties, six are not. Ten of their husbands help plan and prepare for guests at the same rate as they did before, but no idea is given as to whether or not the husbands help. Eight of the women spend about the same amount of money while four spend more "because the easiest dishes to prepare are the most costly". Twelve report that their type of entertaining has not changed because of their employment, although one reports that "my job is at night and this makes entertaining difficult". Six report they do not choose to do less "representational" and more spontaneous entertaining with friends than they used to while four report that they do. One wife, employed outside the Mission, reports sharing entertaining work, expenses and guest lists with her husband. She pays and works when the guests are her contacts. He pays and does the major work when they are his. If she is not there, he entertains.

BEING OFFICIALLY ENTERTAINED

Attending functions to which one has been invited solely because of the employee's positions is another traditional occupation of Foreign Service spouses. Two-thirds of the sample report spending between one and 39 hours (one work-week) a month at such functions. A quarter of the sample report between 40 and 119 hours (over one and less than three work-week). One response documents 135 hours in one month at official social functions. Half the respondents report attending functions two or three nights a week on an average. Many mention more than one function on a single evening. Those whose husbands have representational responsibilities suggest that three or four nights a week is a frequent pattern.

"I think", writes one wife, "the cruelest aspect of a Foreign Service woman's time is that which she must give in the evenings. I have children and housekeeping duties which take up most of my daily time and . . . any time that is for my enjoyment suffers for long periods of time because of the evenings. When we don't go out, we are so terribly exhausted we can only catch up on sleep. Some weeks we will go out 5 and 6 times . . . this is an occupational hazard and should not be thought of as something to remedy. I wouldn't want my husband to go to these functions without me. I think we should instead advise women how to deal with the panic—i.e., identify it, find other times in the day for themselves, don't expect too much from themselves, etc. Also, more important still, how to help husbands deal with this panic of no time."

Ambassadors' and Charges' wives average 58 hours 45 minutes attending official functions. "Not counting the time it takes to keep hair done and change clothes." None of these women reported less than two evenings out a week. "I tend to participate more actively as an Ambassador's wife than hitherto in the rounds . . . there is a kind of unwritten *quid pro quo* that propels us to each other's National Days."

The pattern varies considerably from post to post. One wife suggests that her present post is "quieter" than some of the others in the area. A woman in a Muslim country has stopped attending many functions because the local wives do not attend. In another Muslim post, however, diplomatic wives are expected to maintain a very active social schedule largely separate from their husbands. "Calling on royal family wives is expected".

One of the clear pictures this survey shows, then, is a large group of women whose evenings are not their own. They spend two or three nights or more out officially and maybe the same or slightly less entertaining officially at home.

One wife suggests "there is one other factor to be considered, call it 'minus time' . . . the time representational duties take away from small children. So

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

many functions are 'early evening' and take the mother, especially, away from the dinner hour, bubble bath, story-time routine. Hired help is no substitute."

OFFICIAL ACTIVITIES

Spouses contribute to other areas of official functioning of Missions. They escort Codels and other visitors, conduct price surveys, up-date post reports, edit post and commissary newsletters, serve on commissary and school boards, respond to the Forum Report, prepare slides for the Overseas Briefing Center, organize the American booth for local charity bazaars and many other things. Less than half the total sample reported activities of this sort. This is also true of the two posts for which it is possible to establish profiles. Most of those who are involved in these official activities, however, find that they consume from 1 to 39 hours of their time (less than one work-week). Ambassadors' and Charges' wives average 28 hours per month. Very few women whose husbands do not have representational or leadership responsibilities report involvement in these activities; the few who do, with one exception, report less than 4 hours a month.

The most frequently mentioned activity is escorting visitors—taking them shopping and sightseeing. Codels are often mentioned separately from other visitors. Asked whether or not such activities are on a continuing or "one shot" basis, one wife responds "Each is 'one shot' but they keep coming". Such escort duty can take from three to 15 hours a time. "Each visit usually takes my whole day. We use my car and my gas, and I drive". Other chores are also mentioned in relation to official visitors: mailing packages afterwards, checking airline reservations and, in some posts, putting them up. Escort duty falls primarily to the wives of the more senior officials.

Not all posts are on the visitors circuit. "My representational responsibilities here are negligible", reports the wife of a mid-level officer. "However, we were the only AID representatives at our last post and there was an average of two official visitors a week (often more) and only one hotel and restaurant in town. Obviously, my response would have looked quite different." Political circumstances change quickly and a post can suddenly be inundated. "At the time of my log, I had not been involved with escorting visitors. Since that time, I have spent a considerable amount of time with Senators visiting * * *, this month and last particularly. I did not record the hours but it would have been days, not hours."

Women at two posts report they are not asked to participate in this type of activity without remuneration. "For official vistiors who require translators, the Embassy *hires* language experts among the wives". At another post, wives are given a training course and paid a flat fee for working a Congressional visit.

Although one wife reports that "*All* required surveys are paid for in * * *" doing price surveys appears frequently on responses as official time that is unremunerated. Usually they are reported as using only a few hours a month (only once or twice a year) but two women report spending 40 hours (one work-week).

Another category of official functioning which wives of senior officers, particularly Ambassadors' and Charges' wives, report involves traditional diplomatic wives duties—calling on the wives of local officials and other members of the Diplomatic Corps, or being called upon by them; attending the meetings of Diplomatic Wives and belonging to clubs of a binational nature. "The Ambassador's wife is always the honorary president of * * * so I feel I must." "The PAO's or CAO's wife is always asked to sit on the Arts Council Board."

One post which sent in five responses shows several women involved in the President's Wife's Charity Tea. Other posts report similar functions which, while they may occur only once a year or every other year, can take up to 60 hours of a person's time and involve many of the women at the post.

Entertaining "in-house" visitors is also mentioned by some women: "gave a dinner for the regional psychiatrist". Women at some constituents posts list house guests as an official time-consumer. "We are glad to do it but it is disruptive."

OTHER OFFICIAL TIME CONSUMERS

The fourth question on the survey asked for "other time consumers which you consider official". There is considerable overlap in the responses to this question and the previous one (re official activities) on the survey form. Slightly fewer respondents list less hours than for the previous question. However, all

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

but one of the Ambassadors' and Charges' wives list time in this category. They again average 28 hours. Other than these women, however, there is no predictable pattern as to who is involved and who is not. The underlying connection for women's responses to this question is tasks that they would not be undertaking except for the fact that they find themselves abroad as the wife of their husband.

One of the major areas involves Official Residence supervision, maintenance and repair and the supervision of Residence staff. This applies only to the wives of Principal Officers and their Deputies. "Inventory for Residence. 2 full days! At home, I would not have to inventory a vast hotel kitchen with pantries, attic full of guest glassware, 4th of July tables, etc." "I'm tired!! Is my time 'supervising' this official or not? I'd be in a much smaller place if it weren't for my husband's work." (She did not list the time for running the DCM's residence and it was not counted). "I also did not include traditional gifts (X-mas) to staff of Residence, drivers, agents, guards and all their children * * * 80 people! I spent days on that. If this counts, add 35 hours (not counted). This has always been done, so I thought I should keep the practice which I'm sure these employees were expecting." (Hours a respondent listed in the blanks were counted—others, as above, mentioned in comments were merely noted.) "It took untold hours over nine months to get two bathrooms installed."

Another recurring category is secretarial and social secretarial functions. One Ambassador's wife, an FSO on forced leave of absence, spends an hour or so each morning in their office at the Residence helping her husband "because the Embassy is short-staffed". Guest and Christmas card lists are revised. A number of women list two or three hours a month spent "trying to reach people on the phone about official things".

In what may be a change from earlier times, only one response mentions "baking for a party at the Residence—3 hours."

Time spent learning non-world languages is itemized by some. "I enjoy it but knowing * * * is particularly important so I can speak to my husband's contact's wives." Others teach English to local officials or diplomatic wives. Several wives cite use of their own professional skills: "36 hours per month/voluntary legal assistance work." "Lecturing on American education at the bi-national center."

Perhaps the most telling part of the answers to these questions is that the women responding consider what they are doing to be official whether others would do so or not.

COMMUNITY BUILDING

Three-quarters of the spouses responding contribute time to community building activities in one way or another. This includes attending Embassy or American Women's Clubs, children's Christmas and Halloween parties, Girl and Boy Scouts and above all, helping newcomers. For most women, this takes less than 20 hours a month (half of one work-week). Ambassadors' and Charges' wives average 18 hours, much of it in parties or other forms of welcome for newcomers.

Community building, however, is the only area covered by the survey in which massive time involvement bears no relation to the husband's job. The wife of a junior officer with no representational responsibility, for instance, lists 53 hours a month as chairman of the Welcoming Committee. A male dependent spouse lists 32 hours in Embassy Women's Association functions. Other than for those who note they are officers of Wives Clubs, large periods of time invested in community building seem to be seasonal—during the peak arrival times for newcomers or at the time of the annual Embassy bazaar or major post party for children or the local staff, or the 4th of July picnic.

The survey form suggested that time involved in community building might be of a different nature, perhaps less official, than other official functions. One Ambassador's wife thinks that for her, at least, it is no different from her other obligations as the wife of her husband. A number of women report supporting school functions or giving children's parties "even though I have no children."

ATTITUDES

The survey in no way addressed itself to the respondents' feelings about the work they do or what they think about remuneration. On the whole, the responses are noncommital but cooperative, just as the cumulative picture the survey presents is of basically cooperative, wryly hard working women.

Yet not everyone is totally cheerful. Some, as already quoted, are tired. "I think what dismays me most of all," says another, "is that my contribution is neither

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

recognized nor appreciated—whether it be marketing to have a dinner party or whatever. If you want good food you must go to various markets to buy it—one place for fish, another for meat, another market for fruit, flowers somewhere else, soft drinks at the supermarket. Sometimes it takes half a dozen trips. And no one really cares."

Several women remark that they feel specific jobs should be paid for. "I won't do (a price survey) again unless I'm paid." "If I were paid even minimum wage for the hours I put in, I could afford graduate school when we get home."

Just as clearly, there are those who feel the opposite. "I do not wish to be remunerated. Ambassadors' wives get plenty of appreciation, compensation enough—and too much attention!" Other women remark "I do what I do by choice." A substantial number of the respondents clearly, however, feel obliged by the circumstances they find themselves in to do what they are doing, and regard it as a contribution to official functioning of the Mission of which they see themselves a part.

QUESTIONS, NOT ANSWERS

In the final analysis, a survey such as this raises more questions than it suggests answers. The broad picture is clear enough. The survey bears out common knowledge that many spouses contribute to the official functioning of U.S. Missions around the world to a greater or lesser degree. The more responsible an employee's position in terms of representation and post-leadership, the more likely the spouse is to participate in official functions and the more time-consuming that participation is apt to be.

Yet paradoxically—although the survey results merely hint at it—there is other evidence of a growing trend for some of these same spouses to want, or need, jobs of their own. Can, will the present degree of contribution by spouses to official functioning (between one and three work-weeks a month from a large number of people even more from others) be continued? If it is, or if it is not, what are the implications for the Foreign Service? For spouses?

Are these contributions a function of traditional social roles? Of the System's expectations of wives? Of wives' expectations for themselves? Of the local community's expectations of "Embassy Wives"? How dependent is the system on receiving them? What are the needs of the individuals who make them? What are the alternatives?

Both spouses in many Foreign Service marriages are contributing participants in that Foreign Service career or at least to the Foreign Service. What is the dependent spouse's economic share in that career? Is the dependent spouse contributing to the marriage-partner employee or to the Foreign Service or both? What are the appropriate forms of recognition for the many contributions being made by spouses? Is anyone obliged to care?

Ultimately, perhaps, the question is what is representation? Who represents? Why? What is effective? Necessary? A study of representation and the Department's needs in that regard has already been called for. This time-use survey and its documentation of hours, work-weeks, contributed further underscores the need for clarification of the representation issues.

The CHAIRMAN. Where is your liaison office?

Ms. DORMAN. As one goes into C Street at the State Department, turn directly to the left and it is the first bank of offices on the left.

The CHAIRMAN. Who manages it now, voluntary employees?

Ms. DORMAN. No, Janet Lloyd is the director. She is an FSR–3 and there is a deputy director, an FSR–5.

The CHAIRMAN. Who pays their salary?

Ms. DORMAN. Under management, the Department of State. And there is a secretary. And also attached to this office is the skills/talent bank coordinator who is working there. And there is also an education counselor there too at the moment.

REPRESENTATION OF ALL SPOUSES

The CHAIRMAN. Now in your group, and I raised this with you before, do you represent all spouses, including the male spouses of female officers? Do you have male members?

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Ms. DORMAN. We don't at the moment. As a matter of fact we are in the process, I have already designated a chairman of a committee to look into our organization in its broadest possible sense. We are looking into the possibility. First of all we have to change our name a little bit. Because we have had people who have shown a decided interest of joining among the males, not so much the male spouses today but male officers, unmarried officers in point of face have been very interested in joining our group.

I would like to mention here that in the skills/talent bank there are 24 male spouses aboard, which is very important. And we have been dealing very much up until now with women's affairs, not just spouses. We have women officers, we have secretaries, and we have the staff corps, right down the line as members in recent times. So we are very well represented among the women, as far as the women are concerned.

EMPLOYMENT OF SPOUSES IN POSTS ABROAD

The CHAIRMAN. What are your views with regard to the employment of spouses in a post abroad when the Foreign Service Officer involved has a responsible job in that same post? In other words it is obvious that an Ambassador's wife should probably not be working in the administrative section. On the other hand should the consular affairs wife be working in the administrative section, or should the administrative officer's wife be working in the administrative section?

Ms. DORMAN. Well, I think it preferable if possible if she could work in another office. We have a situation now where there is an ambassador just going out whose wife is a career Foreign Service Officer and she is working I believe for ICA at the particular post. I don't think it necessary for them to work at another organization. I think it can cause less conflicts if the husband and wife are not working in the same division.

I can see problems there but everybody might not agree with me.

Ms. CURRAN. I think it would have to be handled on an individual basis. I think most posts and the management of most posts would be very sensitive to that kind of situation and would probably make a very good decision as to who should be employed where depending upon their relationship and their personality I think might even come into play there.

But I don't think you could really write rules about it. I think people would bend over backwards to be careful about that sort of thing.

BENEFITS FOR DIVORCED SPOUSES

The CHAIRMAN. I believe you favored the approach of the Schroeder bill on retirement benefits and survivor annuities for divorced spouse which would automatically give a former spouse married to a retirement system participant credit for at least 10 years of marriage to a Foreign Service Officer, giving her at least 10 years of the pro-rated share. But doesn't the approach of the draft Foreign service bill, requiring a court order before this could happen, have the advantage of taking into account any special circumstances?

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Ms. RYAN. This is a very difficult problem that has many intractable aspects. The problem with the court order approach that the State Department has undertaken is first of all the expense of recourse to the courts. We are talking about women who frequently—the problem is that they don't have resources. There is also the problem that the courts and the lawyers, the judges and lawyers alike don't know the special circumstances of Foreign Service life that is required that until 1972 had the wives graded on their husband's efficiency reports, that the job itself means that you virtually have no opportunity to create your own economic base. You tend to be cut off from your community where you were raised so you have no kind of community roots. And there is as we all know no precedent in law. That is probably the most important drawback. There are no precedents. What is not addressed in this bill is having some kind of survivor annuity for a former spouse.

We have a number of cases where people have spent 25 or 30 years in the Foreign Service with their husbands, being graded in their husband's efficiency reports, and their husband remarries and the subsequent wife receives the fruits of these years that the former wife put in and she is left penniless in many cases. So the Schroeder bill I believe makes no requirement of time but is simply on the overlap between the years of service and the years of the marriage. So that if the career were 20 years and you have been married 10 years of the time that the spouse was in Government employ you would receive automatically half of the survivor annuity and half of the pension.

The CHAIRMAN. You say half the pension. Does that mean half of the husband's retirement pension?

Ms. RYAN. That is right.

The CHAIRMAN. His retirement pension would be reduced by half?

Ms. RYAN. That is right. We feel that marriage is an economic partnership.

The CHAIRMAN. Why would it be a half because if it is a partnership—I agree where the wife plays a very real role in it, but I am not sure she plays 50 percent of the husband's success.

Ms. RYAN. It wouldn't be half. It would be if she had been married for 5 years and his career was 20 years——

The CHAIRMAN. But for the 5 years they were married it would be half?

Ms. RYAN. Five years they were married while he was in Government service. If they were married before he came into service that period of marriage would not count. This is not a perfect system——

The CHAIRMAN. You may be right. I think my wife has helped me fantastically through the years. I am not sure she has helped me 50 percent. I like to think she has helped on a 40–60 basis.

Ms. DORMAN. I hope that doesn't get back to her, Senator Pell.

[The following information was supplied by Ms. Ryan to clarify the above discussion:]

BREAKDOWN OF THE SCHROEDER BILL

The Schroeder bill apportions the pension of a government employee on a pro rata basis between the government employees career and the length of the marriage in those years. The maximum spousal share of a pension would be 50 percent in a case where the marriage extended through the government employee's entire career. Therefore a marriage that lasted 10 years of a 20

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

year government career would qualify the spouse for 25 percent of the pension and 50 percent of a survivor annuity.

QUESTION OF INCENTIVE PAY

The CHAIRMAN. How do you feel on the question of the incentive pay? Do you believe that is a good idea or not or are you familiar with that provision where they would pay some Foreign Service officers extra money for doing a good job, somewhat like a major general getting extra money for doing a good job and not if he didn't. What is your view on that?

Ms. DORMAN. Well, unofficially, Mr. Chairman, because we are really an autonomous organization and not under the Foreign Affairs agency so I cannot speak officially on that, unofficially I do not agree with that at all. I do like your idea of putting us alongside the Marine Corps. I thought that was delightful.

The CHAIRMAN. That is the way you feel. Thank you very much. I particularly congratulate you on your Family Liaison Office because I have heard of it and know it is doing a good job. I hope we can give whatever support we can in this legislation. I can't guarantee we will, but I would like to.

Ms. DORMAN. We appreciate that very much.

The CHAIRMAN. Our next witness is Mr. Cecil Uyehara, Foreign Affairs Chapter, Asian and Pacific American Federal Employees Council.

Please go ahead and proceed.

[Mr. Uyehara's biography follows:]

BIOGRAPHICAL SKETCH OF CECIL H. UYEHARA

For the past 15 years, I have been involved in programming, budgeting, planning and evaluation of U.S. economic assistance programs in various countries, e.g. Vietnam, Afghanistan, Latin America region, political-economic policy analyses, program operations in varying combinations.

I am the Director, Program Operations Staff, Latin America Bureau, and have been the Assistant Director for Development Planning in Afghanistan, Chief, Programming Div., Vietnam Bureau, all in the Agency for International Development, and senior budget examiner in the former Bureau of the Budget, and geopolitical analyst in the U.S. Air Force.

Awards include Federal Executive Institute senior executive training in 1978; Commissioner's Award of the U.S. Civil Service Commission for distinguished service as member of the Federal Personnel Project, 1978; Career Education Award for Federal Civil Service Employees, National Institute for Public Affairs, Harvard University, 1963–64.

Publications have centered on Japan: co-authorship of *The Social Democratic Party of Japan* (1966); *Leftwing Social Movements in Japan, An Annotated Bibliography.* Another study concerned "the Nuclear Test Ban Treaty and Scientific Advise," in *Knowledge and Power* (1966).

Professional and civic organizations include: Foreign Affairs Chapter, Asian and Pacific American Federal Employees Council, Chapter President, 1977–78; Association for Asian Studies; Japan America Society of Washington, D.C. member, Board of Trustees, 1977–81; Columbia University Seminar on Modern Japan, Vice Chairman, 1979–80; Asia Society, Afghanistan Council, New York; Japan-America Student Conference, Inc., member, Board of Trustees.

Education: BA(48) Keio Univ.; MA(51) Univ. of Minnesota; 1963–64; Harvard Univ. Kennedy School of Government. Language: read and speak fluent Japanese.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

STATEMENT OF CECIL H. UYEHARA, FOREIGN AFFAIRS CHAPTER, ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEES COUNCIL, WASHINGTON, D.C.; ACCOMPANIED BY GEORGE LEE, DEPARTMENT OF STATE; AND DR. JOSE ARMILLA, U.S. INTERNATIONAL COMMUNICATION AGENCY

Mr. UYEHARA. We do have a longer statement which we will submit for the record and we also have the summary.

Mr. Chairman, we appreciate the opportunity to testify on the proposed Foreign Service Act from the perspective of Asian and Pacific Americans. My name is Cecil Uyehara. I am with the Agency for International Development. With me on my left is George Lee with the Department of State and on my right is Dr. Jose Armilla, U.S. International Communication Agency.

Today we are appearing before you in our personal capacities on behalf of the Foreign Affairs Chapter of the Asian and Pacific American Federal Employees Council, which is a national organization of Asian and Pacific Americans in the Federal service.

We appear today first to show that the manner in which the 1946 Foreign Service Act has been implemented has resulted in discrimination against Asian Americans and exclusion of them from a meaningful role in the formulation and implementation of U.S. foreign policy.

Second, we seek your support for equitable and equal opportunities for employment of Asian Americans in the foreign affairs agencies on the basis of qualifications, training, ability, and merit. And third, to solicit your support for specific amendments to the proposed 1979 Foreign Service Act to make equal opportunity in all aspects of employment in the foreign service a statutory requirement of the act.

We would like to emphasize that the Asian Americans as a group is one of the most highly trained in the United States and simultaneously one of the least utilized in the U.S. foreign policymaking process where we must utilize every resource that we have.

As other minorities have played a major and successful role in communicating with the Third World for example, so too could the Asian Americans make a successful and constructive contribution. Unfortunately despite the concentrated pool of talent among Asian Americans they have not been able to participate. Well, what progress has been made?

In the Department of State there was only one Asian American at the State's policymaking level 2 years ago. None of the Asian American FSO–1 or GS–15's have been appointed or promoted to senior level policymaking positions.

In AID the exclusion of Asian Americans from senior positions is much more glaring. Despite the fact that among all minority groups Asian Americans have the highest percentage of qualified employees from which selections could have been made, none have been promoted. Only one has been appointed to a senior level position and even there without commensurate grade and from outside the Agency.

Furthermore, at almost all grades Asian Americans have longer time-in-grade than the average for other employees.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

In USICA lack of promotion opportunities has further reduced through attrition the already small number of Asian Americans in the agency. The only Asian American at the policy level is a deputy area director, and that person again is not a career employee. Thus despite the promise of affirmative action, Asian Americans have made no progress whatsoever at the policy level in the foreign affairs agency in the past 2 years.

We wish to make it clear that the Asian Americans do not want special preferential treatment, lower standards or tokenism. We, like other minorities, women and American citizens in general seek equal opportunities for just, fair, and equitable treatment on the basis of training, qualifications, merit, and demonstrated ability.

There is unfortunately a widespread feeling among Asian Americans that they are looked upon as foreigners in their own country, excluded from the main stream.

Affirmative action, in the view of Asian Americans means positive measures which will place them like other American citizens in positions commensurate with their skills and potential. It also means positive acts to remedy underrepresentation when presented with a choice between equally qualified candidates.

Among the ethnic groups Asian Americans are the best educated. In 1976 for example the percentage of Asian Americans in their twenty's who had completed at least 4 years of college was much higher than for the nonminority. The figures showed 52 percent of Chinese Americans, 44 for Japanese Americans and 43 for Philippine Americans had completed 4 years of college in comparison with 28 percent for the nonminority. The college completion rate for these Asian Americans was 6 percent higher than for the nonminority.

The CHAIRMAN. Could you talk a little louder.

Mr. UYEHARA. By employing Asian Americans in highly visible positions, State, AID, and USICA will be more representative and effective in carrying out their responsibilities to represent the United States abroad. The presence of Asian Americans in the various ranks in the foreign affairs agencies would reflect the values and diversity of American society. At present we feel Asian Americans are an underutilized national resource. Adequate consideration of Asian Americans for senior level positions would increase the size of the qualified applicant pool, thereby increasing competition for high level policy positions.

In light of the foregoing we solicit your support for several amendments to the proposed Foreign Service Act. Our suggested addition would strengthen as a statutory mandate the principle of equal and equitable opportunities for employment and augment, not weaken, the merit principle. They would help prevent management and personnel staffs from overt and covert discriminatory practices and direct them to apply and effectively implement the principle of equality of treatment in all phases of employment in the foreign affairs agencies. It is said that this is not necessary since such a requirement is already in other laws, but the obvious needs to be stated in forceful terms.

In the proposed bill equal employment opportunity is mentioned as a subordinate objective. We strongly recommend that if equal employment opportunity [EEO] is a serious objective, that it be explicitly

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

stated as an independent, repeat independent, objective in the proposed act in the same way other objectives of the act are stated.

Based upon the urgency, appropriateness, and necessity of assessing EEO progress, we ask the subcommittee to include under the responsibilities of the Inspector General a statutory requirement to examine whether the merit and equal employment opportunity principle has been observed in the management of the Department and missions abroad.

We also call for the inclusion of equal employment opportunity principles in the selection, promotion, and the assignment of personnel under this act. As an additional safeguard we would also recommend that a representative of the Equal Employment Opportunity Commission, together with other agencies now specified in the proposed act, be made a statutory member of the Board of the Foreign Service.

Our prepared statement recommends specific word changes for inclusion in the Foreign Service Act of 1979.

In conclusion, we thank you again for your interest and attention and your valuable time in listening to us. We believe that you are our highest resort at this time. Furthermore, we believe if this proposed Act is enacted by the Congress, it will, like its predecessor, govern the U.S. Foreign Service for several decades. It is essential that the principle of equal employment opportunity be clearly and unequivocally included in the act as it is finally acted upon by the Congress.

While we feel that such principles must be included in the act at this time, we sincerely hope that when this act, if it is enacted, is next reviewed by a Congressional committee in the future we will have so progressed in fulfilling the American dream that the equal employment principle will not be necessary and can be deleted with unanimous agreement.

This is the end of my summary statement. If you have questions, we will answer them.

[Mr. Uyehara's prepared statement follows:]

PREPARED STATEMENT OF CECIL H. UYEHARA

Mr. Chairman and distinguished members of the Subcommittee, we appreciate this opportunity to testify on the proposed Foreign Service Act from the perspective of Asian and Pacific Americans.

My name is Cecil H. Uyehara. I am with the Agency for International Development. With me are, on the left, George Lee with the Department of State, and on my right, Jose Armilla of the United States International Communication Agency. Today we are appearing before you in our personal capacities on behalf of the Foreign Affairs Chapter of the Asian and Pacific American Federal Employees Council which is a national organization of Asian and Pacific Americans in the Federal Service.

The Chapter's membership comprises Asian and Pacific American employees in the foreign affairs agencies; namely, the Department of State, the International Development Cooperation Agency, Agency for International Development, and the United States International Communication Agency. Membership is, of course, also open to Asian and Pacific American employees in other Federal agencies engaged in foreign affairs, for example, ACTION, Treasury, Commerce, Agriculture and the Drug Enforcement Agency and to any non-Asian Americans who support our objectives.

The Federal Government defines an Asian and Pacific Islander as any person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands. This area includes, for example,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

China, Japan, Korea, the Philippines, Guam and Samoa. Hereafter, the term "Asian Americans" will be used for convenience.

Whatever our origins, we are Americans and following the American tradition, we are speaking out today about our repressed hopes and competences. We take this opportunity respectfully to draw to the attention of the Subcommittee the record of the Department of State, AID, and USICA on the employment of Asian Americans which is far worse than that of other mniorities (except probably Native Americans).

We appear today:

First, to show that the manner in which the 1946 Foreign Service Act has been implemented has resulted in discrimination against Asian Americans and exclusion of them from a meaningful role in the formulation and implementation of U.S. foreign policy.

Second, to seek your support for equitable and equal opportunities for employment for Asian Americans in the foreign affairs agencies on the basis of qualifications, training, ability and merit; and

Third, to solicit your support for specific amendments to the proposed 1979 Foreign Service Act to make equal opportunity in all aspects of employment in the Foreign Service a statutory requirement of the Act. President Carter on February 24, 1977, in commenting on equal employment opportunities for minorities, noted:

"I think, to be perfectly frank, that the State Department is probably the department that needs progress more than any other and I am determined that this will be done."

Secretary Vance, in accepting the report of the Department's Executive Level Task Force in June 1977 and the Equal Opportunity Plan for 1977, stated:

"It is the policy of the Department of State to promote equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to achieve equal opportunity in all personal operations through a continuing affirmative program."

The Foreign Affairs Chapter supported State's and AID's affirmative action program and initiated a series of discussions and exchanges of letters with management both in State and AID. The Chapter had urged the management in State and AID (1) to make a sustained effort to recruit qualified Asian Americans from the outside, and (2) to consider and appoint Asian Americans already employed within State and AID to positions from the junior level to the senior levels.

What progress has been made? In the Department of State, as you can see in Table 1, there was only one Asian American at State's policy-making level two years ago. None of the Asian American FSO–1 or GS–15's have been appointed or promoted to senior level policy-making positions.

In AID, the exclusion of Asian Americans from senior positions is much more glaring. Despite the fact that among all minority groups, Asian Americans have the highest percentage of qualified employees from which selection could have been made, only one has been appointed to a senior level position and even there, without commensurate grade, and from outside the Agency. Furthermore, at almost all grades Asian Americans have longer time-in-grade than the average for other employees.

In USICA, lack of promotion opportunities has further reduced through attrition the already small number of Asian Americans in the Agency. The only Asian American at the policy level is a Deputy Area Director and that person is not a career employee.

Thus, despite promises of affirmative action, Asian Americans have made no progress whatsoever at the policymaking levels in the foreign affairs agencies in the past two years. After I have completed this statement I could, if you wish, provide you with examples of how the positions of Asian Americans have deteriorated.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

TABLE 1.—ASIAN AMERICANS IN STATE, AID, AND USICA—MIDDLE- AND UPPER-LEVEL EMPLOYEES

	1977	1979	Net change	Gain or loss
State (1979 work force—12,793):				
Assistant secretaries	1	None	1	Loss.
Deputy assistant secretary	None	None	None	
Ambassadors/DCM's	None	None	None	
Principal officers	None	None	None	
Office directors	1	None	1	Loss.
GS 16–18	None	None	None	
GS 15	(1)	2	(1)	
GS 13–14		1		
FS 1–2		1		
FSO 3		5		
FSO 4–5		9		
FSR 1–2		1		
FSR 3		3		
FSR 4–5		11		
AID (1979 work force—4,021):				
Assistant administrator	None	None	None	
Deputy assistant administrator	None	None	None	
Mission director	None	None	None	
Deputy mission director	1	None	1	Loss.
FSR 1–2	None	None	None	
GS/AD 16–18	None	None	None	
GS 15	1	2	1	Gain.
FSR 3	6	9	3	Gain.
GS 13–14	2	2	No change	
FSR 4–5	13	16	3	Gain.
USICA (1979 work force—4,293):				
Senior Washington leadership (1 GS 17)	1	1	No change	
Country public affairs officer	None	None	None	
FSIO 1–2	None	None	None	
FSIO 3	4	4	No change	
FSIO 4–5	6	8	2	Gain.
GS 16–18	(2)	(2)	(2)	
GS 15	None	None	None	
GS 13–14	9	9	No change	
FSR 1–2	1	None	1	Loss.
FSR 3	1	1	No change	
FSR 4–5	33	32	1	Loss.

[1] Data not available for 1977, hence net change cannot be determined.
[2] 1 GS 17 is already counted in the senior leadership.

We wish to make it clear that Asian Americans do not want special treatment, lower standards or tokenism. We, Asian Americans, like other minorities, women and American citizens in general, seek equal opportunities for just, fair and equitable treatment on the basis of training, qualifications, merit and demonstrated ability. There is unfortunately a widespread feeling among Asian Americans that they are looked upon as "foreigners" in their own country, excluded from the mainstream. Asian Americans feel that they have the dubious distinction of being a minority among minorities, a "double minority" if we may use the term.

Also, we should like to state that for Asian Americans equal opportunity means that they be judged and rewarded on the basis of merit without regard to factors not relevant to their job performance and potential. Affirmative action, in the view of Asian Americans, means positive measures which will place them like other American citizens, in positions commensurate with their skills and potential. It also means positive acts to remedy under-representation when presented with a choice between equally qualified candidates.

We are confident that Asian Americans can perform in the Foreign Service and Civil Service in accordance with the highest professional standards. Of all American ethnic groups, Asian Americans are the best educated. In 1976, the percentage of Asian Americans in their twenties who had completed at least four years of college was much higher than for the non-minority. The figures showed that 52 percent of Chinese Americans, 44 percent of Japanese Americans and 43 percent of Philippine Americans completed four years of college in comparison to 28 percent for the non-minority. The college completion rate for these Asian Americans was 61 percent higher than for the non-minority (U.S. Commission on Civil Rights, Aug. 1978).

By employing Asian Americans in highly visible positions State, AID and USICA will be more representative and effective in carrying out their responsibilities to represent the U.S. abroad. Only when a significant number of Asian Americans serve in the foreign service and civil service at all levels will we be

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

able to counter effectively the impression throughout the world that Asian Americans have no role in policy-making—an impression which is damaging to United States interests. The presence of Asian Americans in the various ranks in the foreign affairs agencies would reflect the values and diversity of American society. Misassignment and inadequate use of available qualified Asian Americans in these agencies is a waste of talent; Asian Americans are an "under-utilized national resource." Adequate consideration of Asian Americans for senior level positions would increase the size of the qualified applicant poll, thereby increasing competition for high level policy positions.

Asian Americans in policy positions abroad would show the world that the U.S. foreign affairs agencies are democratic and representative of the American people. This would heighten the credibility of U.S. policies and concerns for fundamental human rights, political, social and economic rights and free democratic institutions.

Only when Asian Americans are employed in ranking positions in State, AID and USICA can they participate substantively, contribute to foreign policy views and articulate this country's core national interests.

In light of the foregoing, we solicit your support for several amendments to the proposed Foreign Service Act. Our suggested additions would strengthen, as a statutory mandate, the principle of equal and equitable opportunities for employment. They would help prevent management and personnel staffs from overt or covert discriminatory practices, and direct them to apply and effectively implement the principle of equality of treatment in all phases of employment in the foreign affairs agencies. It is said that this is not necessary since such a requirement is already in other laws, but the obvious needs to be stated in forceful terms. In any case, if it is already stated there is obviously no harm in reiteration and emphasis in the Foreign Service Act.

In the proposed Bill, equal employment opportunity is mentioned as a subordinate objective. We strongly recommend that if equal employment opportunity is a serious objective that it be explicitly stated as an independent, repeat independent objective in the proposed Act—in the same way that other objectives of the Act are stated. Based on the urgency, appropriateness and necessity of assessing EEO progress we ask the Subcommittee to include under the responsibilities of the Inspector General a statutory requirement to examine whether merit and equal employment opportunity principles have been observed in the management of the Department and Missions abroad. We also call for the inclusion of equal employment opportunity principles in the selection, promotion, and assignment of personnel under this Act.

As an additional safeguard we would also recommend that a representative of the Equal Employment Opportunity Commission (together with other agencies now specified in the proposed Act) be made a statutory member of the Board of the Foreign Service.

We propose the following additions to the proposed Foreign Service Act. (The underlined parts are our proposed additions).

(Chapter 1, General Provisions, Sec. 101.b) as a separate objective: *to create and execute in a vigorous manner a systematic and sustained equal employment program in order to assure that the Foreign Service is representative of the American people.*

(Chapter 2, Sec. 205. The Inspector General). Under the direction of the Secretary, the Inspector General shall inspect the work of each Foreign Service post at least every three years, shall inspect periodically the bureaus and offices of the Department of State, *shall examine whether merit and equal opportunity principles have been observed in the management of the Department of State and Missions abroad,* and shall perform such functions as the Secretary may prescribe.

(Chapter 2, Sec. 206. The Board of the Foreign Service). The President shall establish a Board of the Foreign Service to advise the Secretary . . . and shall include senior representatives of the Department, the International Communication Agency, the International Development Cooperation Agency, the Office of Personnel Management, the Office of Management and Budget, *the Equal Employment Opportunity Commission and such other agencies as the President may designate.*

(Chapter 3, Sec. 301.b) The Secretary shall prescribe appropriate written, oral, physical and other examinations for appointment to the Service (other than as a chief of mission) in accordance with merit *and equal opportunity* principles.

(Chapter 5, Sec. 511.a) The Secretary may assign a member of the Service, in accordance with merit *and equal opportunity* principles, to any position . . .

(Chapter 6. Sec. 601.a) Promotions in the Service shall be based upon merit *and equal opportunity* principles.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

In conclusion, we thank you again for your interest and attention and valuable time in listening to us. We believe that you are our highest resort at this time. Furthermore, we believe that if this proposed Act is enacted by the Congress, it will, like its predecessor, govern the U.S. Foreign Service for several decades. It is essential that the principle of equal employment opportunity be clearly and unequivocally included in the Act as it is finally acted upon by the Congress. While we feel that such principles must be included in the Act at this time, we sincerely hope that when this Act, if it is enacted, is next reviewed by a Congressional committee in the future we will have so progressed in fulfilling the American Dream that the inclusion of the equal employment opportunity principle will not be necessary and can be deleted with unanimous agreement.

The CHAIRMAN. I thank you very much indeed. I am a little concerned here because the Foreign Service is already subject to the same equal employment opportunities legislation that the rest of the Government is. I am wondering if you believe the Service should be subject to special provisions different from those in general law? The phenomenon you are stating or the injustice to which you referred is one that is Government-wide. It is not just the Foreign Service, would that be correct?

Mr. UYEHARA. That is probably true, sir.

The CHAIRMAN. So I am wondering if it would be right to try to approach it in one particular service. How do you feel for instance about the military service? Would there be the same inequitable treatment there?

Mr. UYEHARA. Well, we would like to see it specified clearly and unequivocally in all legislation, yes, sir. Because for instance in the Civil Service Act, the Reform Act, there are eight merit principles listed in title I. The first one does concern itself somewhat with equal opportunity. It is rather weak. It says, "Recruit to achieve work force from all segments of society with selection and advancement solely on the basis of merit after fair and open competition which assumes equal opportunity." If equal opportunity principles are to be applied, that seems to me to be a rather weak statement which assumes equal opportunity.

If it is important, we recommend that it be included explicitly as 1 of the specific objectives among 10 others to be achieved in the Foreign Service Act. The Foreign Service Act mentions "Fostering equal employment opportunity principles." Fostering, again, is a weak statement. One can do all kinds of things to foster something but never quite get there. We think it is serious enough in light of the past historical record to put special emphasis on equal opportunity in the Foreign Service Act.

The CHAIRMAN. I thank you very much for the points you have made and your testimony and being with us. Thank you very much indeed.

[The following information was subsequently supplied for the record.]

ASIAN AND PACIFIC AMERICAN
FEDERAL EMPLOYEE COUNCIL,
Washington, D.C., January 11, 1980.

Hon. CLAIRBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PELL: We appreciated the opportunity to testify on Dec. 14, 1979 on the proposed Foreign Service Act of 1979. We limited our testimony

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to an area of interest to us which needs stronger legislative support than it now receives in the Act.

During the hearing you aptly described the U.S. Foreign Service as an elite corps, and compared it to the U.S. Marine Corps. An elite corps brings to mind a group with a strong esprit de corps, the best and the brightest drawn from *all* segments of American society to serve at all levels in the U.S. Foreign Service. If all conditions are equal, the Asian American group, though small in number, but one of the most highly trained and educated groups in the U.S. would have a much larger participation at all levels than their numbers in the population would suggest. According to a just completed study of Asian Americans in the Federal Service by Professors Patricia A. Taylor and Sung-soon Kim of the University of Virginia, Asian Americans are under-represented in the highest levels of the government although they have the highest levels of educational attainment. The National Research Council survey on doctorates also underscores this point. As shown below, Asian Americans received a disproportionately larger number of doctorates in comparison to their population in the U.S. (1.5–2 percent) would suggest.

	1976–77	1977–78
Asian-Americans	[1] 907	[2] 1,031
American Indians	215	172
Blacks	1,108	1,100
Hispanics	471	532
Nonminority	29,012	28,015
Total	31,713	30,850

[1] 2.9 percent.
[2] 3.3 percent.

Asian Americans are conspicuously absent from the higher councils of the U.S. Government. Because conditions are not equal, their participation in foreign policy is, unfortunately, much lower than it should or could be.

Title I of the Civil Service Reform Act refers to eight merit system principles. The first principle ends by "assuming equal opportunity"—this is hardly a ringing clarion call and the above data would suggest that nothing can be safely assumed. The proposed Foreign Service Act calls for fostering the development of policies and procedures concerning equal opportunity among several other factors. This again is a passive statement, hardly a statement of strong dedication.

In light of the historical record of the foreign affairs agencies, and if the Foreign Service is to be representative of the American people and if equal opportunity is a serious principle which needs to be executed with determination then there is an urgency to make it a mandatory requirement in the proposed Act—(1) as an independent objective, (2) as part of the Inspector General's responsibilities and (3) as a factor in the selection, assignment and promotion process.

While we feel that these few changes would result in a greater role played by all minorities and women, including Asian Americans, in U.S. foreign policy, the far more important result would be that the U.S. Foreign Service would more accurately reflect the value and diversity of American society—in other words, it would more effectively fulfill one of the objectives of the Act, i.e. make it more representative of "all segments of American society."

We hope you will be able to support these proposed changes, the specific wording for which was included at the end of our prepared statement.

Yours sincerely,

ELLIOTT K. CHAN,
Chapter President.

The CHAIRMAN. Our next witness is Mr. Smith Simpson, retired Foreign Service Officer.

Mr. Simpson, welcome.

STATEMENT OF SMITH SIMPSON, RETIRED FOREIGN SERVICE OFFICER, ANNANDALE, VA.

Mr. SIMPSON. Candidates for the Foreign Service come from all parts of the country, all income levels, all kinds of educational institu-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tions, small, intermediate and large, private and public, religious and secular, with every conceivable variation in the quality of instruction, background and experience.

Up to a point, this diversity is healthy and we should build upon it. But unless we recognize its extent and what it means in terms of ability to represent the United States and to engage effectively in international politics, we can easily hoodwink ourselves, as in fact we have been doing.

The result is that we are inducting into the Foreign Service officers who rarely know well their own country in that thorough sense which overseas representation demands. Many cannot answer accurately and intelligently the simplest questions concerning it which foreigners are likely to put to them. This includes questions concerning its political philosophy and social problems, its gross national product, the size, composition, and importance of its foreign trade and the factors determining the adverse levels of that trade as well as sometimes the simplest geographical, economic, political, and social phenomena. Poor secondary education is responsible for some of this for relatively few candidates take courses, say, in geography at the college level.

As with the United States, so with world geography, and history, political philosophies which have a global impact and government systems. On all of these, other governments and peoples have a reasonable expectation that the representatives of a world power will be well informed so as to engage in intelligent discussions and exchanges of views. In this category belong also those cultures, religions and tribal loyalties which play so great a role in the upheavals of our times and with which our representatives must be familiar with sufficient profundity to detect and analyze what is going on, often beneath the surface, to establish relations of confidence and influence with people, who may also be beneath the surface, and to offer timely advice to all concerned.

There is a third area of professional concern, including diplomacy itself, international law, international organization, our treaty commitments and other security arrangements and techniques of national defense in which educational preparation of Foreign Service officers is woefully inadequate. This area lies at the core of our Foreign policy objectives, and our competence in international maneuver. These are not matters separate from the other areas for they are all interactive. The essence of diplomacy is international politics and that is a melange of the national politics, the cultures and sometimes the religions of all the other members of the world community.

But we find an extraordinary gradation in our officers' knowledge of these things, both at the time of their admission to the Service and in subsequent stages of their careers. Indeed, almost no American university offers any instruction in the art and science of diplomacy. In this basic, professional subject newly commissioned officers are completely untutored and what they learn of it over the years comes to them in the fragments of personal experience, thus condemning this country to an ever faltering, reactive posture in world affairs as individual officers gain that fragmentary experience.

Finally, there is a whole area of population, environmental and scientific problems with which our diplomacy is compelled to deal but on which courses are nonexistent in many of our institutions of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

higher learning. The range of sciences involved currently in our world problems—cosmography, anthropology, social biology, social psychology, sociology, ecology and the like—is immense and there is no way by which individual candidates can summon them in university course work in international affairs. A special effort of synthesis is required.

Thus, curriculum gaps conspire with those resulting from candidates' choice of majors and the growing complexity of the problems afflicting the world community to require a concerted effort by our Government to better equip our diplomatic representatives.

All of this means that our diplomatic representatives are called upon to do a first-class, complicated job without having had a first-class, well-synthesized preparation for it. This preparation can only be provided by a diplomatic or foreign affairs academy of a post-graduate character. By making it post-graduate we would build upon the diversity of our educational system at the same time as providing an essential instrumentality for filling the present gaps of officers and greatly honing their skills in the practice of a dynamic rather than an overly cautious and reactive diplomacy.

Instruction would be provided in the art and science of diplomacy, including covert and military, so as to equip diplomatic officers far better than they are now to contribute effectively to an integration of our strategies and tactics in the world community. Legislative statements of objectives will not accomplish this integration. No number of Presidential and congressional admonitions to chiefs of missions, urging them to assume full responsibility for the direction, coordination, and supervision of all U.S. officers will do it. Only suitable education and training can effect it.

If such a government academy should educate and train not only diplomatic officers but all of those who deal with foreign affairs in the Federal Government, this would provide a community of knowledge, perception of the national interest, and recognition of the resources available for the pursuit of that interest. It would also promote an esprit de corps needed to effect that degree of policy integration and coordination of maneuver which Communist and other totalitarian states achieve by party ideology, organization, and discipline and which provides them an appreciable edge over democratic countries in the rough and tumble of international politics. Democracies must move in their own ways to redress this imbalance and enhance their effectiveness.

Such an academy would provide an officers' candidate school. Only those successfully completing its program of studies would be offered commissions in the Foreign Service or appointed to foreign affairs positions in the executive departments.

As I point out in my forthcoming book, "The Crisis in American Diplomacy":

> The educational and training process must be viewed as a continuing one. To enable officers to participate in it—not only through classes but self-educational effort as well—the size of the diplomatic service must be expanded to make possible the release of officers for educational and training assignments and the leisure required for self-development through study and reflection. Reading programs must be instituted in every mission and post. Sabbaticals must be provided every officer on a regular basis.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

I would add that something akin to the Military Establishment's command and staff school should be made a part of this program of continuing education and training.

We cannot move too quickly along this line. We are in a tough bind in the world and the world is not going to become a more orderly place in the foreseeable future. We must prepare our diplomatic officers—and our foreign affairs officials in all parts of our Government—to deal with it.

More funds will be needed from the Congress for this purpose. We should view those funds as appropriated to our national defense. Diplomacy is in fact a component of that defense.

The CHAIRMAN. Thank you very much, Mr. Simpson.

I first became interested in your ideas when I read the article in the Foreign Service Journal, "One Day in the Life of Simas Kudirka and the State Department." I thought that your views had a great deal of merit. I am not sure I agree with the thrust of your statement that there should be sort of like a graduate or undergraduate academy of that sort. This is an idea that has been discussed in the past.

I know Senator Symington had that idea in the early 1960's. It has been going on for quite a while as you know. Why I was particularly struck with your article is that it may point to the need for specific language so that you would not have confusion, as obviously resulted in the consideration of that case. The thought I have is to introduce an amendment that would call for the equivalent thing to the military's in-service officer candidate school for junior officers longer than the present 8 weeks, or whatever training junior FSO's now get, that would really teach them the essence of what a good economic report should contain, what a good political report should contain, what the procedures are in the Service so they don't go out in the field having to learn by the apprenticeship system, which is the way it is done now, and we would have a course of that sort maybe 3 months or more for junior level officers and another for maybe 3 months at the middle grade level like the military's Command and General Staff School.

The idea would be not to deal with generalities but with specific job-related needs, because when you are dealing with general policies and theories, I think we do much better to send our people to the great universities we have, drawing from a diversity of backgrounds and institutions for those fundamental fields of knowledge. But when it comes to applied knowledge, then the situation to my mind is very similar to that in science you have applied science like engineering, and—you have pure science such as physics. When you come to applied science that means taking the theoretical knowledge that you have and utilizing it in practical situations.

In this case I am thinking of the applied use of the knowledge people already have.

Do you follow my thought? I may not have expressed it very aptly. What are your reactions?

Mr. SIMPSON. My feeling, Senator, is that the present 5½ weeks which we devote to preparing newly commissioned officers to the Foreign Service is absurd. The world is much too complicated for this kind of a quick fix in the way of preparing them for their duties abroad. I feel that until we regard the field of diplomacy with the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

same seriousness we regard the military, we are shortchanging ourselves as well as the officers we are sending abroad.

The CHAIRMAN. What I am saying is very like the military. The military has a 3-month officers' candidate school for entering officers and the Command and General Staff School midway through. I am talking about that same sort of structure. But are you suggesting there be an academy like West Point or Annapolis?

Mr. SIMPSON. I am suggesting an academy but of a postgraduate character rather than an undergraduate character such as the military academy.

The CHAIRMAN. I think maybe somewhere in between both of our thoughts there might be a good compromise. I appreciate your views. Incidentally, do you have any views on the Foreign Service bill that is before us?

Mr. SIMPSON. My remarks are addressed to that part of the bill, Senator, which relates to the Foreign Service Institute. It seems to me that the thinking which has gone into that particular part of the bill is extremely prosaic. This part of the bill could have been written in 1946 and probably was a part of the Foreign Service Act of that year.

I would like to see that part of the bill amended so as to provide for far more serious education and training of our officers.

The CHAIRMAN. Good. I thank you and thank you very much indeed, Mr. Simpson, for being with us.

[The following information was subsequently supplied:]

[From the Foreign Service Journal, September 1979]

ONE DAY IN THE LIFE OF SIMAS KUDIRKA AND THE STATE DEPARTMENT

(By Smith Simpson [1])

PROLOGUE

A widespread feeling exists that something is basically wrong with our diplomatic performance. With the initiative in international politics seized by others in vital areas, we are viewed at home and abroad as being outmaneuvered to the imperilment of our national interests and indeed our national safety. A subtle, indefinable weakness appears to be at work and we sense the desperate need of taking remedial action.

But what action? Before the question becomes so politically charged as to excite a flood of confusing gibberish in a presidential campaign, we should take a hard, professional look at our diplomatic establishment and the quality of its performance.

Does that mean we should engage in the conventional pursuit of "restructuring" the State Department and Foreign Service? Or does it mean we should think in terms of something infinitely more subtle and profound?

As a department and Foreign Service officer I was early convinced that some organizational innovations and rearrangements were needed to improve our diplomatic effectiveness, and some have been made, but far more basic corrections were needed in the minds and attitudes of officers. I became persuaded that it is these that account for our inadequate overall performance. The State Department has failed to educate and train incoming officers to a point at which they properly conceptualize their responsibilities and has failed to keep educating and training them in sufficient quantity throughout their careers to perfect the skills and performance demanded by world politics.

[1] Smith Simpson, a retired Foreign Service officer, is author of Anatomy of the State Department, as well as many articles on U.S. diplomacy. These articles have appeared in the Journal, The Nation, The Annals of the American Academy of Political and Social Science and the New York Times.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

How do we come to grips with so shadowy a challenge as this? Its very nebulousness has caused all reformers over the years to shy away from it. A possible approach is by analysis of specific instances of failure. One such instance is offered here, which, by antedating the present administration, suggests basic rather than simply contemporary causes of inadequacy.

Originally investigating this instance on the heels of its occurrence, so as to interview the officers involved and observers while their minds were fresh and documentation could be easily obtained. I found it difficult to publish the analysis. The performance of colleagues was in question and I succumbed to the temptation to shelve it. However, our diplomatic performance has become progressively more inadequate relative to the nation's needs and neither general hand-wringing over this situation nor tinkering with the Foreign Service Act of 1946 has got us anywhere. Basic, specific reforms must be undertaken and they can be distilled only from basic, specific failures. Unless we professionals possess the will and courage to engage in this distillation and to circulate its results, the nation will continue to indulge its dissatisfaction in expressions of general unease, importuning oratory and political claptrap, inviting a round of circus-like scapegoating such as recently overtook the Central Intelligence Agency. To concentrate attention upon issues, I use no names in this analysis. Participants are identified only by title or positions held. What is important is diagnosis of disease, not identification of bodies.

The day was November 23, 1970. The place was off Gay Head Bluff, Martha's Vineyard, in territorial waters of the United States. A U.S. Coast Guard cutter, the *Valiant*, was moored alongside a Soviet ship, the *Sovetskaya Litva*, for an exchange of views concerning Soviet fishing practices which were depleting marine stocks in the Atlantic off New England. Similar meetings with Soviet fishing fleets had been held off both our coasts pursuant to fishing agreements between the two countries. The groundwork for this particular discussion off Gay Head had been laid by the American embassy in Moscow. It was no impromptu event.

Simas Kudirka, a Lithuanian crew member of the *Sovetskaya Litva*, alerted a visiting party from the cutter of his intention to defect and later got himself to the cutter where his presence was accidentally discovered by one of a Soviet party paying a return visit. A Soviet spokesman for the party—apparently a KGB agent—conveyed to the Coast Guard skipper (whom I will hereafter call "the skipper") his awareness of the defection but made no request for Kudirka's return, apparently in deference to well-known U.S. policy on political asylum and the fact that the ships were in U.S. territorial waters. However, he intimated that the Soviet side would be appreciative if Kudirka's return were volunteered by the Americans.

In a series of radio-telephone conversations with superiors in Boston, the skipper received orders from the admiral in charge of the Coast Guard district to return Kudirka if so requested by the Soviets. Horrified by this and well aware of what punishment would be meted out to Kudirka if this were done, and with the defector emotionally pleading for asylum, the skipper stalled for time. From the admiral's chief of staff came a strong intimation that the skipper might find it expedient to elicit from the Soviet captain a formal request for Kudirka's return, as this would "make the record look good."

Two hours later, the admiral repeated his order. The agonized skipper, having received a formal request for Kudirka's return—a request which KGB agents aboard the *Sovetskaya Litva*, by this time aware of the American confusion and indecision, seemed to have pressed that ship's reluctant captain to make—now obeyed. He permitted Soviet crewmen to board and search the cutter, locate and seize the hapless defector, savagely subdue him, wrap him in a blanket, bind him with yards of cordage and remove him. The ships were now unmoored, the skipper having taken this precaution in the event of a reversal of the admiral's order, and the Lithuanian was returned to the Soviet vessel on a lifeboat—ironic term—generously supplied by the cutter.

The denial of asylum being completely at variance with long-established U.S. policy, the ensuing furor raised questions of what policy and operational controls the State Department had exercised. The following sets forth the State Department's role in the affair:

1:15—Coast Guard headquarters in Washington received a telephone call from its Boston chief of staff (the admiral being ill at home, although in telephonic communication with his chief of staff) advising that cutter officers had been

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

signaled by Kudirka of an intention to defect. So inadequate were communication lines and practices between Coast Guard and the State Department—notwithstanding the presence for some years of Soviet fishing fleets and earlier discussions off our coasts—that an hour and a half were consumed in a search for the proper office in the State Department to alert. Logically, it turned out to be the office of Soviet affairs.

2:45—In that office a senior Foreign Service officer heading the bilateral political relations section (herafter called "section chief") was notified by the Coast Guard of the prospective defection. He promised to call back advice as soon as he had a copy of the Boston message, which was provided him within a half hour by the Department's operations center.

3:15—The section chief, as promised, called the Coast Guard. Mindful of attempts by the Soviet government to fake defections in the past so as to gain intelligence information or to create embarrassments for the United States, he advised that "the possible defector should not be encouraged." This advice, while proper, was of negative tenor and of no great assistance for it left unanswered what should be done if Kudirka defected *without* encouragement, which was the possibility the alert signaled. The section chief then concluded his call with the request to keep him posted, adding that if defection occurred it would have to be handled according to circumstances. "Handled" is an operational term, referring to how a policy should be carried out, but the policy itself was not stated. The section chief never advised, at this time or later, that if the defector appeared to be genuine, he should not be returned (Slip No. 1 in the State Department). This "keep me informed" approach sealed the State Department to a reactive diplomacy.

4:00—Coast Guard headquarters, preparing to close down for the day (its working hours ending at 4:00), called the section chief to report that no further news had been received. It had not called Boston to make certain, before closing, that it had the latest available information, nor did the section chief request it to do so (Slip No. 2 in the department). He described that day as having been, like all days, hectic, with Kudirka's but one of many problems he had had to deal with.

6:00 or thereabouts—The section chief left for home, without having advised any superior of the alert (Slip No. 3) or having sent (or even considered sending) a department officer to Boston to preclude any possible foul-up—to keep in touch with the situation, render policy guidance on the spot, ensure prompt communication with the department and reduce the risk of misadventure in what can always be a tense and tricky situation (Slip No. 4). "There was no one I could send," he said. Furthermore, it would have been "unprecedented" to do so, and he "could not imagine anyone in the office agreeing to it." So he did not raise the issue with any superior. But it would have been an effective way of taking charge and restraining an admiral in Boston from going off on his own tangent.

While the department's report to the president on this affair states that the section chief informed a colleague (who was to stand duty that night) of the Coast Guard message, the duty officer confided to me that he had not been briefed as to the specific facts or the applicable policy. He had just recently joined the office of Soviet affairs, had never before been confronted by a defection case and was specific in his statement to me that there had been no discussion with him of U.S. policy in defection cases, of possible complications or problems to anticipate and what to do if any of these materialized. However, he was a Foreign Service officer, of mid-career rank, with eight years' experience, including a year in embassy Moscow (as a publications procurement officer), and subsequent tours in Paris and Brussels in connection with NATO affairs and in the State Department's bureau of intelligence and research. He had just recently joined the office of Soviet affairs.

This failure to brief a duty officer—especially a newly arrived one—certainly merits identification as Slip No. 5. The section chief did not even ask to be kept informed in the course of the evening or, if he did, the duty officer did not hear him say so (Slip No. 6).

7:45—The duty officer at Coast Guard headquarters alerted a state watch officer (posted in the department's operation center) that Kudirka had reached the *Vigilant*, requested to stay, and "was being returned at this time at written request of his ship's master." This electrifying report that defection had occurred and the State Department's instruction (to be kept informed of developments) had been disregarded did not electrify the duty officer to whom the message was relayed at his home. Although unfamiliar with the background of the message,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the watch officer had the sensitivity to detect the possible need of action and he suggested that the duty officer call the Coast Guard. Instead, the duty officer procrastinated (Slip No. 7). For an hour he did nothing. This was all the more extraordinary since the message was phrased in the continuing present—"was being returned." During this hour he could have saved Kudirka, for the message failed to take account of the struggle which a defector would put up for his freedom and possibly his life.

The duty officer for the bureau of European affairs (of which the Soviet affairs office is a part) was notified at this time by the watch officer, but never seems to have entered the scenario thereafter, apparently assuming that the responsible office was "on the ball." He did not so much as check with the duty officer for Soviet affairs to inquire what the report was about (Slip No. 8). Such an inquiry might have activated the latter by generating an exchange of views. The latter simply holed up, paralyzed either by ignorance of all the essential facts, by a lack of elementary operating training or by an astonishing deficiency in the instinct to act, or all three.

9:00–11:00—Sometime within this period the duty officer called his department's watch officer to inquire if further information had come in. None had. Again, the watch officer suggested he call the Coast Guard. This time the duty officer did so, was informed that the Coast Guard duty officer was asleep and, still indecisive, phoned back the watch officer for advice whether he should insist upon speaking to his Coast Guard counterpart. Advised he should, he had the Coast Guard duty officer roused, thereby narrowly averting another slip.

The Coast Guard duty officer, reporting that no further message had arrived from Boston, promised to submit a "Situation Report" the next morning. The duty officer could still have spared Kudirka his ordeal and his government ensuing embarrassment of global reach had he requested and insisted upon a call to Boston but, in his irresolute way, was content with the promise of a morning report (Slip No. 9), which, to anticipate the narrative, was never made. Nor did the duty officer call his superior, the section chief, for guidance (Slip No. 10). He did not himself call Boston (Slip No. 11). Nor did the section chief, as a precaution, call the duty officer the entire evening (Slip No. 12). So the duty officer retired for the night as the luckless Kudirka was being brutally beaten and kicked, trussed in blanket and cordage in the presence of the horrified skipper, crew and fisheries negotiators, thrown abroad the cutter's lifeboat and delivered to his masters.

What are we to make of this eerie and disastrous sequence of events? Where were all those qualities claimed by the establishment to constitute the hallmark of the career Foreign Service officer and to distinguish him generally from political appointees—unique knowledge and superior knowhow, acute and trained sensitivity, a good sense of initiative and timing and professional skill? Except by the watch officer, none of these were demonstrated. On the contrary, a most excruciating ineptitude, commonly associated with the worst of political appointees, was exhibited—and one of the officers involved was of senior rank.

The diplomatic establishment is forever pleading that the reason it cannot turn in a more airtight performance than it does is because foreign relations are international in nature, dependent not upon our will alone but on that of other governments as well. But here was one foreign policy situation clearly within the department's control and it was, just as clearly, bungled. Presidents have long been exhorting the department to cease being what John F. Kennedy called "a bowl of jelly" and to "take charge." Here was a situation in which, patently, the department could have done so. It proved to be what President Kennedy had termed it.

All the more disturbing was that this had occurred in the office charged with managing our relations with a government whose dynamic diplomacy exploits every vacuum, every weakness, every mistake presented by its rivals.

The outrage of the president, congressmen and the public over this incredibly slipshod performance was instant and tidal. With an oath directed at "that goddamned State Department," the president ordered reports from it and the Department of Transportation (in which the Coast Guard is situated). As dismay spread around the world, the U.S. reputation for knowing its policies and interests and being able to act effectively in accordance with them took a nose dive. As this came in the midst of our disastrous involvement in southeast Asia, the dive was all the steeper. But when the president received the departments' reports any follow through he might have had in mind evaporated. Either he was

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

swamped by other problems or he may have been stumped by the thicket of unfamiliar questions which the situation posed.

The State Department itself, always reluctant to confront basic questions concerning its performance, dismissed the Kudirka affair as an unpleasant episode not symptomatic of systemic weakness. It appointed no board of inquiry, as did the Coast Guard. It issued no reprimands, as did the Coast Guard. And it took no remedial steps save the most obvious: (1) issuing the Coast Guard and other government agencies a statement of U.S. policy on political asylum (which it had failed to do before despite the patent opportunities of defection provided by offshore Soviet fishing vessels), (2) defining for the Coast Guard channels of communication with the department, and (3) inviting Coast Guard representation on interagency bodies dealing with asylum cases.

These steps took care of locking the Coast Guard stable *ex post facto*, but the basic questions requiring address slipped like quicksilver through the department's fingers. As the furor subsided so did its concern. A brilliant, illuminating flash of lightning had streaked across the sky, revealing a startling sequence of inexcusable slippages, but when the flash was over all excitement and curiosity vanished. Other problems, other crises, other brush fires closed in. Events conspired with a chronically meager staffing pattern to produce days too hectic and burdened for officers to think beyond their immediate work-load. The latest cable, the latest telephone call, took its customary priority. "Keep me informed, and if you don't call back I'll assume there is no problem" resumed its sway as an operating principle—a reactive stance, not one of positive assumption of responsibility and leadership. Kudirka and his unhappy experience, which should have taught so much, wound up teaching nothing at all.

Were the slippages in this case only personal, as one would like to think, so that other officers would, in all likelihood, have acted more responsibly? Or were they systemic? Even if simply personal, they raised enormous questions of systemic nature:

What weaknesses in the selection system permit incompetent, indecisive officers to be commissioned?

Are officers reasonably adequate when commissioned but inadequately educated and trained when inducted and thereafter?

Does the system fail to instill an adequate conceptualization of diplomacy and diplomatic functions and responsibilities?

Do deficiencies in the promotion system permit unqualified officers to move up the ladder to mid-career and even senior ranks?

Do conditions of service contribute to producing overworked, jaded minds, overly vulnerable to negligence and to incapability of distinguishing the relative importance of situations and taking effective charge of those of highest priority?

Do such systemic factors seal the United States in to an excessively cautious and essentially reactive attitude in international politics?

To come to grips with these shadowy questions requires a close familiarity with the diplomatic establishment and, frankly, I have been holding back the publication of this analysis in the hope that someone other than myself would pick up this, or a similar, case and assume the invidious task of analyzing the conduct of colleagues which our general situation requires. But the national interest commands that some such analysis be produced without further delay.

Consider first the selection of officers. There is no system for the selection of stationary State Department staff apart from that of the general civil service. Stationary officials other than civil servants acquire temporary sojourn in the department when some president or influential congressman wants them to have a government job, or occasionally a political appointee or friend in the department wants a special assistant. No special orientation or training in the dynamics of diplomacy is provided such appointees or civil servants.

Commissioning in the Foreign Service has traditionally involved a written and oral examination. The written tests the range of a candidate's general knowledge and culture and his IQ. It does not test any conceptualization of diplomacy. The oral examination, superseded this year by a so-called "assessment procedure," has permitted a probing of personal qualities, but since the interviewers have been drawn from the diplomatic establishment and that establishment pervasively thinks of itself in pedestrian fashion, as a collection of bureaus, offices, "cones" and "jobs," with no synthesizing conceptualization of diplomacy as a dynamic international political process, they have naturally examined candidates as though they were simply entering a bureaucracy, without reference to political aptitudes and action mentality. With recruitment itself

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

directed not to the political arena, but to colleges, students of events rather than activists predominantly came before the oral panels.

Fortunately, the department's recruitment has been substantially supplemented by self-starters who have come forward as candidates on their own impulses, after trying careers in private business, in the military and in government. The average age of all candidates currently hovers around 29. Still, they constitute a mystifying mélange of people prepared and people unprepared for international politics and therefore prophesy an extraordinary range of performance behavior. This has been aggravated by the waiver of the written examination, under the pressures of Equal Opportunity, for candidates from four ethnic groups: American Indians, blacks, Hispanic-Americans and Asian-Americans.

To give two examples from a recent Foreign Service class of what this is doing to the Foreign Service:

Officer A graduated from a polytechnic institute with a BS in management and from a university with a masters in mathematics education. He taught math and science in public schools for eight years. He thus had no background, educational or employment-wise, in foreign affairs and none in US government and history, including US foreign policy and diplomatic history, international law and international organization. In the whole international area, he was as complete a novice as a high school senior.

Officer B began his college education at a university but dropped out. After drifting through Central and South America as a tourist and student and through Europe as a tourist, he settled down in the United States as a bricklayer for a year and a half. This was all the preparation he had for representing and explaining this country and its policies abroad, answering questions concerning our history, culture, politics and social problems and engaging in the wide-ranging complexities of international politics.

These two officers came from ethnic groups exempted from the written examination. Such exemption, thus, results in the department commissioning officers wholly unprepared in foreign affairs. Rather than obtaining learned diplomatic officers, it is inducting the most superficial imaginable. We must recognize, however, that other candidates not so exempt and with better academic backgrounds, still possess serious gaps. Those strong in Americana are weak in foreign affairs and vice versa. Nearly all, exempt or not, are illiterates in diplomacy, untutored in international strategies and tactics, which constitute the essence of international politics. Even if exemptions from the written examination were not being accorded ethnic groups, the department's claim that the Service gets "the cream of the nation" has become a meaningless shibboleth. "The cream" is no longer good enough for the needs of a world power.

No psychologist has ever been co-opted to assist oral panels in threading their way through a mystifying mélange of applicants, either as a panel member or adviser. Since the panels have consisted simply of rotating Foreign Service officers of varying degrees and kinds of experience, with no training in the interviewing art, the weaknesses of candidates have often gone undetected or, at best, superficially explored. In view of the exactions and dangers of modern diplomacy, this is serious remissness indeed and is surely related to the psychological problems which have overtaken the Service, aberrant behavior (reported in the media), alcoholism, disinclination to serve in hardship posts ranging from Moscow to Africa, and indeed to serve abroad at all. This dissipation of zeal for overseas duty, commitment to the nation's needs and discipline have worked to the detriment of our diplomatic performance. Contrasting with the higher degree of commitment and discipline in the diplomatic services of other governments, it is inevitable that our effectiveness must have relatively declined.

For some years, candidates have not been subjected to any special stress in the course of oral interviews, so that no one could judge how well they might be expected to react to particularly difficult or embarrassing—still less to hazardous—situations, or even to relatively simple ones like Kudirka's. Quite the reverse, for examiners, succumbing to the current easy-going, socializing psychology of our society, have felt that the interview itself is enough of a strain, and so have been making it as pleasant and relaxed as possible. In a hard and dangerous world, this has not only exposed the diplomatic establishment and the nation to risks they should not be exposed to but gives candidates a totally false impression of the highly demanding calling they aspire to enter and the unflappable self-control it exacts. One detects, indeed, in the attitudes of three of the officers involved in the Kudirka affair precisely this relaxed, easy-going

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

mentality, devoid of political sensitivity, discipline and teamplay. Thus, the selection system has joined hands with deficiencies, and may have subtly sowed debilitating attitudes where none originally existed.

If nothing in the selection process in recent years has remotely suggested the Herculean challenges awaiting successful candidates or tested anything approximating the sensitivity and resourcefulness demanded of them, this particular defect may be somewhat mitigated by an experiment introduced this year of replacing the hour-and-a-half or two-hour oral interview by a day-long "assessment procedure" borrowed from major corporations. This stimulates a "day on the job." The candidate is given a stack of material with which he might be expected to be confronted in a typical workday. He must dispose of this, deciding the questions posed. Lacking tutelage in international politics, he will of course come up with some superficial or even cockeyed decisions, but at least this type of test should help to screen out the indecisive and unimaginative. It is difficult to conceive the two principal officers involved in the Kudirka case taking such a test without raising serious questions concerning their qualifications.

At the same time, it would be a serious mistake to adopt any entrance test which aggravates the American penchant for approaching foreign affairs as a collection of "problems" on which one concentrates one by one and makes decisions to the exclusion of broad political considerations. One must keep in mind the essential nature of diplomacy, which is not to keep one's in-box contents flowing into one's out-box, but to keep a political process flowing, with an eye to foreign policy objectives. The principal limitation of the innovation is that it is a desk-job test and smacks too much of the widespread antihumanist, managerial belief that papers, desks and "decisions" are more important than people. It may well reinforce the debilitating conceptualization of the diplomatic process as a mere collection of in-boxes and out-boxes, offices, "job," cones, paperwork and "problems," rather than a *political* process of international maneuver to obtain certain strategic goals.

One has to remember, also, that in international as in national and local politics, people of more profound political instinct are imaginative and resourceful in personal relationships rather than in executive-desk type of in-box and out-box work. The essence of diplomacy is personal persuasion in a cross-cultural, cross-historical context—in which tact and personal agreeableness are important factors—not managing a desk or an office of one's own compatriots and certainly not in a business-oriented type of organization. Some combination of a decisive-minded, management type test with a vastly improved oral examination might provide the ideal solution.

The socializing, make-them-feel-at-ease philosophy which has metamorphosed American education and has come to characterize our oral examination, pervades the five-and-a-half-week, so-called basic officers course given to all newly commissioned officers. So much in this case that officers are commissioned *before* not *after* completing the course, during which *no* examinations are given to test the degree to which material has been absorbed. Indeed, this is not a "course" at all but a fleeting, superficial exposure to a grab-bag of subjects most of which are unsynthesized with either the substance or the objectives of the diplomatic process.

The first priority of the "course" has been to introduce officers not to diplomacy—that is abjured as too "remote" and "high-flown" for new officers (even though their average age is 29)—but to "the work" of the State Department and Foreign Service (a purely bureaucratic concept), to orient officers to the terms and conditions of their employment (including the department's medical and insurance program, employee-management relations, the career development system and the like) and to make a gingerly thrust at some of the core skills they need in oral and written communication, reporting and analysis of information they gather, negotiating (a one-day simulation) and the supervisory-management skills required of a junior officer.

The second priority has been to develop a faint understanding of the relationship between "individual job assignments" and the overall formulation and implementation of U.S. foreign policy, of diplomatic social practice, of some questions of international law which rise to the level of the department's legal adviser (rather than the broad questions which diplomatic and consular officers may be expected to face) and the roles of the White House, executive departments and Congress in policy formulation and implementation. The general outlines of U.S. foreign policy were once sketched but are not now. Even when sketched important areas have been omitted such as those relating to defection

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and asylum, basic though these are to what the United States stands for in the world. The interests and activities of the federal foreign affairs community are touched upon, but not synthesized in a total conception of American strategies and tactics. Not even the role and resources of the Central Intelligence Agency were covered in any meaningful way until recently, when the buffetings to which the agency has been subjected by Congress and the press have knocked sufficient humility into its head to get down off its high horse of exaggerated secrecy. This part of the "course" has never included the Coast Guard.

Whether this introduction to the Service provides any grounding in U.S. foreign commitments, (including our defense treaties) and the reasons for them or the policies and commitments of other important governments, depends upon the conductor of the course and since there is a constant succession of conductors, both substance and quality in these areas differ astonishingly.

Even when there is some slight grounding in such vital matters, there is none at all in others equally critical, including the Soviets' political, economic and military strategies and tactics, or in the crucial question of the sources of anti-American feeling around the world, in international law generally (although we profess a consummate dedication to it), in international organizations and the resources and problems they present to us, or—most startling of all—in diplomacy generally, although this is the profession the officers are entering and the principal means by which governments are seeking their objectives. Occasionally, a conductor (such as the present one) explores some diplomatic functions, such as protocol, negotiation, démarches and interviewing skills, but there is never an analysis in depth of the diplomatic process and the role it plays in our national security and welfare and that of the international community. Hence, apart from negotiation under the present conductor, there are no case studies of a problem-solving nature in the dynamics of the international political process, comparable to those, for instance, which good schools in business management employ to prepare aspirants to business careers. Nor is there the slightest suggestion of the contributions which a complex of sciences is making to the analysis of our world—cosmography, anthropology, social biology, social psychology, sociology, ecology and the like—especially of the underdeveloped areas. All in all, the basic officers' preparation is a resounding hosanna to superficiality and amateurism. Needless to say, the sounds which the American diplomatic performance generate include many eerie and discordant ones—as in the Kudirka case—and this accounts in no small part for our slippage in world esteem.

Apart from the one exercise in negotiation, the department propagates the false conception that diplomacy is hazy, largely individual, instinctive, felt-understood in encounter experience, incapable of analysis and verbalization, to be practiced by people off the seats of their pants, rather than a sharp, brisk, politico-economic-cultural-military competition of ideas, moves and countermoves—demanding of practitioners the highest degree of learning, altertness, complex calculation and systematic teamplay. This false conception has vast psychological ramifications, invading the entire diplomatic establishment and creating a fertile incubation culture for Kudirka-like slippages and worse. This is why even in so relatively simple a matter as dealing with the Soviets on a defection question or the siting and construction of embassies in our respective capitals we are outsmarted. They know the game and too many of our officers do not.

Not being conceptualized as professional in nature, the preparation of officers is cast in the image of its conductors. These being Foreign Service officers and therefore constantly rotated, orientation content is subject to equally constant and bewildering mutation as each conductor experiments, adding here, subtracting there, according to his individual experience and perceptions. Human rights, for example, are now much emphasized in the basic orientation, as youth problems were in President Kennedy's time. If the department viewed its task clearly and did it well, such things would be covered all the time and this extraordinary erraticism of content and quality would disappear.

Confronting the same problem, the military establishment has overcome it by reducing courses to writing, ensuring that basic subjects are covered thoroughly, in a professional manner, while permitting instructors to contribute their own experience, insights and personality to instruction. The department's casual, relaxed approach to its instructional responsibilities is symptomatic of a profound misperception of diplomacy, the modern world and its own role and cannot but profoundly influence the performance of officers and therefore its own competence relative to our military establisment, our intelligence agency and other governments.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Of equally psychosomatic effect, the course propagates the notion that past experience is of no relevance. No warnings, by case studies or otherwise—apart from anecdotes by course conductors—are given of mistakes committed in the past by either our diplomats or those of other governments to sharpen appreciation of hazards and pitfalls. None of the critical analyses of the department published over the years is required reading—to stimulate thinking of some breadth and depth of the kind of an organization they are stepping into, what inadequacies to anticipate and compensate for and what changes to work for. The excuse is given that all of these studies are "out of date," but all together they constitute a palimpsest of American thinking—and non-thinking—on foreign policy making and diplomacy, throwing light upon perennial problems in these two areas. Thus, a wholly passive, irresponsible, even disdainful, attitude toward the organization as a whole and its problems is induced.

Not even biographies and memoirs of diplomats are required to be read to stimulate a professional search for clues to the nature of diplomacy, what functions it performs relative to the nation's security, and what to do or avoid doing in their own careers to achieve a satisfactory quality of performance in the shortest possible time. Such reading would provide some transfer of conceptualization and experience from officer to officer and from generation to generation, badly needed in a system of constantly rotating officers. Incidentally, also, it would inculcate a professional attitude sadly lacking in the diplomatic establishment, as was all too vividly attested by the loose-jointed, unprofessional way the office of Soviet affairs handled the Kudirka case.

Orientation, thus, is little more than a transient situational disturbance in the lives of the officers and a perfect exegesis of Santayana's admonition that those unware of the past are condemned to repeat it. It is also an exegesis of the complementary Simpson axiom that those ignorant of the past do not know what good things to perpetuate. It confirms the American insistence of living in a fool's paradise of the present, chopping up history into little daily bits, and disregarding the perspectives of the past, leaving too many of us unable to detect basic trends. It is as though those associated with the course over the years were followers of Rousseau and believed that "our existence is nothing but a succession of moments perceived through the senses."

Might this suggest that while we get to know a lot, we understand little and perhaps explain why World Bank officials say that in their travels they go to American embassies for the most up-to-date information but to others—the British, French and West German—for insights and perspectives into what the information means. It helps also to explain our failure to understand and to attract following in countries respectful and even reverent of the past.

How these deficiencies penalize officers is common observation. One reason—perhaps the principal reason—the China-born officers who became "China hands" in the 1930–40 period ran afoul of the State Department, as they did also of the "red-baiting" McCarran-McCarthy-Hurley-Nixon-Chambers-Budenz crowd, lies here. They were simply not adequately trained for their exacting profession and their free wheeling helped to do them in. It is the duty of the State Department to provide every entering officer with the best possible foundation and discipline, with risks of his committing errors reduced to a minimum. It is fair neither to the officers nor to the nation to dig for officers what T. E. Lawrence called "a shallow grave of public duty."

One needs only to compare this approach to the rigors of foreign affairs with the preparation exacted by the legal and medical professions to see the enormity of its misperception. To be admitted to the practice of law one must have capped a liberal arts education with three years in a law school and further demonstrate, through a rigorous bar examination, a grasp of the substance and procedures of jurisprudence. For the practice of medicine, requirements are even stiffer, since human life is involved—four years in medical school on top of general college work (in which stated pre-med courses are required) and a concluding internship in which further searching examination is made of knowledge, judgment and general capability. Diplomacy, like the law, concerns justice and order and involves maneuvering, bargaining and hard negotiating with these ends in view but on a global scale, encompassing different cultural, economic, political and legal systems. Like medicine, diplomacy concerns people's lives, not only those of individuals, as in the Kudirka case, but, again, on a very large scale, with successes and failures affecting the lives, health and fortunes of whole populations. The State Department, instead of measuring up to such formidable responsibilities and requiring, before commissioning, a rigorous educa-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tion and training, coasts along with the most relaxed and minimal standards conceivable.

Even a business-like brokerage, which might seem to be relatively simple—merchandising stocks, bonds and units in various types of investment funds—approaches its challenge responsibly. First-class firms put their candidates for account executive through a grueling 29 weeks of courses, after which come stringent examinations by the New York Stock Exchange, the National Association of Security Dealers and the Chicago Board of Trade. Are foreign policy making and diplomacy really so much less demanding, with so much less of an impact upon the nation and the global community?

Or take something simpler than brokerage: customer service of a public utility. The Philadelphia Electric Company puts applicants through a 13-week training to prepare them for work in that department. This provides not only a searching study of all possible customers' problems but psychologically jacks up the applicants' appreciation of the importance of what they will be doing if selected. Just what is the State Department trying to prove by a five-week-plus orientation? That diplomacy is simpler and easier than serving customers of a large electric utility, or its candidates are all that better prepared for their monumental tasks—or that foreign affairs constitutes a kind of Willy Loman occupation, "riding on a smile and a shoeshine?"

When, at various times, I have challenged this relaxed unprofessional preparation of Foreign Service officers, the objection has been made that the recruits would rebel against a thorough and tested preparation. "They are fed up with courses and examinations." I have been admonished. "They have had enough of studying and examinations. They want to get going."

What would candidates for the legal and medical professions be told if they said after finishing college or graduate school they were fed up with studying and examinations and just wanted to "get going," practicing law or medicine? What would first-class brokerage firms or the Philadelphia Electric Company say to applicants who "rebelled" against rigorous preparation? They would say: "Then you are not for us. Try something else." The State Department says: "Come on in anyway. We'll teach you on the job." The Kudirka case shows dramatically this can be so much malarkey. Few officers acquire on the job everything they need to know to be learned, sagacious, responsible diplomatic officers of a world power. Few can be intelligent and useful in any profound sense who are simply the product of what John Dewey called their own "undergoing." One needs to recognize that there is a wisdom of centuries not submissive to the fluctuations of time, assignments and daily chores.

The fact that on-the-job training is by fits and starts, by catch-as-catch-can fragments, from supervisors who learned the same way, straps a Kudirka-like time bomb to every Foreign Service officer. Piecemeal, job-related thinking becomes so fragmentary, limited and pedestrian as to become superficial, a sure way of fusing habit and tradition with anachronism, exaggerated individualism and repeated errors in our conduct of foreign affairs. This is why no government department is so beset by folklore and mythology, by-guess-and-by-God notions and clichés as the State Department. It explains why there is no pervading esprit de corps, team play and sustained organizational morale in our diplomatic establishment. To anyone familiar with the casual and disorganized fashion in which that establishment was run before World War II, the Kudirka case is dispiritingly reminiscent, revelatory of how old attitudes, mental processes and operational norms perpetuate themselves in a totally different and far more complex and dangerous age.

On-the-job training also exaggerates the American penchant of viewing foreign affairs not as international politics and therefore in terms of strategies and tactics, which are the dynamics of diplomacy, but as so many "problems." We thereby run the risk of losing sight of the broad political environment in which problems arise and must be resolved. Governments having an overall strategy acquire the momentum we have seen Soviet diplomacy acquiring in Africa and the "arc of crisis" from Afghanistan to the Persian Gulf while we try to separate out from the web SALT, Israeli-Egyptian relations, Rhodesia and other "problems" for individual treatment.

Under this system, learning tends to become excessively individualized. This is why the department, the Service, the basic officers course and diplomacy itself become, each, as I have had occasion to point out before, a kind of Rorschach inkblot, conceptualized not professionally but solely in response to the stimuli of individual experience.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Finally, on-the-job learning is the slowest possible kind. We are a world power and the state of the planet is such that we can no longer afford the luxury of officers assuming responsibilities of initiative and leadership only after years of service. The Kudirka case dramatically demonstrates that even with eight years' experience a mid-career officer can be so unanalytical and irresolute he cannot satisfactorily handle the simplest kind of a situation and a senior officer of *eighteen* years' experience does not know how to manage even one subordinate, cannot clearly articulate an important policy for the guidance of others and cannot, therefore, coordinate State Department interests with the operations of another agency.

The fact that the diplomatic establishment has some well-rounded, competent officers is in spite of, not because of, its commitment to on-the-job training, and these officers are far too few. Only when the average, run-of-the-mill officer possesses a shap strategic and tactical conceptualization of diplomacy and is trained to act in accordance with it can our democracy hope to contest successfully the kind of diplomacy waged by the authoritarian regimes which have replaced in modern times the Philips of Macedonia and Alexander the Greats of other times.

This brings us to the metastatic effects which working conditions exert upon the minds and attitudes of officers. These accentuate what the selection procedure and orientation begin: the creation of a bureaucratic instead of a dynamic political mind. For decades the staffing pattern of the establishment has been too lean to permit the development of effective educational and training programs for a sizable proportion of officers, the adequate development of officers by supervisors, or even self-development through individual reading and sabbaticals. The absence of reflective and creative thinking in our diplomacy for which the nation has been pleading for years stems in part from this, for the effect of overly stringent staffing is that officers work with their minds to the grindstone, not infrequently required to perform clerical tasks, as were officers in our consular posts in Iran, and thus so preoccupied with daily chores as to lose sight of the large ends toward which chores are supposed to be directed.

As one of our officers writes from London:

The tight staffing pattern of the Foreign Service does not only make it practically impossible for an adequate training program at the State Department's training institute to have sufficient inputs at all appropriate points in officers' careers. It also effectively insulates consular officers from developing political, economic or commercial skills or participating in those functions in connection with their consular assignments. In posts where I have served, I have observed that the sheer pressure of work (brought about in large part by insufficient staffing) leaves officers in such a state of physical and mental weariness at the end of each working day that they simply have no energy left to expend on reading or social contacts or other activities ordinarily thought to be part of the responsibilities of a Foreign Service officer.

This could have been written from any of our consular posts in Iran in recent years.

In the Kudirka case, this kind of staffing left the section chief pleading he had no one to send to Boston to take charge on the spot and himself apparently too fagged out to keep on top of a situation brought to his attention during the day. In a wearied condition, he closed the door of his mind as well as of his office at six o'clock. He had earlier served a tour of duty at the Treasury Department and noticed that the State Department was keeping that sister department insulated from policies and actions. Yet he could not, even in a specific instance obviously demanding the closest kind of collaboration, breach the insulation of the Coast Guard by issuing it a clear policy instruction and following up on its execution. "Perhaps," he said when it was all over, "we should have a liaison officer over there [at Coast Guard headquarters]." Perhaps we should also have alert, trained, unfatigued, take-charge officers in greater numbers in the State Department. Attitudes, not the lack of organizational devices, or an up-dated version of the Foreign Service Act of 1946, are at the root of many of our serious problems.

Year after year, Dean Rusk used to boast before Congressman John J. Rooney's subcommittee on appropriations that he was not requesting any personnel increases for the diplomatic establishment, despite accumulating needs and increasing workloads. "We are just working harder," he used to say. This was demagogy of the worst kind, all the more destructive because two government-wide reductions in personnel (to which President Nixon was to add a third)

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

had already stripped the diplomatic establishment to dangerously reduced staffing levels, and we are traveling that same road in the present administration.

"Working harder" breeds slippages of the Kudirka kind, as constant, day-long, week-in-and-week-out barrages of problems numb the senses, constrict attention span and inevitably induce mismanagement. In a broader sense, "working harder" over the years has also meant working harder at the same old lines of policy. the same old bureaucratic notions of diplomacy, in accordance with the same old shallow ideas of what the United States and the free world community need to do to ensure a preservation of their values and interests. Since some of the policies up to the time of the Kudirka affair had to do with Vietnam, "working harder" meant digging the nation ever deeper into that swamp. With no time to back off for fresh thinking and fresh perspectives, overworked minds simply cannot respond alertly and creatively to either immediate or long range, subtle or overt challenges.

The Kudirka affair and Vietnam, each in its own way, were symptomatic of the department's inability to conceptualize diplomacy in sharp enough terms to relate diplomatic actions to resources. Equally symptomatic—and reinforcing this deficiency—is the absence of a diplomacy planning staff. A policy planning staff has existed since General Marshall introduced it in 1947 in the hope of inducing in the State Department the planning functions and mentality of the military's general staff. But there is still no planning staff for the execution of policy and therefore no coordination of resources—human and other—for the global implementation of the policies decided upon by the president and secretary of state. Such a staff could, among other things, stimulate adequate educational, training and personnel development programs and conditions and press for a staffing pattern appropriate to the diplomatic needs of a world power. Every company of any importance has a management action planning system to enable it to operate by plan and anticipation rather than by simply responding to situations.

In the promotion of officers the department has been as inefficient and resourceless as in selection, education, training and staffing, because officers are doing, in too many cases unprofessionally, the evaluations on which promotions are given. Here, again, psychologists have not been enlisted to assist in resolving the problem of supervisors who cannot write professional, objective evaluations of subordinates. Without such evaluations, the department can too often fail to make the right promotions or assignments. It simply cannot weed out the incompetents, the vacillating, the indecisive, the people unwilling or unable to take charge and prevent them from going through all the ranks even to ambassadorships. The other side of this coin is that officers, have not been instilled in the basic course with the professional criteria which would make them willing to accept objective evaluation.

The Kudirka case, thus, is a lens which brings to a focus what has happened over the years to US diplomacy in Latin America, in Vietnam, Africa and the Persian Gulf and what characterizes generally our relations with the Soviet Union and will undoubtedly characterize our relations with the Peoples Republic of China. Other governments are as mystified by our fumbling conduct as was the skipper of the *Valiant* and they are as traumatized as he by our incompetence in meeting some of our simplest diplomatic challenges. They feel—and many Americans feel—as Wellington said he felt after reviewing untrained troops during the Peninsular campaign: "I don't know what effect these men will have on the enemy, but, by God, they frighten me."

The CHAIRMAN. Our next witness is Mrs. Cynthia A. Thomas, Foreign Service Reserve officer, from Washington.

Mrs. Thomas is also originally from Rhode Island. Welcome.

[Mrs. Thomas' biography follows.]

BIOGRAPHY OF MRS. CYNTHIA A. THOMAS

Mrs. Thomas is the widow of FSO Charles William Thomas whose tragic death initiated some personnel reforms in the Department of State.

Mrs. Thomas was born in Providence, Rhode Island on July 20, 1938. She received her B.A. from Sarah Lawrence College in International Relations in 1958.

Experience:

1971–present—Foreign Service Reserve Officer. Currently, political analyst in the Bureau of Intelligence and Research for Colombia, Venezuela, and Ecua-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

dor. Formerly, International Relations Officer for Latin American Affairs in the Bureau of Oceans and International Environmental and Scientific Affairs.
1963—Professional Actress, Broadway.
1962—Assistant Education Editor, Bantam Books.
1961—Assistant Foreign Correspondent, *Business Week*, Milan.
1958–1962—Editorial Researcher, *Time Magazine*.
Mrs. Thomas has two daughters, Zelda and Jeanne Marie.

STATEMENT OF MRS. CYNTHIA A. THOMAS, FOREIGN SERVICE RESERVE OFFICER, POLITICAL ANALYST

Mrs. THOMAS. I think I should introduce myself. In addition to being a Foreign Service Reserve officer, presently political analyst for three democracies in Latin America, I am also the unofficial and uncompensated Ombudsman for Foreign Service officers who have some difficulty with the personnel system, mainly because my husband, who died nearly 9 years ago, was a victim of that system.

My remarks will be brief. I hope that this committee decline to report favorably on the Foreign Service Act of 1979, S. 1450, until and unless a grievance procedure guaranteeing the fullest measures of due process to all employees of the foreign affairs agencies is contained therein. When world opinion is focused on our Foreign Service officers held hostage in Iran, it would seem an appropriate action.

A grievance procedure exists under section 1101, but these procedures were the result of the impasse between the House and Senate Conference Committee in 1975, which legislated essentially the interim grievance procedures the Department of State was forced to implement in the wake of public outcry, court cases, and congressional inquiries.

The statute tacked onto the Foreign Affairs Authorization bill, November 29, 1975, was complicated enough, but the grievance system which it delineated was further complicated by the requirements that a grievance be thoroughly considered and resolved administratively within the agency. A report prepared by the House Foreign Affairs Committee in 1972 contains a comparison between the proposed Foreign Service grievance procedures at the time and the interim regulations then in effect. There are only slight variations between the Senate and House versions. Later versions in both Houses came together on September 24, 1975 in S. 1080 and H.R. 9805.

The Bayh bill, as it came to be known in the Senate, was reported out of the Foreign Relations Committee three times and passed by the full Senate four times. However, on the House side, action was blocked at the committee level by the former committee chairman, former Congressman Wayne Hays.

The reason I call your attention to the comparison of procedures is to illustrate that, though the language is more comprehensive in the current grievance legislation, its limitations are almost as great, as its denial of due process were in the original interim procedures. There is only one respect wherein the proposed law differs from the one that was passed in 1975, and that is to provide a further deterrent to a grievant by awarding the exclusive bargaining agent in the Department of State, the American Foreign Service Association, the power to deny to the individual his right to appeal to the grievance board.

The original Bayh/Cooper/Humphrey/Scott bill was introduced in the Senate in June 1971, following the tragic death of Charles William

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Thomas, a Foreign Service officer. Despite an outstanding record of 20 years of loyal and distinguished service, Mr. Thomas was dismissed for failure to be promoted. As may be seen in the findings of the Senate Foreign Relations Committee report, published in 1974 (appendix C), Mr. Thomas was unable to appeal his arbitrary selection-out because no appeal body existed.

The Director General was the final appeal authority, and no hearing in the Department of State was granted for 16 years. Despite the fact that there is an appeals procedure now, in reality the final appeal body is still the Director General, or in actual practice, the Deputy Assistant Secretary for Personnel. The reference to "The Secretary" in the legislation is in reality a myth since the Secretary himself habitually delegates this authority downward.

Though the regulations state that, if the Department's Grievance Staff rejects a grievance, a person can appeal to the Grievance Board, most major areas are not grievable.

I would like this committee to request information from the Grievance Staff on how many major grievances on selection-out, nonpromotions, unfair reprisals, discrimination, and capricious, arbitrary, or other malicious acts arising in the administration of the personnel system or performed by personnel authorities are brought before the Grievance Staff. Obviously, there aren't any. The legislation is careful to exclude grievance based on these acts on the part of the personnel authorities.

Worse yet, the Grievance Staff's major role is to provide an extended delaying and potentially cruel, career-damaging informal consideration of a grievance by forcing the victim to go to the very people that committed the acts complained of. This provision "legislates" some of the cruelest aspects of the Foreign Service personnel system, by ignoring the human element that a person will risk his entire career by going to a Grievance Board only when he feels that it is in extremis.

In contrast the legislation cosponsored by this committee in prior years provided for a clear and unimpeded path to the Grievance Board for a review of a grievance upon its merits without subjecting the grievant to a series of dangers, humiliations, and possible irreparable damage to his career.

A grievance was once defined by the Senate Foreign Relations committee as "any complaint against an injustice, unfair treatment of an employee or aspect of his situation or from any action, documents or records, which result in career impairment or damage, monetary loss to the employee, or deprivation of due process. It shall include but not be limited to action in the nature of reprisals and discrimination, actions related to promotions or selection-out."

Now, let us examine how different the present law is:

Definitions of grievances were rewritten in so restrictive a manner as to deprive grievants of the opportunity to protest the prevalent general injustices and policies concerning a wide range of items such as promotions, misassignment, discriminatory treatment or favoritism, and selection-out

The present law restricts grievances against selection-out to involuntary retirement caused by violations of law and regulation or to erroneous or falsely prejudicial material in performance files, which is much less likely in the case of selection-out for time-in-class, that

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

is, failure to be promoted within a specified number of years. Officers selected-out for time-in-class often receive consistently above average performance reports over a period of years. On the other hand, a generally below average officer may be singled out for the occasional outstanding report. Consequently, the above average performer is selected out. The result has been a continuous loss to the Foreign Service of highly talented officers.

One of the many serious defects of the legislation is the failure to order the reinstatement of officers wrongly selected-out, rather than merely to recommend their reinstatement to the Agency head. The Agency head, despite a clear recommendation by the Board, can refuse to reinstate an officer, no matter how meritorious his claim, on the pretext that the officer no longer meets the needs of the Service. Worse yet, any such adverse decision on the part of the Agency head is specifically excluded from judicial review.

The failure to order the reinstatement of officers wrongly selected-out is a most regrettable and ironic provision. The original impetus toward legislation providing for a Foreign Service grievance procedure was furnished by the tragic death of my husband Charles W. Thomas, nearly 9 years ago. Subsequent private legislation which provided for the relief of Charles W. Thomas, deceased, gave evidence to the grievous wrong done to him by the Department of State.

Furthermore, the President of the United States, Gerald Ford, in a subsequent letter, expressed the hope that legal measures would be enacted to prevent recurrences of the situation which led to this tragedy. Yet, the grievance legislation finally resulting from Mr. Thomas' death did not provide for the rectification of the wrong. In other words, if Mr. Thomas were still alive, he would still be unable to bring a grievance under the present system. Moreover, if he could bring a grievance, the Deputy Assistant Secretary for Personnel could refuse to reinstate him for any reason whatsoever on the pretext that he and his skills were no longer needed by the Foreign Service, and he would specifically be prevented from appealing such an arbitrary decision in the courts.

I have been working in the Department of State many years. I could relate to you a number of telling cases. But, I will talk about FSO Temple Cole, who died last summer at the age of 49 of a heart attack. I believe, Senator Pell, you commended this officer for his very fine work on refugee affairs some years ago.

It is a sad long case and a complicated story. I know from personal experience that the Deputy Assistant Secretary for Personnel and the Director General refused to give this man elementary due process of law.

[The following information was subsequently supplied:]

STATUS OF TEMPLE COLE CASE

The answer to a question at a noon briefing on July 9, 1979, regarding this officer was the following:

"A. In May of this year, several persons requested that the Bureau of Personnel look into the possibility of granting Mr. Cole a retroactive promotion on compassionate grounds. After a careful review of the situation, the Department concluded that it does not have the legal authority to grant retroactive promotions in the absence of a recommendation by an EEO Appeals Examiner or by a Grievance Board or Panel (22 U.S.C. 8993B). Mr. Cole, himself, had not per-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

sonally requested such a promotion; nor did he have any formal EEO complaint or grievance against the Department pending at the time of his death."

Mrs. THOMAS. I would like to point out to this committee that the several persons referred to by the Department were: (1) myself; (2) a friend of Mr. Cole's, who was the attorney that argued the *Lindsay* v. *Kissinger* case before Judge Gesell, resulting in the decision which is a part of the Foreign Service Act now—the right to a hearing for anyone selected-out for low ranking; and (3) the third person was, ironically, an Assistant Secretary for Human Rights. But we did not approach the Department of compassionate grounds. We believed that due process should be extended to Mr. Cole while he was still alive.

I hope this committee will investigate thoroughly the legal authority which the Department says it lacked in the matter of Mr. Cole. Perhaps Mr. Cole's case will provide the lever to break the inhuman system that the State Department has written for itself.

I am also concerned about the case of former FSO David Hughes, a Chinese specialist who was condemned for his miserable judgment in questioning a regulation that is now moot. It had to do at the time with marrying an alien. He wants to reenter the Foreign Service. He just happens to be fluent in Cantonese and Mandarin.

I would appreciate your looking into that matter. There are many others. I could go on and on. But I would like to refer this committee to the excellent testimony provided by the Government Accountability Project of the Institute for Policy Studies which has been submitted for inclusion in the record. This testimony provides keen analysis and a reasonable appeal in support of the fullest measure of due process, which they identify as the Bayh bill of U.S. Senate.

[The information referred to appears on p. 427.]

Mrs. THOMAS. I don't know what reasons can be given any further for the delay.

Thank you.

[Mrs. Thomas' prepared statement follows:]

PREPARED STATEMENT OF MRS. CYNTHIA A. THOMAS

Mr. Chairman, I ask that this Committee decline to report favorably on the Foreign Service Act of 1979, S. 1450, until and unless a grievance procedure guaranteeing the fullest measures of due process to all employees of the foreign affairs agencies is contained therein.

A grievance procedure is provided under Chapter 11, p. 131, Section 1101, but these procedures were the result of the impasse between the House and Senate Conference Committee in 1975, which legislated essentially the interim grievance procedures the Department of State was forced to implement in the wake of public outcry, court cases, and Congressional inquires.

The statute tacked onto the Foreign Affairs Authorization Bill, November 29, 1975, was complicated enough, but the grievance system which it delineated was further complicated by the requirements that a grievance be thoroughly considered and resolved administratively within the agency.

The legislated grievance procedures contained in S. 1450 provide a modicum of due process, but a little bit of due process is not enough! I would like to refer to a report prepared by the House Foreign Affairs Committee in 1972, "Background Material on Foreign Service Grievance Procedures." The Frontispiece contains a comparison between the proposed Foreign Service grievance procedures at the time and interim regulations then in effect in the Department of State, AID, and USIA. The bills' numbers were H.R. 9188, Representative Hamilton; H.R. 10304, Representatives Hamilton/Buchanan/Fascell and others. On the Senate side, they were known at the time as S. 3526, S. 3722, Senators Bayh/Cooper/Fulbright. The Bill in the House that was identical to the Senate Bill

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

at that time was H.R. 15457 (Biesta). There were numerous other identical bills in both Houses. If you want to refer to Appendix A of my testimony, you can see that there are only slight variations between the Senate and House versions. Later versions in both Houses came together on September 24, 1975, in H.R. 9805 and S. 1080.

The "Bayh Bill," as it came to be known in the Senate, was reported out of the Foreign Relations Committee three times and passed by the full Senate four times. However, on the House side, action was blocked at the Committee level by the former Committee Chairman, former Congressman Wayne Hays, who worked hand-in-glove with management officials of the Department of State on this matter and with a certain faction within the American Foreign Service Association until he departed the Congress.[1]

The reason I call your attention to the comparison of procedures is to illustrate that, though the language is more comprehensive in the current grievance legislation, its limitations are almost as great, and its denial of due process is nearly as keen as they were in the original interim procedures. There is only one respect wherein the proposed law differs from the one that was passed in 1975, and that is to provide a further deterrent to a grievant by awarding the exclusive bargaining agent in the Department of State, the American Foreign Service Association, the power to deny to the individual his right to appeal to the appeal body.

I urge the Committee to replace Chapter 11 of S. 1450 by the provisions of the original "Bayh/Cooper/Hamilton/Buchanan/Fascell" proposed legislation which was introduced as S. 1080, September 24, 1975. Attached at Appendix B is the original (S. 2659).

The original Bayh/Cooper/Humphrey/Scott Bill was introduced in the Senate in June, 1971, following the tragic death of Charles William Thomas, a Foreign Service Officer. Despite an outstanding record of twenty years of loyal and distinguished service, Mr. Thomas was dismissed for failure to be promoted. As may be seen in the Findings of the Senate Foreign Relations Committee report, published in 1974 (Appendix C), Mr. Thomas was unable to appeal his arbitrary selection-out because no appeal body existed.

The Director General was the final appeal authority, and no hearing in the Department of State was granted for sixteen years. Despite the fact that there is an appeals procedure now, in reality the final appeal body is still the Director General, or in actual practice, the Assistant Secretary for Personnel. The reference to "the Secretary" in the legislation is in reality a myth since the Secretary himself habitually delegates this authority downward. Though the regulations state that, if the Department's Grievance Staff rejects a grievance, a person can appeal to the Grievance Board, most major areas are not grievable. Thus, due process becomes largely a sham. I have brought along a chart prepared by the Grievance Staff for persons who may be planning a grievance. It is a confusing and ambiguous maze. (See Appendix D.)

I would like this Committee to request information from the Grievance Staff on how many major grievances on selection-out, non-promotions, unfair reprisals, discrimination, and capricious, arbitrary, or other malicious acts arising in the administration of the personnel system or performed by personnel authorities are brought before the Grievance Staff. Obviously, there aren't any. The legislation is careful to exclude grievances based on these acts on the part of the personnel authorities.

Worse yet, the Grievance Staff's major role is to provide an extended delaying and potentially cruel, career-damaging informal consideration of a grievance by forcing the victim to go to the very people that committed the acts complained of. This provision "legislates" some of the cruelest aspects of the Foreign Service personnel system, by ignoring the human element that a person will risk his entire career by going to a Grievance Board only when he feels that he is *in extremis*.

Furthermore, the Grievance Staff requires that the grievant submit his case to them in writing for review before he can get to the Grievance Board to request a formal hearing. I refer you to Appendix E, letter of FSO Robert Allen and his accompanying situation. He believes that the Department's purpose has been to evade, to delay, and to Obfuscate. He believes that ample evidence could

[1] In testimony before the Senate Foreign Relations Committee in 1976, I pointed out that Mr. Lars Hydle, the then appointed (not elected) Vice President of the AFSA (without allowing a proposed referendum by the membership) deceived the Congress into believing that the 7,000 members supported a compromise on the Bayh/Fascell Bill.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

be gathered to support a class-action suit against the Department for violations by the Grievance Staff of the right to due process.

The legislation co-sponsored by this Committee in prior years provided for a clear and unimpeded path to the Grievance Board for a review of a grievance upon its merits without subjecting the grievant to a series of dangers, humiliations, and possible irreparable damage to his career.

A grievance was once defined by your Committee as "any complaint against an injustice, unfair treatment of an employee or aspect of his situation or from any action, documents or records, which result in career impairment or damage, monetary loss to the employee, or deprivation of due process. It shall include but not be limited to action in the nature of reprisals and discrimination, actions related to promotions or selection-out: the content of any efficiency report or related records; separation for cause, denial of salary increase within a class, etc."

Now, let us examine the present law:

1. Definitions of grievances were rewritten in so restrictive a manner as to deprive grievants of the opportunity to protest the prevalent general injustices and policies concerning a wide range of items such as promotions, misassignment, discriminatory treatment or favoritism, and selection-out.

2. The present law restricts grievances against selection-out to involuntary retirement caused by violations of law and regulation or to erroneous or falsely prejudicial material in performance files, which is much less likely in the case of selection-out for time-in-class, i.e., failure to be promoted within a specified number of years. Officers selected-out for time-in-class often receive consistently above-average performance reports over a period of years. On the other hand, a generally below-average officer may be singled out for the occasional outstanding report. Consequently, the consistently above-average performer is selected-out. The result has been a continuous loss to the Foreign Service of highly talented officers.

3. The choice of Grievance Board members gives too much of an in-house character to the Board by permitting former employees of the foreign affairs agencies to serve on it, including former members of the "interim" Grievance Board, or of the Department's Office of Personnel. Most of these latter can be expected to perpetuate the evils of the interim grievance procedures which an independent and impartial membership would have eliminated. Section 1111 should also eliminate from Grievance Board membership all former officers and employees of the Department or other foreign affairs agencies. While retired Foreign Service employees are theoretically free from pressures exerted by high management personnel and other Department officials, they, in fact, as Foreign Service Reserve appointees, must please those high officials or find themselves removed from a desirable and lucrative position. Some of the Foreign Service Grievance Board members have now been members for about eight years. Board membership has become a highly desirable second career for them, which they might be ill-advised to place in jeopardy through grievance decisions strongly opposed by management.

4. Hearings are essentially closed instead of being entirely open to public scrutiny. An open system would have helped to prevent some instances of Departmental abuse of due process rights.

5. The Department's Grievance Staff has sought to deny access by grievants to relevant documentation. This practice should be explicitly prohibited and penalized in the law, as well as restrictions on the appearance of witnesses.

6. One of the many serious defects of the legislation is the failure to *order* the reinstatement of officers wrongly selected-out, rather than merely to recommend their reinstatement to the agency Head. The agency head, despite a clear recommendation by the Board, can refuse to reinstate an officer, no matter how meritorious his claim, on the pretext that the officer no longer meets the "needs of the Service." Worse yet, any such adverse decision on the part of the agency head is specifically excluded from judicial review. Keep in mind that it is not, in fact, the "agency head" who actually wields this great power, but, as Senator Fulbright once called the personnel system, "a self-perpetuating board of directors."

The failure to order the reinstatement of officers wrongly selected-out is a most regrettable and ironic provision. The original impetus toward legislation providing for a Foreign Service grievance procedure was furnished by the tragic death of Charles W. Thomas eight years ago. Subsequent private legislation which provided for the relief of Charles W. Thomas, Deceased, gave evidence to the

50-236—80——25

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

grievous wrong done to him by the Department of State.[2] Furthermore, the President of the United States, Gerald Ford, in a subsequent letter, expressed the hope that legal measures would be enacted to prevent recurrences of the situation which led to this tragedy. Yet, the grievance legislation finally resulting from Mr. Thomas' death *did not* provide for the rectification of the wrong. In other words, if he were still alive, he would still be unable to bring a grievance under the present system. Moreover, if he could bring a grievance, the Secretary of State (in actual fact, the Deputy Assistant Secretary for Personnel) could refuse to reinstate him for any reason whatsoever on the pretext that he and his skills were no longer needed by the Foreign Service, and he would specifically be prevented from appealing such an arbitrary decision in the courts.

I have been working in the Department of State eight years. I could relate to you a number of telling cases. But, I will talk about FSO Temple Cole, who died last summer. I believe, Senator Pell, you commended this officer for his very fine work on refugee affairs some years ago. The answer to a question at a noon briefing on July 9, 1979, regarding this officer was the following:

"Q. What is the status of the Temple Cole Case?"

"A. In May of this year, several persons requested that the Bureau of Personnel look into the possibility of granting Mr. Cole a retroactive promotion on compassionate grounds. After a careful review of the situation, the Department concluded that it does not have the legal authority to grant retroactive promotions in the absence of a recommendation by an EEO Appeals Examiner or by a Grievance Board or Panel (22 U.S.C. 8993B). Mr. Cole, himself, had not personally requested such a promotion; nor did he have any formal EEO complaint or grievance against the Department pending at the time of his death."

I would like to point out to this Committee that the several persons referred to by the Department were: (1) myself; (2) a friend of Mr. Cole's, who was the attorney that argued the *Lindsay* v. *Kissinger* case before Judge Gesell, resulting in the decision which is a part of the Foreign Service Act now—the right to a hearing for anyone selected-out for low ranking[3]; and (3) the third person was, ironically, an Assistant Secretary for Human Rights. But we did not approach the Department on "compassionate" grounds. We believed that due process should be extended to Mr. Cole while he was still alive.

I hope this Committee will investigate thoroughly the legal authority which the Department says it lacked in the matter of Mr. Cole. Perhaps Mr. Cole's case will provide the lever to break through the inhuman system that the State Department has written for itself.

I am also concerned about the case of former FSO David Hughes, a Chinese linguist who "was condemned for his miserable judgment" in questioning a regulation that is now moot. He wants to reenter the Foreign Service.

I would appreciate your looking into that matter.

In conclusion, I would like to refer this Committee to the excellent testimony provided by the Government Accountability Project of the Institute for Policy Studies, which has been submitted for inclusion in the record. This testimony provides keen analysis and a reasoned appeal in support of the fullest measure of due process which they identify as the Bayh Bill of the United States Senate.

I will be happy to provide this Committee with further documentation and any assistance I am able to afford to provide a system of justice for the Department of State.

Thank you.

The CHAIRMAN. Would it not be a correct statement that the military service retirement-out provision gives even less protection than the Foreign Service provision, and yet that occurs in maybe 100 times the number each year?

Mrs. THOMAS. But when we have evidence that FSO's are being hurt, and this committee is itself on record for having supported the Bayh bill, why compare the Foreign Service to the military? Why not do something about the Foreign Service?

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[2] Report No. 93–741, March 22, 1974, For the Relief of Charles William Thomas, Deceased (Appendix C), to Accompany S. 2446.

[3] The case was *Lindsay, Cole, Starbuck, and Foo* v. *Kissinger*, 367 F. Supp. 949 (DDC 1973).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The CHAIRMAN. I was with a lieutenant commander the other day who was not being promoted to commander, he had been too long in grade, and who is going to have to make a second career. I would like to see everybody make commander and make captain and make admiral. And it is very hard to determine who will and who won't.

In any case, we will follow up your specific points here and try to inform you if we find some information, which I hope we will, in that regard.

Which would you prefer, the grievance procedures under title VII of the Civil Service Reform Act, which applies to the rest of the Government, or those of chapter XI of the proposed bill?

Mrs. THOMAS. Under title VII.

The CHAIRMAN. You prefer those? All right. Do you think the Foreign Service Grievance Board can gain knowledge and understanding of the system without having retired FSO's on it?

Mrs. THOMAS. I think it is terrible to have retired FSO's serve because this then becomes a second career. They are tied into the system. It should be as it was originally stated in the Senate Foreign Relations Bill, an independent body.

The CHAIRMAN. Thank you. I thank you very much indeed for being here, Mrs. Thomas.

Mrs. THOMAS. I thank you.

The CHAIRMAN. This concludes this hearing of the subcommittee which will meet again on Wednesday at 10 o'clock, in this same room.

[Whereupon, at 1:05 p.m. the hearing adjourned, to reconvene at 10 a.m., Wednesday, December 19, 1979.]

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

FOREIGN SERVICE ACT OF 1979

WEDNESDAY, DECEMBER 19, 1979

UNITED STATES SENATE,
SUBCOMMITTEE ON ARMS CONTROL, OCEANS,
INTERNATIONAL OPERATIONS AND ENVIRONMENT
OF THE COMMITTEE ON FOREIGN RELATIONS,
Washinngton, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 4221, Dirksen Senate Office Building, Hon. Claiborne Pell [chairman of the subcommittee] presiding.

Present: Senators Pell and Hayakawa.

OPENING STATEMENT

The CHAIRMAN. Today, the Subcommittee on Arms Control, Oceans, International Operations, and Environment will continue its hearings on S. 1450, Foreign Service Act of 1979.

Our witness this morning is the Honorable Ben Read, Under Secretary for Management of the Department of State. The purpose of the hearing is to provide the State Department with an opportunity to comment on the criticisms and proposals that were presented during last Friday's hearing with public witnesses and union representatives.

I understand, Mr. Secretary, you have a short statement you wish to make.

STATEMENT OF HON. BEN H. READ, UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF STATE, WASHINGTON, D.C.

Mr. READ. Thank you, Mr. Chairman.

Let me first introduce Harry Barnes, who is the Director General of the Foreign Service and Director of Personnel, and Jim Michel, Deputy Legal Advisor and principal draftsman of the bill before you.

Last July when Secretary Vance described to this committee the main features of the bill, he observed that since the days of Benjamin Franklin and the Committees of Correspondence our diplomats have risked their lives in the service of our country. He stated that at no time in the post war period has service been more difficult or dangerous than it is at present. Recent events have illustrated the point all too clearly.

Foreign Service has often become hazardous, frontline duty as evidenced by events in Teheran, Islamabad, Kabul, Tripoli, Managua and San Salvador. At many other posts, our people have to work and live under conditions of physical danger, stress and lack of amenities

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

which are highly disruptive in human and social terms. More and more employees have been split from their families for long periods because of the deteriorating conditions of overseas assignments, and now, of course, because of widespread dependent evacuations as well.

Despite these most trying circumstances, the Foreign Service has performed with singular dedication and high competence.

During such times the members of the Foreign Service deserve the best personnel system, conditions of service and support that we can provide. Without such measures it will be increasingly difficult in the Secretary's view and mine to conduct foreign affairs and to staff our overseas posts effectively in the early 1980's. That is why we think that the new Foreign Service Act is so important, even more important now than when it was introduced last summer.

I am proud to be able to testify this morning on behalf of the pending administration bill, which is, as you well know, the product of extensive deliberations and discussions within the Service and within the executive branch. We believe that it is fully responsive to the request for a comprehensive plan to improve, simplify, and strengthen the Foreign Service which was called for in the amendment proposed by yourself 3 years ago, and it is the product of the work of two administrations, as you also are well aware.

With your consent, I will concentrate on three aspects of the bill which represent the most significant departures from existing law and practice: (1) simplification and rationalization of the Department's dual Foreign Service-Civil Service personnel systems; (2) the Foreign Service career performance requirements for tenure, compensation, promotion, and retention; and (3) employee-management relations and related matters.

Turning first to the Foreign Service-Civil Service relationship in the Department of State, the bill would resolve a long-standing dispute by its acceptance of and clear distinction between the Department's dual Foreign Service-Civil Service systems.

Advocates of the dual systems as well as advocates of inclusion of both worldwide and domestic categories in a single Foreign Service system have seen their competing views reflected in the various congressional, executive branch, public and private studies spanning three decades. The dual systems, which was an underlying premise of the Foreign Service Act of 1946, was supported in three major reports by the Wriston Committee in 1954, by AFSA in 1968, and by the Murphy Commission in 1975. The unitary worldwide system was backed by the Hoover Commission in 1949, the administration-supported but unsuccessful Hays bill in 1965–66, and the "Diplomacy for the Seventies" report in 1970.

Starting in 1971, the Department and USIA [United States Information Agency] initiated an administrative personnel policy based on a single service concept. Special inducements, including partial or complete exemption from overseas service, were offered to Civil Service employees in both agencies who converted to Foreign Service status. By 1975 the Department was criticized in a report by the Civil Service Commission for its neglect and lack of career opportunities for its Civil Service employees.

The problems with making the single service system work were recognized explicitly at the end of the Ford administration in the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Department's interim report on January 10, 1977, to Congress in response to its request for a "comprehensive plan" to improve and simplify its personnel systems. That report, which was filed, as you will recall, by my predecessor, Larry Eagleburger, found that:

> A central reality which no earlier study or plan has changed—although some may not have faced it fully—is the existence of a domestic category of people in the Department and USIA who supply essential skills and continuity of service which cannot be met effectively by a world wide service."
>
> Our examination of past efforts to create a single service has made clear that the Foreign Service Act cannot serve as an instrument to manage a domestic service. Efforts to implement this program have not been successful. Uniformity has not brought equity or management efficiency.

We agree fully with those conclusions. The lack of success of the administrative policy to achieve a single system is illustrated by the fact that there were approximately 3,100 Civil Service personnel in State when the policy went into effect in 1971; there are approximately 3,100 today. It has been an ever receding goal.

Many persons providing policy and support assistance essential to the Department's ability to conduct foreign affairs are needed and willing to serve in Washington only. But 600 persons with such purely domestic orientation in State have been given Foreign Service status, 900 in USICA, with the resulting cited management inefficiencies.

The Civil Service Reform Act of 1978, as the committee well knows, provides numerous improvements in the conditions of Civil Service rank-in-position employment in all departments and agencies, including State and USICA, with new opportunities, risks and benefits linked to performance, particularly in the new Senior Executive Service. But as you will also recall, the Foreign Service was exempted, thanks in large part to your own efforts, from many of the provisions of the 1978 act in recognition of the basically different conditions of service, in particular the need for frequent rotation from position to position and the consequent reliance on a rank-in-person system.

The pending bill would recognize the dual Foreign Service-Civil Service systems and the need to restore a rational and equitable division between these, while promoting compatibility and interchange between the systems under common principles whenever appropriate.

The transition objective of the bill is to convert Foreign Service domestic employees to the Civil Service system, if they are not obligated to accept and needed for worldwide, rotational assignments, and to do so as quickly as possible but, at the same time, to guarantee the protection of individual rights and the preservation of existing pay and benefits.

This conversion plan would permit Foreign Service domestic employees with skills designated by the Secretary as needed abroad, and who are willing and otherwise qualified to accept true worldwide obligations to elect to remain in the Foreign Service system.

Other Foreign Service domestic employees in the Department of State would have a 3-year period in which to accept conversion to the Civil Service system or to leave the Department.

Conversions to the Civil Service would take place under the following conditions: No loss in salary, and with unlimited protection against downgrading as long as the employee did not voluntarily move to another position; the right to remain in the Foreign Service retirement and disability system (for those already members) or, alternatively,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to elect to move to the Civil Service retirement system; and the kind of appointment offered on conversion would parallel that currently held—career Foreign Service would receive career GS appointments, career candidates would receive probationary or career conditional GS appointments, and those on time-limited appointments would be offered GS time-limited appointments.

Second, I would like to emphasize and illustrate the reasons for the features of the bill to which Secretary Vance and I attribute highest importance: Linking the grant of tenure, advancement, compensation and incentive pay, as well as retention in the Foreign Service more closely to high levels of performance.

The interaction of basic elements of a well working career personnel system and the absolute necessity for closer linkage of such elements to performance than at present has been painfully illustrated during the last 4 years. I refer to the impacted situation at senior levels which has caused pervasive problems at all levels and revealed serious structural flaws. This situation has been partially alleviated recently, but could recur at any time under slightly different circumstances and is worth careful examination.

For years, many persons in the most senior levels in the Service have been exempted from annual performance evaluation and selection out for substandard performance. This placed heavy reliance on voluntary and mandatory retirement as the primary means of senior attrition which, in turn, largely determined the limits on promotions in all junior and middle ranks.

In February of 1977, a long delayed executive pay raise granted by Congress went into effect and resulted in more than a 50 percent drop in voluntary retirements, because many members of the Service who were considering such retirement decided to serve for 3 years at the new salary rate to obtain fullest pension benefits.

In June of 1977, a lower court decision prohibited use of the 60-year retirement limit set in the 1946 act on constitutional grounds, and until the ruling was reversed by the Supreme Court in April of this year, mandatory retirements stopped altogether.

Thus, largely by the coincidence of two events completely beyond administrative remedy, senior departures from the Service slowed to a mere 5 percent from more than double that rate in more normal times.

This situation was aggravated by two additional factors: an administrative move in 1976 to extend to 22 years the combined permissible time in classes 1 and 2; and the actual or virtual cessation in several recent years of selection out for substandard performance.

The combination of all these factors required us to set the lowest promotion rates since World War II in 1977 and to reduce intake accordingly. Obviously, this had a crippling effect on morale, and some excellent and most promising younger persons were lost to the Service as a result. That the Foreign Service has performed as well as it has under these circumstances is a tribute to its highly dedicated personnel.

To prevent recurrence of such situations, we are suggesting a multifaceted approach in the bill to achieving higher performance requirements for all aspects of Service life. The bill would establish a new Senior Foreign Service [SFS] for the highest three ranks, paralleling

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

with adaptations the new Senior Executive Service. Present Career Ministers and eligible FSO/FSRU/FSR-1's and 2's who are obligated to and needed for worldwide service could elect to join the Senior Foreign Service within 120 days of the date of enactment of the bill.

Membership in the SFS during and after transition would involve greater benefits and risks based on performance. Performance pay would be available for outstanding service within the same limits as provided for the Senior Executive Service in the 1978 law, but with greater stress on analysis, policy advice, and other factors which determine success in the Senior Foreign Service.

Variable short time-in-class rules and selection out for relative substandard performance on the recommendations of annual selection boards are procedures which are retained and tightened and made applicable for the first time to all members of the highest three ranks of the Service. Current voluntary and mandatory retirement provisions of the law, which are vital for the proper operation of the Service, are retained.

Under a new proposed procedure, members of the Senior Foreign Service and other members of the Service whose maximum time in class expires after they reach the highest class for their respective personnel categories, may continue to serve under renewable limited extensions of their career appointments, not to exceed 5 years. Such extensions would be granted only on the basis of selection board recommendations and the needs of the Service.

A rigorous SFS threshold procedure is proposed under which members of the Foreign Service at the new threshold class (FS-1) must request consideration for promotion into the SFS and then would remain eligible for a period of time, say 5 years, specified by the Secretary.

If not promoted on the recommendation of the selection boards during that time, the member would be "passed over"—a concept borrowed from the military—and would no longer be eligible for promotion into the SFS. This, it is expected, would enable such persons to make more timely second-career decisions than is now permitted.

Middle and junior ranks of the Foreign Service are also more closely tied to performance. After transition to the new system, selection out for substandard performance will be applicable for the first time to all Foreign Service personnel.

The bill would require all persons seeking career Foreign Service status at any level to pass a strict tenuring process, a status which is presently conferred almost automatically in many cases.

Within-class salary increases could be increased or withheld for outstanding or poor performance on the basis of selection board recommendations.

All of these performance-related features and others would enable the Foreign Service to overcome and avoid the crippling structural defects, such as the ones I have cited, which now encumber the system and deter advancement and retention of the ablest. I am confident that it would produce a stronger, more professional and efficient Service, better equipped to meet its heavy future requirements.

Third, and finally, the bill includes a new chapter 10, governing employee-management relations, replacing Executive Order No. 11636, which has covered such matters since 1971.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The Department favors placing employee-management on a sound statutory basis for several reasons:

The existing Executive order states that the foreign affairs agencies should take into account developments elsewhere in the Federal Government;

It would obviously be unfair to deny a Foreign Service employee a legislated labor-management program when such a legislated program has been granted to over 2 million other Federal employees in the Civil Service Reform Act of 1978;

The chapter is an essential element of the bill in that it adapts to the special needs of the Foreign Service the labor-management program provided for other Federal employees; and

It guarantees employees the right to participate in matters which have a direct bearing on their careers.

The chapter differs from the present Executive order in the following key respects:

It creates an independent Foreign Service Labor Relations Board consisting of the Chairperson of the Federal Labor Relations Authority and two public members;

It retains the single, agencywide bargaining unit with certain exceptions for personnel, security, inspection, and audit officials;

It provides for judicial review of decisions by the Foreign Service Labor Relations Board;

It provides for the resolution of disputes arising in the implementation of the collective bargaining relationship; and

In a related provision in chapter 11 on grievances, the exclusive employee bargaining organization must represent, or agree to other representation in the processing of, employee grievances.

There are, of course, many other important features of the bill, such as the provision for:

Reducing to two below the Senior Foreign Service the more than a dozen existing personnel categories and subcategories and placing them under a single pay scale; opportunities for Foreign Service spouses and family members; equal opportunity; greater compatibility among the personnel systems of the agencies authorized to use Foreign Service personnel.

I think you may find it preferable to approach these and other issues through the summaries and section-by-section analysis we have submitted or through questions.

We will be glad to try to respond now or later to any such question or requests for additional information.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Secretary.

[The following information was subsequently supplied:]

PREPARED STATEMENT OF DR. RICHARD I. BLOCK, ESQ., CHAIRMAN OF THE FOREIGN SERVICE GRIEVANCE BOARD, DEPARTMENT OF STATE

It is a privilege to have been invited to appear before these two Committees and testify about grievance procedures, the Foreign Service Grievance Board and that part of the legislation you are now considering relative to the Grievance Board. I hope my information will be useful. I shall be pleased to attempt to answer questions you might have.

It is unusual for an arbitrator such as myself to be involved in the construction or modification of a grievance system. In private industry, where I am active on a full-time basis as an arbitrator, the neutral is called into the act after the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

parties—management and union—have sat down together and decided upon the role of the arbitrator and the limits of his or her power and authority. To be invited to contribute in any context to the rules of the game is a unique experience.

The grievance system for the Foreign Service is itself unique, as indicated by its genesis. While management (the State Department) and labor (the American Foreign Service Association) were in consultation and, to a certain extent, in agreement, Congress became involved as a third party and ultimately put its legislative stamp on this grievance system. Similar machinery in industry and the private sector is based exclusively on agreement between the parties, often enshrined in the work contract, without the benefit (or handicap) of legislative endorsement.

You may be aware of some of the background of our present system and earlier Congressional interest in the establishment of a grievance system for Foreign Service employees of the three Foreign Service Agencies. I did not come on the scene until 1976, after the legislation was enacted, when I was invited to become a member of the Board. Sandy Porter was Chairman at that time and played a substantial role in dealing with the groundwork on our present regulations.

The Board presently consists of fifteen members, eight of whom, myself included, are professional labor arbitrators, and seven of whom are retired employees of the Foreign Affairs Agencies. The range of experience and arbitration expertise on the Board is extremely broad. All arbitrators are members of the National Academy of Arbitrators and the Board includes, of the eight arbitrators, the current Secretary-Treasurer, three Past-Presidents and a President-Elect of the Academy.

The staff of the Grievance Board currently consists of eight employees supplied by the respective Agencies. Our staff serves an impressive range of functions. In addition to guiding each case from original filing through final hearing, and marshalling all necessary paperwork and records, they become intimately involved with "sanitizing" all Opinions to conform with Privacy Act demands, so that the Opinions may be distributed to all parties. This function is performed in the interest of building a body of common law case precedent for the parties. They also prepare Summaries of each Decision, to be released on an expedited basis to the various agency house organs. Administrative support for the Board—quarters, compensation for Board members, supplies, travel costs, etc.—is supplied by the Department of State. Unlike the private sector counterparts, then, the grievance machinery is cost free to the grievants.

At any time there are approximately thirty to forty cases at the Board at various stages. In Calendar Year 1978, thirty-eight decisions were issued, twenty-three involved hearings and fifteen were decided solely on written stipulations of the parties. In several other cases, the parties were receptive to our overtures as mediators, wherein we sought to arrive at a mutually-acceptable solution, rather than issuing, judge-like, our decisions as arbitrators.

Turning to the Grievance Chapter of the proposed legislation, some overall comments are in order. I serve as the Umpire and arbitrator for a number of federal agencies, including the Internal Revenue Service, Labor Department, Treasury Department, Community Services Administration, Justice Department, and others. I am also familiar, in general, with arbitration systems in and out of the federal sector. My judgment, supported by my arbitrator colleagues on the Board, is that this is the single best federal sector system we have seen. For the most part, the Act is well-structured and adequately responsive to the needs of the parties. And, I have been most impressed both with the quality of the presentations by the parties, as well as the responses by the Board.

Now to the draft legisation before you. In the main, the draft represents reorganization of present legislation. Some new functions are assigned the Board—the hearing of cases relative to selection out for cause, resolution of certain disputes between management and the employee organizations, for example. I contemplate no significant problems in accommodating these new matters, although the demands on the time of the arbitrators and, perhaps, more significantly, on the staff, must always be monitored.

By virtue of its size and other inherent institutional impediments, it would be unrealistic to expect a governmental system in general, and this bargaining relationship in particular, composed as it is of five individual participants, to function with the ease and efficiency of a private sector relationship. But there are modifications which would go a long way toward strengthening the potential of this internal dispute resolution system.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Let me bring an interpretative problem to your attention. In a decision issued some two years ago, we concluded that the Agency erred in its interpretation of a regulation which had resulted in depriving the grievant of a shipping allowance. We ordered the Agency to reimburse the officer. However, the Comptroller of the Agency refused, contending the payment would have been illegal and would, therefore, have resulted in personal liability to that Comptroller. The Agency desired to seek an opinion from the General Accounting Office. That created a substantial dilemma. The Foreign Service Act reads as if the proper recourse in appealing a Board decision is to a Federal District Court. And, this Board was not created to serve as a trial forum for the GAO. At the same time, one can understand the Agency's reticence to move, faced as it was with conflicting mandates. Clarification here is in order.

As you know, the Act provides that, in certain respects, our decisions are binding. In other areas, we issue only recommendations. While I personally believe that parties settle their own disputes more readily when the final step is binding, I am not particularly troubled by the existence of recommendations, inasmuch as the scope of that area subject to recommendations only is reasonably narrow, dealing, for the most part, with retroactive promotions. Moreover, the legislation does require that when a recommendation is rejected, the Agency's reason for so rejecting will be stated in writing. There are three grounds. One can surely justify rejection of a recommendation based on national security reasons or if it is contrary to law. But the third category refers to substantially impairing the "Efficiency of the Service." If it is the Congressional intent to confine management's discretion in these areas to cases of real and substantial conflicts presented by a Board decision—and the overall structure of the Act suggests this—then this third category is, at the least, insufficiently precise. Our experience has been that the Agency wishing to support the grievance system will accept our recommendations if at all possible. But the Agency wishing to undercut the system and to suppress grievances by employees will reject recommendations whenever possible, citing "Efficiency of the Service," sometimes represented as "Morale of Other Employees," or similar generalities which translate into, "We're doing it because we want to." The system should be designed to inform Agency heads that a rejection in this context may not be founded on the mere premise that it would somehow disturb the business-as-usual routine. I recommend deletion of this portion of the Act in its entirety.

A significant problem also exists with respect to Sections 692(1)(C) and (D) of the present Act, giving "Former Officers" the right to grieve (1) denials of allowances or financial benefits or (2) circumstances allegedly illegal or improper in connection with certain employees' involuntary retirement. The provision is troublesome. Who is a "Former Officer"? Is it someone who is off the rolls under any circumstances? Part D—the involuntary retirement provision—refers only to employees separated six years before the passage of the Act. Does this mean a current employee who is terminated may not file a grievance because he or she is off the rolls? Reasonably, one would reject this interpretation. The Agency should not be able to defend on the basis of an employee's standing when the challenge is to the very action creating that standing. But what is reasonable in our view may not necessarily square with legislative intent.

An earlier draft of these changes appeared to have resolved the "Former Officer" problem, much to my delight. I see, however, that the change has not survived in the present draft. much to my disappointment. I would commend it to your attention and urge a modification. It is a change which I cannot help but believe would be welcomed by all parties concerned.

The other portion of this provision is also troublesome. What is a "financial benefit"? Did Congress really intend a former officer to be able to grieve denial of any money claim? Or was this intended to apply only to those continuing federal benefits, such as pensions, for example, which would clearly have a continuing impact on a former officer's life? If this was the intent, and I suspect it was, the Act should be amended to say so.

In plenary session, the Grievance Board has discussed these questions at substantial length. We have reached our own conclusions as to what position should be taken, absent further expression of Congressional intent. But we are not, and should not be, in the legislative business and would earnestly seek your assistance.

A final request. We are occasionally confounded by a dearth of legislative history relating to this Act. It would be most helpful if, in its Reports, these Committees would endeavor to distinguish between changes which are merely clari-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

fying in nature, and those which are intended to effect substantive changes in the statute.

I thank you for the opportunity to have addressed you, and welcome any questions you may have about our operations.

The CHAIRMAN. This, I realize, is a pretty vital matter to the future of the Foreign Service and morale in the Foreign Service, and the welfare of our Nation. I think its importance is in inverse proportion to the attendance of the press, as I look at an absolutely empty press table, and the attendance at this hearing.

I don't know whether it is necessary to state this, but this is almost of the same importance as the Rogers Act of 1924, and the Foreign Service Act of 1946. This will be the third step along that line, presumably, increasing the professionalism of the Foreign Service, which already is a very professional organization.

SELECTION OUT APPLYING TO ALL

I notice that you say that selection out is going to apply to everybody in the Foreign Service. Does that apply to those at the lowest levels, the junior levels?

Mr. READ. From the very highest to the very lowest, after a transition period, Mr. Chairman.

The CHAIRMAN. This is much more severe than the military, because the selection out process does not start with the military until, for example, in the Navy, you make lieutenant commander or lieutenant.

Mr. READ. That is correct.

The CHAIRMAN. What is the reason for the increased severity of the program?

Mr. READ. Selection out with the appropriate safeguards that the bill contains was felt to be desirable by the members of the Foreign Service themselves at all levels. Where there is not an up or out system, there has been impediment to the promotion and advancement of the ablest, and that has been recognized, I am proud to say, from the top to the bottom. We have paid great attention to these safeguards. There are some transition features which I alluded to earlier.

ABILITY OF EXECUTIVE BRANCH TO REMOVE SFSO'S

The CHAIRMAN. There were several points that were brought in the hearing earlier last week that concern me. One of them was this question about the ability of the executive branch, the President and the Secretaries, to turn over the Senior Foreign Service officers if they found them incompatible.

I happen to have been a Foreign Service officer at the time of the McCarthy period, and nobody would say that John Foster Dulles was not a worthy citizen, or a decent man, but at that point, many people were trembling because of the way in which a Foreign Service officer could have his career lightheartedly ruined.

As I look at this bill now, it would make it even easier for another period under a John Foster Dulles and a Senator McCarthy to move along the same route. At least then there was some career protection under the act of 1946, but as I read now, under the proposed Senior Foreign Service, you could just not renew their contracts after 3 years,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and it seems to me that you could get rid of everybody whose thinking was out of step with your own, if you were the Secretary of State.

Mr. READ. Just to the contrary, there are safeguards in the bill, Mr. Chairman, that do not exist today to prevent just such a politization or heavy-handed action by any administration. For the first time, there are explicit limits on the numbers of noncareer senior officers who can be appointed; to wit, 5 percent. This is provided in a provision of the bill that is pending before you. No such provision in the law exists today.

The CHAIRMAN. I see that, but what you could then do is get rid of your senior people and use your junior people. You don't have to replace them with people from the outside, necessarily. At the time of McCarthy, there were not many people brought in from the outside; Scott McLeod and a few others, and that was it.

So that is not a safeguard. That is a procedure. I still don't see what there is to prevent, within the 3-year period, which I think is the period of time of these contracts, having a pretty complete turnover.

Mr. READ. The safeguards are multiple, and not just the 5 percent age limit that I alluded to, which, I might add, is in contrast to 10 percent governmentwide, and 25 percent in any one agency limit in the civil service.

We have also the fact that selection boards of career officers would administer the extension of career appointments, and while they would be given the total numbers which may be extended and promoted in a given year, they are also required to follow the 5-percent rule. So they can determine whether there are people ready to promote in a mass promotion upward or not, and it is their determination and not the management function of any future administration that would be determinative.

So the combination of those factors is a very powerful inhibition.

THREE-YEAR APPOINTMENTS FOR SFSO'S

The CHAIRMAN. Correct me if I am wrong, but am I right in saying that these Senior Foreign Service officers will have 3-year appointments or contracts? At the end of that contract, it will be up to the Department to judge whether the contract will be renewed.

Mr. READ. We are thinking in terms of 3, 4, or 5 years. There is no precise determination yet.

The only function of the management of the Department at any time in the future will be to determine the numbers of those that should be extended or promoted, and not the names. The actual process of extending or promoting would remain firmly under the control of the selection boards.

The CHAIRMAN. But the number would remain in management's hands.

Mr. READ. That is correct, but within the statutory guidelines that you could not simply vacate the senior ranks and leave the noncareer at 5 percent. You would always have to have that balance.

The CHAIRMAN. What statutory guideline?

Mr. READ. There is a provision in the bill pending which would limit to 5 percent the total noncareer element in the Senior Foreign Service.

The CHAIRMAN. We just keep repeating ourselves. My point is that if you wanted to get rid of all the people whose contracts came up,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

when it came to filling those slots, you would just move younger, and hopefully more malleable people.

Mr. READ. My point is that the selection boards could say, in their wisdom—they are made up of career members predominantly, as you know—"We do not think that there are as many junior officers ready to move up."

The CHAIRMAN. Then, they would move the junior officers.

At the time of McCarthy, they did not bring in, as I said earlier, many people from the outside. I think that they brought in less than 5 percent noncareer, but it still made everybody toe the line, and be very leery about going down and taking a course in Soviet affairs, or anything of that sort. I don't see any protection in this at all.

Mr. MICHEL. Mr. Chairman, if I may. I think there is a very great distinction between the analogy of the McCarthy period and the structure created by this bill.

In the early 1950's, the individual stood alone against the system. Whatever allegations were made, it was the responsibility of that individual to defend himself or herself as best he or she could against the existing structure of the Department of State and the U.S. Government.

This bill recognizes an evolution in labor-management relations, and in the individual rights of public employees, which have been developed by the Congress and by the courts. Indeed, a part of that evolution occurred as a direct result of actions that were taken against Foreign Service officers in the 1950's who did go to court.

In this bill, you have, first of all, a statutory labor-management relations program. We have an agencywide bargaining unit. So the individual stands represented by an organization empowered to negotiate with management on behalf of the individual.

Second, there is an independent grievance board, which was established by the Congress, and which is retained in this bill, which protects the individual's rights.

Third, there is a criterion for action by the selection boards which are the competent body to decide who gets his or her appointment continued or who does not; that criterion is merit. A departure from that criterion, and a recommendation based on political rather than performance standards would be subject to the whole process of the labor-management chapter and the grievance chapter that are set out here.

So I don't think that the risk is at all enhanced, but to the contrary there are very significant safeguards against the occurrence of that sort of thing by virtue of this bill.

The CHAIRMAN. Wouldn't you agree that the criterion for selection out has been broadened in this bill as opposed to the present procedure?

Mr. MICHEL. The criterion for selection out?

The CHAIRMAN. Yes.

Mr. MICHEL. No. Indeed, the emphasis is on merit principles throughout this bill. These merit principles have been elaborated in the Civil Service Reform Act in much more detail than existing law.

Mr. READ. Selection out has been extended to persons who do not have that procedure invoked at present, who have been isolated and immune from it. But it is the same procedure, with the same safeguards.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CONFLICT WITH MERIT PRINCIPLES IN BILL

The CHAIRMAN. Isn't one of the basic tenets of the Service now that Foreign Service employees should be retained on the basis of the adequacy of their performance. Section 602(b), I believe it is, provides that consideration should also be given to the need for attrition. That is a broadening right there.

Doesn't that provision conflict with the merit principles that have been incorporated in the bill?

Mr. MICHEL. No, because the need for attrition, for a flow of talent—entry into the Foreign Service, advancement opportunities, and reasonable numbers of people coming into the Foreign Service, and a reasonable number of people leaving the Service—is a statistical thing. It has nothing to do with the performance of one individual.

The individual's performance is going to be evaluated by these selection boards which have a great deal of independence, and are made up primarily of career people. The whole operation of the system by the management of the State Department is subject to the constraints of the labor-management relations process, and to the opportunity for review by the Grievance Board.

There is a difference between the system's operation statistically and its effect on an individual—the concern was that an individual might be treated unfairly. What we are saying is that the bill contains considerable safeguards to protect the rights of each individual employee.

The CHAIRMAN. Section 612 of the bill makes the records of current and prospective assignments one of the criteria for promotion or retention in the Senior Foreign Service. Why do you believe that prospective assignments should be a criterion for either promotion or retention? It seems to me that this is getting away from merit.

Mr. READ. We have put that as a proposed provision, Mr. Chairman, because the selections boards today have, of course, the written record only of the supervisor of that employee right up through his career.

The CHAIRMAN. It is getting now where you have to judge between the person whose supervisor says, "He is very good," or "He is very, very good." If you say, "He is poor," then the poor fellow who writes the report is liable to have a grievance proceeding brought against him.

Mr. READ. The nuances of writing those reports and reading them are well known to you. The selection boards, I think do strikingly well in sorting their way through them on the whole. There is no fail-safe system. We are proud of the system, and the Service is proud of the system.

We are suggesting the addition of this element of assignability as a useful new element for the selection boards to consider because at present selection boards and the records do not show whether a person is very narrowly eligible, and a person for whom there is great difficulty in finding appropriate placement.

Obviously, to work this out in an equitable and fair manner, and make it a matter of a person's file, which would be subject to inspection and examination as anything that goes before selection boards, should be and must be very carefully designed to include only matters which are of record, to wit, which bids he had put in for in a given year for the next assignment, and whether those bids were picked up

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

or not picked up. We think that that is a relevant external judgment on the person's eligibility for advancement that would be useful to the selection boards. That is the reason for this new proposal.

Mr. BARNES. Mr. Chairman, if I could go back to a point that you made earlier. Your concern, as I understood it, had to do with the possibility that a future Secretary of State might be able to remove the entire Senior Foreign Service.

The CHAIRMAN. Or could give a Senior Foreign Service officer a nothing job, which would then force him out because of the prospective assignment point.

Mr. BARNES. I was talking more of the earlier concern you had expressed, and I wanted to make one point, if I could; namely, in the discussions that we have had with the American Foreign Service Association, the point has come out, and they, of course, can speak to this themselves, the importance that they attach to there being a regular, predictable upward flow of talent through the ranks of Foreign Service, including into the Senior Foreign Service ranks.

That sort of concern, in addition to the type of legislative history, in effect, being set now by the comments you were raising and the questions to which we are responding, it seems to me that we have set a clear idea that that sort of abuse could not take place.

The CHAIRMAN. I know you believe that you are right, but I wonder if there is anybody in this room who was in the Service at the time of McCarthy.

Mr. BARNES. Yes.

The CHAIRMAN. I see Mr. Vance in the background there. But not too many were.

PARACHUTE PROVISION

I think one way to have avoided that would have been if you had had a parachute provision. What decided you against a parachute provision, which I believe the Civil Service has. I am not saying that there should be an analogy with the Civil Service, I am always trying to get you to go toward the military services. But have you considered the idea of a parachute provision?

Mr. READ. We considered it very carefully, Mr. Chairman, and we found that it really was inimical to the entire, basic, fundamental premise of the Foreign Service personnel system, right back to the Rogers Act.

As you know, in the 1946 act there is a provision that says as follows: "The Foreign Service should become an instrument of foreign policy which insures the rapid advancement of men of ability to positions of responsibility and the determination of men who have reached their ceiling of performance." This was obviously written before certain recent social revolutions.

The up or out principle which has been badly impeded by the structural defects, which this bill is designed to get at, is the cornerstone of our whole approach to personnel. We think it is completely inappropriate to have a person who has been promoted to the top ranks, to have a cushion of going back to serve at a lower rank. Obviously, there would be a disgruntlement factor, and it would be absolutely contrary to the up or out principle.

50-236—80——26

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

DEFINITION OF POSITIVE LOYALTY

The CHAIRMAN. I am just wondering if an administration talked about positive loyalty being one of the more important qualities in Government service—how the selection boards would define positive loyalty? This would mean, presumably, loyalty to the President and to the administration.

Mr. READ. I am not a good interpreter of those words, which I have always had difficulty with, and they go back to the beginning of the Dulles period. They have been used in quite different contexts over the years.

The precepts which the selection boards follow do not attempt to define such intangibles in any way, shape or form. They are very closely hammered out in negotiations between AFSA and management, as you know, do not attempt to get into such phraseology at all.

The CHAIRMAN. I think this concern, which was expressed by a couple of our witnesses last week, is a very real concern, indeed. If the spirit of McCarthyism witchhunting should come in again, there would be, I am sure, many victims of it; so I want to make sure that there are as many safeguards against this spirit as there can be.

Mr. READ. So do we, Mr. Chairman. I guess no bill, no piece of law can safeguard against all forms of abuse that one could hypothesize of a future political circumstance. But we do feel, and we think we can document it, that this bill contains a large number of safeguards that do not exist today, and would be helpful to counteract such situations.

The CHAIRMAN. There are an excellent couple of sentences that former Ambassador Herz stated, which I would like to read into the record:

> I believe that section 602, which makes retention in the Senior Foreign Service a matter of the Secretary's appreciation of "needs of the Service to plan for continuing admission of new members." Section 641, which allows the Secretary, by regulations, "to increase or decrease such maximum time for a class as the needs of the Service may require" opens the way to mass dismissals of Senior Foreign Service Officers by some new administration that would be convinced that they all lost China, or lost Africa, or were "pinks" of fascists, or in some other way incongenial.

I still don't see why you could not do that on a mass basis, replacing them with young Foreign Service Officers who yet had not had an opportunity to lose China, or lose Africa.

Mr. READ. Theoretically you could do that today. But you have more safeguards under this bill than you have today against any such outrage. The labor-management provisions which Mr. Michel referred to, the percent limit on noncareer persons in Senior Foreign ranks, the access to the special counsel for merit system protection board are all new proposed safeguards.

The CHAIRMAN. As I understand the proposed law, you say that in special circumstances set forth by regulation, the Secretary may remove an individuals name from the rank order list submitted by a selection board, or delay the promotion of an individual name from such a list. Is that in the present law?

Mr. READ. It is in present law, and the reason for that, Mr. Chairman, is that from time to time, after a selection board sits, when management cannot and is precluded from any conversations with the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

boards for perfectly good and understandable reasons, a security matter may come up, an investigation may start, a criminal indictment may occur. This provision has been used very rarely, I am happy to say, but it has been designed for use in such circumstances only.

Mr. BARNES. Mr. Chairman, I know Ambassador Herz very well, and I have read his statement. I don't believe, from what I know of him and in reading the statement, that he is trying to say that there should not be a movement upward in the Foreign Service, or that the Secretary should pay no attention to the requirements of the Service for different types of categories of talents.

The CHAIRMAN. No, but what he is saying is that there must be some protection, in case a new administration should come in in this next election, going in one extreme direction or another extreme direction, and chop off a lot of heads. We want to stop that.

Mr. READ. I think that the implication of his remarks, at least the excerpt you read, is that that could be personalized. A future Secretary of State could say: "We don't like you people who have been doing African affairs," or whoever it may be. This cannot be done. The selection board makes the determination, and the management can only give numbers. The selection board does the ranking as to who is most qualified from 1 to 100, or whatever the number may be.

There is no way in which a malevolent management can accomplish such a gross violation of rights.

BONUSES PAID TO SFSO'S

The CHAIRMAN. The selection boards have a very important function and devote a great deal of time to recommending promotions. How much more of their time is going to be taken up by this question of the prepared bonuses that will be paid to Senior Foreign Service Officers?

Mr. READ. We think that it would be a complementary determination by them that would not unduly extend their deliberations or add to the burdens upon them. It is hard to quantify that, of course.

The CHAIRMAN. Probably one of the two career men with you have served on a selection board, how much more time do you think will be taken in trying to figure out what the bonuses should be.

Mr. READ. Mr. Barnes?

Mr. BARNES. I have, indeed, served on selection boards, Mr. Chairman. Let me add one point before responding specifically to your question.

We are working now on various ways to make the work of selection boards still more efficient in terms of the use of the members' time. We are working on this, in part, through trying to develop a type of evaluation which will be more effective in itself. We will be having discussions before long with the American Foreign Service Association on this point.

My hope would be that as a result of those discussions, that by the time we come to implementation of the new act, already the time spent by the board members will be more productive.

In terms of the specific function of looking at bonuses, as you know, what a board is required to do is to look at the records of all the people whom they are reviewing. They rank those people in terms of their

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

excellence. They also identify those people who are at the bottom spectrum of the class.

In terms of the performance pay, the bonuses, we contemplate it now, those bonuses would be awarded to individuals who are in the top portions of the class. The board—remember I am referring here only to the Senior Foreign Service, not to all the boards which cover——

The CHAIRMAN. My question is a very simple one. What percentage more of time would it take?

Mr. BARNES. I was making sure that we were starting from a common ground in terms of what the board does, and I think that that is pertinent in replying to your question.

The CHAIRMAN. I know what a promotion board does.

Mr. BARNES. The board would look at the people that it had ranked in the upper categories of the Foreign Service and determine which of those should receive the performance pay. My guess would be that it would probably take not much more than about 10 percent additional time.

We have done the basic work already in terms of reviewing the whole class.

WITNESS OPPOSITION TO PAY BONUS

The CHAIRMAN. I hope you are right, but I am not sure that you would be.

As you know, at the hearing last Friday we did not have a single witness who supported the bonus pay system. We had one witness who did not oppose it, and that was AFSA, I believe. "We have chosen not to oppose it, which is somewhat different from supporting it," that person said, and we had a few other witnesses—I would say about half dozen,—who responded along similar lines. How do you account for this diversity of view from your own?

Mr. READ. I would like to say that several of those witnesses, Mr. Chairman, were retired persons who would not benefit from it, not that they do not have their own strong and perfectly correct views on whether it is appropriate or not appropriate.

The CHAIRMAN. Two were retired, I think.

Mr. READ. None of the witnesses are, perhaps, as well placed to speak as the proposed future Senior Foreign Service officers, who will be the primary beneficiaries.

I would like, if I may, to introduce into the record a letter which I have received from Ambassador David Newsom, who is the Chairman of the Board of Foreign Service.

The CHAIRMAN. Without objection, it will be incorporated into the record.

[The information referred to follows:]

DEPARTMENT OF STATE,
Washington, D.C., December 18, 1979.

BEN H. READ,
Under Secretary for Management,
Department of State.

DEAR BEN: This is to reconfirm the support of the Board of the Foreign Service for the performance pay provisions of the proposed Foreign Service Act of 1979. The Board devoted considerable time and attention to studying the provisions of the proposed Act, including the concept of performance pay. Following briefings

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and its own deliberations on this subject, the Board on August 2 formally endorsed the performance pay provisions in a resolution the text of which is attached to this letter.

As I stated in my letter to Secretary Vance on August 4 conveying the Board's decision and resolution, "Central to the Board's conclusion on this subject was the consideration that, under present circumstances and given the prior passage by the Congress of Civil Service legislation containing performance pay provisions, the only practicable way now available to ensure that senior level Foreign Service officers have the opportunity to attain salarly levels comparable to those of the top levels of the Civil Service is through the adoption of similar performance pay provisions. The Board noted that this position supports the general principle that Foreign Service pay opportunities should maintain comparability with those of other government and private sector professionals."

I hope that this restatement of the views of the Board of the Foreign Service will be helpful in your continuing discussions of these provisions of the proposed Act both with the Congress and other interested groups.

Sincerely,

DAVID D. NEWSOM,
Chairman, Board of the Foreign Service.

Mr. READ. I would like to read a brief resolution, which was passed by that Board on August 2, 1979, which is as follows:

BOARD OF THE FOREIGN SERVICE RESOLUTION

The Board of the Foreign Service—

Having considered the question of performance pay within the context of the Foreign Service legislation currently being considered by the Congress;

Believing that it is desirable to maintain comparable opportunity for compensation between the senior levels of the Foreign Service and the Senior Executive Service;

Endorses the concept of performance pay in the Administration's proposed Foreign Service Act of 1979.

The CHAIRMAN. This was not in AFSA's statement, was it?

Mr. READ. No. This is a Board of Foreign Service resolution.

The CHAIRMAN. The Board of Foreign Service—Mr. Barnes is the head of it, is he not?

Mr. READ. No.

Mr. BARNES. No; I am not. Ambassador Newsom is the head of it.

Mr. READ. Management is not on that Board. There are four Senior Foreign Service officers. The others are——

Mr. BARNES. Representatives of other Departments, the Department of Commerce, the Department of Labor.

The CHAIRMAN. It is a management group, basically?

Mr. READ. No.

The CHAIRMAN. It is certainly not an employee group.

Mr. READ. It represents the senior ranks of the career Foreign Service.

The CHAIRMAN. It is like saying that the Cabinet is an employee group.

Mr. READ. Just to the contrary, these are career people who have come up through the system. They include Ambassador Newsom, Ambassador Pickering——

Mr. BARNES. George Vest is an Assistant Secretary.

Mr. READ. George Vest is in as good a position to speak for Senior Foreign Service officers as anyone else.

The CHAIRMAN. There must be some people behind this unwise idea, or it would not have crept into the legislation itself, I can see that.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Mr. READ. You have also received, because we were given a courtesy copy, a letter from the president of AFSA, which is dated yesterday, which makes very clear, of course, that if there is no alternative to receiving comparable compensations to the Senior Executive Service, they would support the SFS performance pay.

The CHAIRMAN. Excuse me, but going back to the Board of Foreign Service for a moment, is that an elected group?

Mr. READ. It is an appointed group.

The CHAIRMAN. There is a certain difference, I think, in viewpoint between those that are elected and those who are appointed. You get appointed from your bosses, and you get elected by the people below.

Mr. READ. But it is simply a fact, Mr. Chairman, as you know, that the American Foreign Service Association does not have among its membership proportionately as many senior members of the Foreign Service as are represented at other levels of the Service.

If I could just add a word on that, and I know we have deeply divided views in response to your representation, when we met a few days ago, I did speak to the Secretary again to ask him to review this issue. We continue to support strongly performance pay Mr. Chairman, because we simply do not feel that in good conscience we could recommend leaving senior members of the Foreign Service, now and in the future, in a substantially disadvantaged posture with counterparts of the civil service.

We feel that it would be in violation of the Pay Comparability Act of 1971 to do so, which provides, "equal pay for substantially equal work."

The CHAIRMAN. But that could be achieved through another way, I would think. You could have the bonuses paid to everybody, and it would be perfectly legitimate. The real reason for this, to oversimplify it, I guess, is as a gimmick to try to get around the Federal pay ceiling, which the Civil Service has worked out by the bonus. It is a gimmick that works well, but there is a difference between the Civil Service, the Foreign Service, and the military service.

I would suggest that a way could be found of spending exactly the same amount of money, if that is the objective, on the Foreign Service officers by giving everybody a bonus for being in the Senior Service at that grade and for that time. That would be absolutely legal and constitutional.

Mr. READ. We found that the great majority of Congress, in passing comparable provisions in the Civil Service Reform Act, simply thought that it was unreasonable to ask taxpayers to pay for increased salaries for these senior ranks without a relationship to higher performance rather than just across the board bonuses.

We are copying exactly here, as you know, what Congress enacted a year ago, and we do not see any alternatives.

The CHAIRMAN. But this was for the civil service. Do you think that it should be done for the military service, too, that a major general should get a bonus? So far the incentive has been very effective in the possible promotion to lieutenant general.

Mr. READ. Scotty Campbell, in appearing before you last July, said that he would not be opposed to that, as you know.

If I can now, I would like to go back to a point that Ken Bleakely made in his letter of yesterday, which I think is extremely well put.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

He said: "Financial incentives have never been a prime motivation of the Foreign Service, but they are important to employees and their families." With the cost spiral that we are facing abroad, it is impossible for us to put forward anything that would leave our people at a disadvantage compared to their counterparts.

The CHAIRMAN. In reaching your conclusion, have you looked into the reason why the Air Force had started this unwise concept, and has abandoned it?

Mr. READ. Yes. It was quite nongermane. We have looked into it since last week's hearing. I guess that it may have been Ambassador Herz who raised that point or Ambassador Vance, I forget which.

As near as we can determine, what was being referred to there was a provision of law found in 37 U.S. Code 206, called responsibility pay. This authority can be used by any of the Armed Services. It is currently being used by the Coast Guard, and the Navy has requested administrative authorization to use it.

It is a limited parallel to what we are talking about, when you look at the details. We do believe that it is not an idea which is alien to the services, and the fact that the Navy is now requesting to use it is certainly some evidence to that end.

RAISE BASE PAY TO COMPENSATE FOR LOSS OF PERFORMANCE PAY

The CHAIRMAN. Could you see your way to supporting an amendment designed to raise the base pay of all the Senior Foreign Service levels to compensate for the elimination of the performance pay provisions?

Mr. READ. Under existing law, the President's pay agent, which is OMB and OPM, make that determination for the executive branch. So you would be getting, I am afraid, a purely personal viewpoint if I ventured an opinion.

We don't, as a practical matter, see any possibility of obtaining a general raise, either within the executive branch or within the Congress.

The CHAIRMAN. We can try. In other words, if you would support it as an amendment, we could put it in the Senate bill, and go to conference with the House, and see how it goes.

Mr. READ. How would you articulate it?

The CHAIRMAN. I am not a lawyer. It is up to lawyers to articulate it. The concept is perfectly simple, it is the same amount of money. I agree with you that the Foreign Service is grossly underpaid considering the risks that its members run. As you may know, I am working on getting this thought into this Teheran resolution. I am aware of the fact that more ambassadors have been killed in the last 10 years than general and flag officers in both the Korean and Vietnam wars. The threat to life and limb is tremendous.

I want a higher salary for all the Foreign Service, but I don't like this picking and choosing.

Mr. READ. We feel that the prevailing view of both branches is heavily against an across-the-board raise and in favor of performance-related compensation.

The CHAIRMAN. My view, as shown by the attendance at this hearing, is that nobody is vitally interested in this matter. I am vitally

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

interested in it, and I am prepared to discuss this matter for quite a long time in the committee, if the bill is brought up with this provision in it, which is against my wishes. I do think that that factor, particularly if your personal view is not to oppose, should be brought into it, and we can go to conference with the House and see where we are.

Mr. READ. This is an honest difference of opinion, Mr. Chairman, as you well know. We are very respectful of your views, and we know how deeply felt those views are.

We think that performance pay is a very justifiable way of rewarding the senior officers who are the outstanding performers in the Service.

The CHAIRMAN. If you had to make a political decision as to whether you would rather lose performance pay and not have the bill, or have it eliminated and have the bill, you would just as soon have the whole bill postponed. Would that be correct?

Mr. READ. I don't think that it would be useful for me to speculate on that because I hope very much that it will not come down to that choice.

The CHAIRMAN. Certainly, if there was a provision in the bill to the effect that all Senior Foreign Service officers would have the money divided up amongst themselves, you would not want to see the bill falter on that issue?

Mr. READ. We feel that there should be a distinction in these bonus arrangements in favor of those who have turned in outstanding performances. We feel that that is a valid and justifiable concept.

The CHAIRMAN. You don't feel, then, that this is a gimmick or a way of trying to insure that your Senior Foreign Service officers get more salary, which is a perfectly understandable reason, and that that is the main reason for it?

Mr. READ. Far from it. We think that it is an equitable reward for those who have done outstanding duty.

The CHAIRMAN. As you said, we will just have to agree to disagree on this very strongly, and move on to some of the other issues that we have here.

There is a rollcall vote going on, so I think that this is an appropriate time to recess. I will be back in a few minutes.

[Recess.]

The CHAIRMAN. The hearing will come to order.

I apologize for these rollcall votes, but they are unpredictable.

The Office of Management and Budget rejected the State Department request for the $24 million required to bring about pay comparability between the Foreign Service and the Civil Service at the lower and middle grades. This came out, as you know, of the Hay recommendations which came out of my legislation.

Mr. READ. They have not taken final action on it as of this time, Mr. Chairman. The Secretary and I are going over this afternoon to argue the point.

The CHAIRMAN. I would hope that you would argue as vigorously for the Hay Commission Report as you do for the idea of the bonus pay.

Mr. READ. We feel most strongly about this.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The CHAIRMAN. I think it means a great deal more, not only in terms of dollars, but in overall benefit to the service. I just would hope that you would argue vigorously for that.

Mr. READ. This is another area where we are much indebted to you for the amendment which was put in a year ago. It pointed out correctly that the present links were created in 1962, and obviously the workload and the responsibilities of the Foreign Service have doubled and trebled under any criteria you wish to apply. Hay Associates is certainly one of the most prestigious firms working in this field, and I think that their findings are very good.

The CHAIRMAN. I recognize, too, that the Hay study would not benefit the Senior FSO's.

Mr. READ. That is correct.

The CHAIRMAN. I realize that that problem is there. But I would hope in view, as you say, of my strong interest and desire to be of help that you would work a little harder in trying to figure some way of skinning the cat to achieve your objective, which is increased compensation for Senior FSO's, and my objective which is not to have a performance pay system.

I have usually knocked myself out to be of support to the Department, but you have not knocked yourselves out trying to figure out some other ways of skinning this cat, and I wish you would.

Mr. READ. We are pushing to the outer edges of the arguments for equal pay for substantially equal work as required by law. No effort has been spared, I can assure you, on the pay comparability front.

The CHAIRMAN. My point is that I wish you would make the same efforts to meet my objections as well.

Mr. READ. I wish we saw a way to do it. We simply at this point do not, Mr. Chairman.

The CHAIRMAN. What about limiting Senior Foreign Service officers' pay to the executive salary schedule, which is higher than the Civil Service schedule?

Mr. READ. We do not think that there would be support for that in either branch. We may, of course, be wrong, but we don't think that that proposal would stand the test.

The CHAIRMAN. Could we try to work something out and see if it would? I think that if the Department agreed, it might be accepted by the Senate, and then we could go to conference and see how it evolved.

Mr. READ. The pay agents of the President, under the 1971 legislation, are required to safeguard the comparability principle, and they would find violation of that principle in such a move.

The CHAIRMAN. I don't mean to keep hitting this dead horse, but I think that perhaps the best way of legally getting around it might be the idea of the mass bonus for people in those jobs, taking into account the increased hazard that Foreign Service officers have to accept as a way of life.

Mr. READ. That, unfortunately, would be vulnerable to the argument that they were receiving more than comparable pay for comparable work.

The CHAIRMAN. Not when you crank into it the risk of assassination.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Mr. READ. That, indeed, should be cranked in, but above the cap where such considerations do not apply anywhere, I have to be pessimistic about the acceptability of that argument.

EXTRA COMPENSATION FOR STAFF CORPS FOR OVERSEAS FACTOR

The CHAIRMAN. What are your ideas with regard to extra compensation for the staff corps for the overseas factor, for the extra responsibility that they assume abroad?

Mr. READ. The Hay Associates Study, which was, of course, turned over to Congress in June, has a number of suggestions for adjustment upward for that factor, which we believe to be justified.

The CHAIRMAN. Do you think that full pay should be granted to officers who are temporarily serving as principal officers? In other words, since chargé pay, as you know, is half at this point, could that be made full pay, and also for Foreign Service officers detailed outside the service?

Mr. READ. The Secretary has discretion to provide that. The current regulations call for, as you indicated, half pay after a certain number of days as chargé. We could take a new look at that, if you wish. It has been a policy which has been in effect for many years, and we will be glad to reexamine it and submit a memorandum on that, if you would like.

The CHAIRMAN. I don't feel strongly on it. It would be a way, if you want to reward officers for superior performance.

Mr. READ. Chargés performances are not always superior, unfortunately.

Mr. BARNES. Or for prolonged periods of time.

SPOUSAL RIGHT IN FSO SURVIVOR BENEFIT INSURANCE

The CHAIRMAN. Do you think that spouses should have a vested right in the Foreign Service officers' survivor benefit insurance?

Mr. READ. We feel that there are rights which should be vested in surviving spouses, and that this bill presents some instances where we are attempting to move in that direction. We have other proposals which are pending at the Office of Management and Budget for additional provisions of law that could be considered along these lines.

The CHAIRMAN. Do you believe that the employment opportunities of Foreign Service dependents should be increased?

Mr. READ. I do, indeed, and that has been part of the central thrust of the new Family Liaison Office, which has been set up in the Department, and now, I am glad to say, in 68 posts abroad, to find such employment outlets for spouses and dependents.

INCREASED REPRESENTATION ALLOWANCE

The CHAIRMAN. Do you think that there should be increased representation allowance, so that people are not out of pocket as they are now when they give parties for official purposes?

Mr. READ. The representation allowance, which has been provided by the Congress, we estimate now covers 96 to 97 percent of out-of-pocket expenses of our officers. The Congress has been far more gener-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ous in recent years than when I was in the Department in the 1960's in that regard. That is a pretty fair reimbursement, as I am sure you will agree.

The CHAIRMAN. It is.

The Foreign Service spouses, do they receive reimbursement for representation activities undertaken for the benefit of the United States?

Mr. READ. Undertaken outside of the United States?

The CHAIRMAN. Undertaken for the benefit of the United States.

Mr. READ. We think that that is, in special circumstances, presently permitted and fully justified. Where, for instance, the spouse may have special links to members of an opposition party, or dissident faction with which the Government wishes to be in contact, and where the employee might not have such contacts, the Ambassador, in his judgment, could authorize reimbursement under those circumstances.

It is hard to write, as you can readily appreciate, rules and regulations to provide for all such circumstances.

ESTABLISHMENT OF FOREIGN SERVICE LABOR RELATIONS SYSTEM

The CHAIRMAN. Why did the administration choose to create a separate Foreign Service labor relations system, rather than the adoption of the Civil Service system?

Mr. READ. I will ask Mr. Michel to address that, if I may.

Mr. MICHEL. Mr. Chairman, the bill in a sense does not create a new labor management system for the Foreign Service. It continues the separate system which already exists for the Foreign Service under Executive order.

As in the case of the Civil Service Reform Act, which drew from a system in place by Executive order, the labor management chapter in the Foreign Service bill draws from the labor management system for the Foreign Service that was in place by Executive order.

There is a history of bargaining under that system. There are special circumstances of Foreign Service employment which are quite different from the Civil Service, as you have pointed out.

The system has worked. We believe that there are features of the Civil Service labor management system that would not work in the Foreign Service. While we have looked to the Civil Service legislation for parallelisms, where parallelisms were justified, we have also tried to retain the special needs of the Foreign Service, and have adapted the labor management chapter accordingly.

The CHAIRMAN. The unions have requested a bargaining unit as large as possible, including a substantial number of supervisory personnel. What are your views on this issue, and will the inclusion of supervisors create a conflict of interest?

Mr. READ. The bill is largely a reflection of the current situation. As you know, in the rotational rank in person system which we have in the Foreign Service, people move in and out of supervisory positions in a way that is not paralleled anywhere in the Civil Service, and many very junior Foreign Service officers have supervisory responsibilities for Foreign Service national employees, for instance.

So if we adopted the provision of the Civil Service Reform Act employee management provisions, we would be excluding under

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

various estimates 60 to 80 percent of the members of the Service from the bargaining unit, which obviously would be in no one's interest to do.

REINCORPORATING FSIO'S AS CONE OF FOREIGN SERVICE

The CHAIRMAN. What would be your reaction to reincorporating the Foreign Service information officers as a separate cone to the Foreign Service? You have your administrative, your economic, your political, and your consular cones, and could include the FSIO's.

The reason I ask that question is, the FSIO Corps came out of my legislation some years ago and was really designed at that time as a means of permitting USIA to select out some of the people they wanted to. It has served its purpose, and I think that there would be more cross-fertilization if it was part of the Foreign Service. What is your view on that?

Mr. READ. Under chapter 12 of the bill, as you know, we have called for movement toward maximum compatibility between the systems, recognizing their different missions, and different purposes and objectives.

Ambassador Reinhardt, when he was before you last July, was asked the same question by you, and stated that ICA would oppose its reabsorption in the Foreign Service as just an additional cone, because of the traditions and different objectives of the ICA.

The CHAIRMAN. What is your view? I am not asking you for Ambassador Reinhardt's view.

Mr. READ. I think that the present provisions of law are a correct reflection of the greatest obtainable degree of compatibility that makes sense at this point.

Somewhere way back in the reporting sections under title II, you will note that the Secretary is required, on a yearly basis, to file progress reports with the Congress on steps taken toward greater compatability.

The CHAIRMAN. You would agree with me that the information function, propaganda, or whatever you want to call it, is basically a cone like the existing cones are, and that in order to get real cross-fertilization—also I think that there have only been two FSIO's who have ever been chiefs of mission. In order to get real cross-fertilization, it should all be one big Service. I believe you have more than two consular people, administrative people, and economic people who have risen to carry the Ambassador's briefcase.

Mr. READ. While there are only two right now at the ambassadorial rank, there have been substantially more in the recent past that have served as ambassadors.

The CHAIRMAN. There are only two who have reached chief of mission status.

Mr. BARNES. Actually, our present Ambassador to Rumania is a career information officer. There are three: Togo, Botswana, and Rumania.

The CHAIRMAN. At any rate, I don't think that I agree with that thought. The problem is that for many things, like Frankenstein, you create them, and then you cannot uncreate them. I sort of wonder if, on balance, I did a service to the country in creating the FSIO Corps or not. I think that now I would like to see it be a cone in the Department.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

MODIFICATION OF THE CONE SYSTEM

Incidentally, does the cone system still exist? I know there was some effort made to move away from it.

Mr. BARNES. It still exists. We are giving some thought now and have started some discussions with AFSA about modifying the cone system, Mr. Chairman.

The CHAIRMAN. The cone system basically means that a person spends two-thirds, maybe three-fourth or his or her career in that particular cone.

Mr. BARNES. That is right.

The CHAIRMAN. Why do you think that it needs modification? Why isn't that a pretty good idea?

Mr. BARNES. Because we think that we require, particularly at the senior levels of the Foreign Service, people with more diverse background, more diverse experience. We find that the cone system has been applied in a way which makes for overly narrow people, so we are looking at ways of keeping the benefits of some specialization, without incurring some of the difficulties that we have had.

RETIREMENT BENEFITS FOR INTERNATIONAL BROADCASTERS

The CHAIRMAN. The AFGE made an appeal for retirement benefits for a group of employees who served as international broadcasters with RFE [Radio Free Europe], Radio Liberty, and the Armed Forces Network.

Does the administration have a position on AFGE's proposal in this regard?

Mr. READ. We do have a position, Mr. Chairman.

The CHAIRMAN. What is it?

Mr. READ. Perhaps I could state it for the record later on, because I am simply not up to date on that.

The CHAIRMAN. Certainly.

[The information referred to follows:]

SUPPORT FOR AFGE AMENDMENT

[Submitted by Department of State]

Since this is a proposal to amend the Civil Service retirement system, I would defer to OPM. However, I can tell you that the Administration has strongly opposed this proposal in the past because it would provide a benefit to these employees in addition to benefits they agreed to work for at the time and it would establish a precedent for doing the same thing for other Government employees with prior service in other Government-funded activities.

Persons who worked for the "Radios" knew they were not contributing to the Civil Service, Foreign Service or CIA retirement system and were not earning benefits under those systems.

With respect to the adverse precedent that would be established by the enactment of this section, many Federal employees have prior service in various past and present Government-funded activities for which they do not have retirement credit. Many Government-funded activities today have their own retirement systems, as does RFE/RL; but many persons left these organizations, either before the retirement systems were established, or without sufficient service to have earned a vested retirement benefit. An unknown number of such persons are now Government employees and undoubtedly would like Federal retirement credit for their prior service in these Government-funded activities. Federally-funded state and local government organizations, the Corporation for Public Broadcasting, the U.S. Railway Association, and the National Railroad Passen-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ger Corporation (AMTRAK) are examples of such organizations. Appropriated funds have been or are used to pay the salaries of employees of these organizations. This amendment would provide a precedent for enacting similar legislation for both persons who are now Government employees and who become employed by the Government in the future following service in Government-funded organizations.

The CHAIRMAN. Also AFGE proposed that any person who is appointed as a Binational Center grantee, and has completed 5 years of satisfactory service in that capacity, or any other appointment under the Foreign Service Act of 1946, should become a participant in the Foreign Service retirement and disability system, and make an appropriate contribution to the Foreign Service Retirement Fund.

What are your views on this proposal, or would you like to submit that for the record?

Mr. READ. I would like to do the same, if I may, Mr. Chairman.

[The information referred to follows:]

SUPPORT FOR SECOND AFGE AMENDMENT TO GRANT RETIREMENT BENEFITS TO FORMER BINATIONAL CENTER GRANTEES

[Submitted by Department of State]

The Department has opposed this amendment in the past and we must continue to do so.

The Grantee program started in 1948. Grantees served under contracts until 1966, when they were converted to Foreign Service staff employees of USIA. Foreign Service staff employees of USIA did not come under the Foreign Service retirement system until authorized by P. L. 90-494 of August 20, 1968, and then only if they had completed ten years of continuous service in the Foreign Service.

There were several hundred Grantees who resigned prior to 1966 without becoming Federal employees so far as we know. Approximately 50 of them completed 5 years as a Grantee and would benefit by this amendment. To grant them Foreign Service retirement credit, would provide them benefits in excess of those provided other staff employees of USIA at that time. Similarly, to provide Foreign Service retirement credit to those who converted to Foreign Service staff employment and who did not complete ten years of service, would provide a benefit not provided other staff employees at that time. Such staff employees received Civil Service retirement credit.

The CHAIRMAN. There will be various other questions that will be submitted to you for the record. We can leave the record open for at least a week. I think that some of my colleagues may have questions, and the record would be left open for them.

Mr. READ. We will be happy to respond.

ADOPTION OF GRIEVANCE PROVISION PROCEDURES

The CHAIRMAN. Mrs. Thomas, an expert on grievance procedures, advocates the adoption of a grievance provision embodied in the bill S. 1080, introduced in 1975.

I was wondering if the administration had considered that legislation in formulating its provision, and what is the administration's position with regard to that proposal?

Mr. MICHEL. Mr. Chairman, the grievance chapter in this bill is largely a codification of the existing law. The bill to which you refer is one that was not enacted by the Congress. The Congress enacted a quite different system as an amendment to the 1946 Foreign Service Act.

That system has been in place and has worked effectively. We think it has been generally accepted as the best, or certainly one of the best,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

grievance systems in public employment anywhere. We had extensive consultation with employee organizations, with the professional arbitrator who chairs the Foreign Service Grievance Board, and with his staff, and concluded that with only slight modifications a continuation of the existing Foreign Service Grievance Board was the right thing, rather than to have any fundamental change in that system in this bill.

The CHAIRMAN. I was very struck last week with the testimony of the Foreign Service women, and their point that spouses who had fully participated in their husband's life, or their wife's life, for many years and then were divorced deserved a portion of the usufruct for those years of endeavor.

I was wondering if you had examined this proposal, and had any way of meeting its objective?

Mr. READ. We have, indeed. We are sympathetic to the point, Mr. Chairman. We submitted a bill to the Office of Management and Budget last summer which would authorize survivor benefits to former spouses of deceased Foreign Service members, either by the election of the member, and sometimes they would like to make such choice, or by court decree.

There are presently no such benefits, as you know, and persons who have accompanied their spouses throughout a long career, are sometimes cut off in cruel circumstances, as some recent cases poignantly remind us.

The bill does also acknowledge the direct contribution by Foreign Service spouses in two or three other respects. In section 101(b)(5) in the statement of purposes, a section which we hope, if enacted, will be useful in State court processing of claims in the future, it gives explicit recognition to the special hardships that are encountered by Foreign Service families.

In another provision in 821(b)(2) the bill acknowledges the direct contribution by Foreign Service spouses by granting them a vested right to survivor annuity after 10 years of accompanying a member of the Foreign Service on various assignments.

I think that these are long overdue steps.

The CHAIRMAN. I think also they were concerned, not just with death benefits, but with pension rights.

Mr. READ. That is correct.

The CHAIRMAN. I think that those are even more important. There was one suggestion made that it should be done on a pro rata basis. If a man and woman had been married for 10 years, then were divorced, and he married somebody else for another 10 years, that they would, then, divide it up. Could that be worked out?

Mr. READ. I don't think so. I don't think that any mechanical formula would apply to the great diversity of human experience. I think that any formula would be made a mockery of by the first case that came along.

The CHAIRMAN. How would you handle that situation?

Mr. READ. By a court determination, which, of course, might find either spouse having deserted the other, or who knows what the circumstance might be.

The CHAIRMAN. I hate to see us opening more litigation. You don't think that some simple solution could be arrived at, that the years of marriage could actually be taken into account on a pro rata basis?

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Mr. READ. We have not thought of one that really just would not look absolutely topsy-turvy in an actual case situation.

The CHAIRMAN. You have probably studied it more than I have. I like the idea, particularly since if there is one profession where the husband and the wife are a team, it is the Foreign Service.

Mr. READ. We agree with that wholeheartedly, but we just don't know of any single formula that would fit the enormous spread of facts that could be imagined.

The CHAIRMAN. I wish that you might go back to the drawing board and see if you can figure out something with the Foreign Service women. They did come up with some very specific suggestions.

Mr. READ. And some very good ones. We don't mean to close the door here on any good ideas.

The CHAIRMAN. I think that this about winds up this hearing.

Before absolutely wrapping it up, is there anybody in the room who has further comments to make, or any further suggestions? I recognize that there are a lot of people who are pretty familiar with the Foreign Service.

Mr. READ. Perhaps I could offer one other thing for the record, if I may, Mr. Chairman. I would like to put in a short brief on why we consider the retention of mandatory retirement at 60 very, very important to the future health of the Service.

The CHAIRMAN. That statement, without objection, will be put into the record.

[The information referred to follows:]

THE NEED FOR CONTINUATION OF MANDATORY RETIREMENT IN THE FOREIGN SERVICE OF THE UNITED STATES

[Submitted by Department of State]

THE FOREIGN SERVICE

To manage and execute U.S. foreign policy, the Nation needs a highly capable, mobile corps of dedicated personnel able and willing to assume a wide range of demanding duties sometimes under difficult and dangerous conditions, often at short notice, anywhere in the world.

MANDATORY RETIREMENT

The Congress has determined that normally Foreign Service personnel should retire no later than age 60. This reflected the fact that the Foreign Service, with the special nature of its mission and its unusual conditions of service, is much more analagous to the military services than to other civilian services of the government. The state of readiness for any kind of service worldwide, expected of members of the Foreign Service, corresponds closely to what is expected from members of the armed forces. In fact, it was the military model from which the Congress drew the provision for retirement in the Foreign Service.

As the Supreme Court noted in its 8–1 decision in the *Vance* v. *Bradley* case, the Congress not only has held this view since 1924 but has expanded its application subsequently: "Congress not only retained the lower retirement age for Foreign Service Officers when it reorganized the Foreign Service in 1946, but it also lowered the age to 60. In expanding the coverage of the Foreign Service retirement system to reach others than Foreign Service Officers, Congress obviously reaffirmed its own judgment that the system should provide a lower retirement age than in the Civil Service system, just as it did in 1978 when it repealed the mandatory retirement of Civil Service employees but left intact the rule for those under the Foreign Service System."

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

CONDITIONS OF SERVICE

Approximately 60 percent of the Foreign Service is serving abroad at any one time in contrast to about 5 percent in the Civil Service where foreign duty is generally a volunteer matter.

Foreign Service personnel are assigned and reassigned regularly and spend a substantial portion of their careers overseas.

The conditions of service in the Foreign Service are unusually demanding. For example, 95 percent of Foreign Service personnel aged 21 to 29 are medically the rule for those under the Foreign Service System."
to 59 are able to do so. (There is a similar trend among spouses) :

PERCENTAGE OF STATE FOREIGN SERVICE PERSONNEL WITH A CURRENT MEDICAL EVALUATION MAKING THEM UNAVAILABLE FOR ASSIGNMENT TO ALL POSTS AS OF FEB. 28, 1979

Officer age group	Employee	Spouse
21 to 29	5	2
30 to 39	8	6
40 to 49	18	11
50 to 59	32	19

This situation is now manageable. However, if mandatory retirement were to be eliminated or the age raised significantly, the ability of the Secretary to assign personnel to otherwise appropriate posts would be reduced to the point that it would become excessively difficult for him to meet his worldwide responsibilities.

And as the Supreme Court stated in its decision, it would appear sensible "that the Government would take steps to assure itself that not just some but all members of the Service have the capability of rendering superior performance and satisfying all of the conditions of the Service."

EXCEPTIONS

The Congress did, however, provide for two exceptions to the existing mandatory retirement rule. These exceptions permit the retention of extraordinarily capable officers past the time of mandatory retirement.

(A) *The Secretary's Waiver.*—The Secretary may make an exception to the retirement when it is in the national interest to do so.

(B) *Presidential Appointees.*—Career personnel serving in positions to which they have been appointed by the President (as Ambassadors or Assistant Secretaries) are exempted from the requirement while serving in such positions. There are 95 career persons currently holding such appointments of whom 4 are 60 or older.

CONCLUSION

Under these circumstances, we recommend that mandatory retirement be retained as a general rule and that the Secretary and the President continue to be authorized to make exceptions as seems appropriate.

The CHAIRMAN. Along that line, I cannot help but note that in the past few years there seems to be a definite disadvantage to approaching 60, as I have seen so very many able and competent Foreign Service officers in their fifties who are permitted to retire.

I realize that this opens the way for younger officers, but it does mean that we have some awfully able officers that are not being used. It is a tough decision, I know, that you have to make.

Mr. READ. It was particularly severe during the period when the courts had stopped all mandatory retirement. We attempted to do equity to people in that sort of circumstance, and we will continue to do so. It is not an easy problem, as you know.

50-236—80——27

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

The CHAIRMAN. I think that in other services, isn't 65 the usual retirement age?

Mr. READ. There is no limit in the civil service since the Civil Service Reform Act.

The CHAIRMAN. No, in the other foreign services, British, German, French?

Mr. READ. It varies. We could give you a table of the 10 or 12 major countries.

The CHAIRMAN. I would appreciate it, if you would, and we would put that in the record.

[The information referred to follows:]

Mandatory retirement ages for selected other foreign services

Australia	65
Canada	65
France	60
German Federal Republic	65
Great Britain	60
The Netherlands	65
Norway	68
Spain	70
Italy	65

Note.—Information obtained from Embassies by State Department Bureau of personnel.

The CHAIRMAN. Are there any other points that anybody in the room cares to make?

If not, this hearing is concluded, and the subcommittee will adjourn, to meet at the call of the Chair.

[Whereupon, at 11:55 a.m., the subcommittee adjourned, subject to call of the Chair.]

[Additional questions and answers follow:]

HON. BEN H. READ'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR PELL

Question 1. Affirmative Action: How will the bill affect affirmative action efforts in the Department?

Answer. The Foreign Service Act of 1946 stated that the Service should be "broadly representative of the American people," but it contained no specific provisions relating to equal employment opportunity or affirmative action.

The bill retains a finding that the Foreign Service should be representative of the American people (Sec. 101(a)(3)). In addition, it currently states that one of its ten objectives is—

> "to foster the development of policies and procedures which will facilitate and encourage entry into and advancement in the Foreign Service by persons from all segments of American society, and equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition."

We believe this will be further strengthened in the House of Representatives, so that the first portion will read:

> "to foster the development and vigorous implementation of policies and programs, including affirmative action programs, . . ."

This change will provide strong statutory support for the Department's affirmative action programs, and will represent an advance from all current legislation.

The Bill thus gives legislative endorsement to the continued development and implementation of affirmative action programs in order to assure equality of opportunity in the Foreign Service.

The above-quoted statutory objective closely parallels the merit principles contained in the Civil Service Reform Act of 1978 (5 U.S.C. 2301). These merit prin-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ciples are made expressly applicable to the Foreign Service by section 102(7) of the Bill, and compliance with them is directed in connection with the appointment (Sec. 301(b)), assignment (Sec. 511(a)), and promotion (Sec. 601(a)) of Foreign Service personnel.

Question 2. How many employees of the Department of State are minorities (meaning blacks, Hispanics, Oriental Americans and American Indians) and women? How many minorities (meaning blacks, Hispanics, Oriental Americans and American Indians) and women are foreign service officers?

Answer. As of the end of 1978, the Department of State had 2,050 minority employees and 4,782 women employees in an overall total of 12,793. Detailed studies are attached. Statistical studies based on the data for the end of 1979 are expected to be available in February or March.

The attached studies based on 1978 data show 161 minority and 307 women Foreign Service officers in a total of 3,414. These data, however, are not fully comparable with the data for 1977 because of a change in the initial designation given to entering junior officers. Since January 1978, entering junior officers have been designated as career candidates and have been given commissions limited to four years as Foreign Service Reserve officers rather than being immediately commissioned as Foreign Service officers. In preparing the studies based on employment data at the end of 1979, we intend to show career candidates separately so as to be able to make comparisons.

In the interim, the best indication of the number of minority and women Foreign Service officers and career candidates is a total figure calculated as of November 1979 which includes Foreign Service officers, career candidates, and officers appointed through the two special emphasis programs, who also enter initially as Foreign Service Reserve officers. In this group of 3,634 officers, there are 292 minority officers and 423 women officers.

DEPARTMENT OF STATE

MINORITY EMPLOYEES—BY SUBGROUP AND PAY PLAN AS OF DEC. 31, 1977, AND DEC. 31, 1978

Pay plan (Dec. 31)	Total population	Minorities: Total		Black		Hispanic		American Indian		Oriental	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
FOREIGN SERVICE											
CA:											
1977											
1978											
Change											
CM:											
1977	39	1	2.6	1	2.6						
1978	38	1	2.6	1	2.6						
Change	−1										
FSO:											
1977	3,475	159	4.6	102	2.9	38	1.1	1		18	0.5
1978	3,376	161	4.7	105	3.1	37	1.1	1		18	.5
Change	−99	+2	+.1	+3	+.2	−1					
FSR:											
1977	2,226	210	9.4	157	7.1	36	1.6	1		16	.7
1978	2,224	221	9.8	151	6.7	48	2.1	1		21	.9
Change	+18	+11	+.4	−6	−.4	+12	+.5			+5	+.2
FSRU:											
1977	767	53	6.9	40	5.2	8	1.0			5	.7
1978	964	85	8.8	65	6.7	12	1.2			8	.3
Change	+197	+32	+1.9	+25	+1.5	+4	+.2			+3	+.1
FSS:											
1977	2,529	174	6.9	98	3.9	51	2.0	2	0.1	23	.9
1978	2,539	183	7.2	109	4.3	47	1.9	3	.1	24	.9
Change	+10	+9	+.3	+11	+.4	−4	−.1	+1		+1	
Total, FS:											
1977	9,036	596	6.6	397	4.4	133	1.5	4		62	.7
1978	9,161	650	7.1	430	4.7	144	1.6	5	.1	71	.8
Change	+125	+54	+.5	+33	+.3	+11	+.1	+1	+.1	+9	+.1

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DEPARTMENT OF STATE—Continued

MINORITY EMPLOYEES—BY SUBGROUP AND PAY PLAN AS OF DEC. 31, 1977, AND DEC. 31, 1978—Continued

Pay plan (Dec. 31)	Total population	Minorities: Total Number	Total Percent	Black Number	Black Percent	Hispanic Number	Hispanic Percent	American Indian Number	American Indian Percent	Oriental Number	Oriental Percent
CIVIL SERVICE											
GS:											
1977	3,411	1,414	41.5	1,339	39.3	37	1.1	11	0.3	27	0.8
1978	3,300	1,336	40.5	1,268	38.4	36	1.1	7	.2	25	.8
Change	−111	−78	−1.0	−71	−.9	−1		−4	−.1	−2	
GG:											
1977	296	57	19.3	8	2.7	25	8.4			24	8.1
1978	332	64	19.3	11	3.3	25	7.5	1	.3	27	8.1
Change	+36	+1		+3	+.6		−.9	+1	+.3	+3	
Total, CS:											
1977	3,707	1,471	39.7	1,347	36.3	62	1.7	11	.3	51	1.4
1978	3,632	1,400	38.5	1,279	35.2	61	1.7	8	.2	52	1.4
Change	−75	−71	−1.2	−68	−1.1	−1		−3	−.1	+1	
Total, FS and CS:											
1977	12,743	2,067	16.2	1,744	13.7	195	1.5	15	.1	113	.9
1978	12,793	2,050	16.0	1,709	13.4	205	1.6	13	.1	123	1.0
Change	+50	−17	−.2	−35	−.3	+10	+.1	−2		+10	+.1

MINORITY EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY

	Dec. 31, 1977: Total population	Total minorities	Percent	Dec. 31, 1978: Total population	Total minorities	Percent	Percent difference
COMBINED FOREIGN SERVICE AND CIVIL SERVICE							
Senior level:							
CA							
CM	39	1	2.6	38	1	2.6	
FSO/R/RU-1 and GS/GG-18/17	456	10	2.2	445	12	2.7	+0.5
FSO/R/RU-2 and GS/GG-18/16	565	16	2.8	565	16	2.8	
Subtotal, senior level	1,060	27	2.5	1,048	29	2.8	+.3
Middle level:							
FSO/R/RU-3, FSSO-1 and GS/GG-15/14	1,237	54	4.4	1,260	58	4.6	+.2
FSO/R/RU-4, FSSO-2 and GS/GG-15/13	1,468	79	5.4	1,494	94	6.3	+.9
FSO/R/RU-5, FSSO-3 and GS/GG-15/12	1,429	156	10.9	1,574	179	11.4	+.5
Subtotal, middle level	4,134	289	7.0	4,328	331	7.6	+.6
Junior level:							
FSO/R/RU-6, FSSO-4 and GS/GG-11/10	1,635	234	14.3	1,743	237	13.6	−.7
FSO/R/RU-7, FSSO-5 and GS/GG-9/8	1,932	386	20.0	1,790	384	21.5	+1.5
FSO/R/RU-8, FSSO-6 and GS/GG-9/7	1,751	321	18.3	1,846	315	17.1	−1.2
Subtotal, junior level	5,318	941	17.7	5,379	936	17.4	−.3
Support level:							
FSS-8 and GS/GG-6	969	254	26.2	773	241	31.2	+5.0
FSS-9 and GS/GG-5	618	256	41.4	643	239	37.2	−4.2
FSS-10 and GS/GG-4/3/2/1	644	300	46.6	622	274	44.1	−2.5
Subtotal, support level	2,231	810	36.3	2,038	754	37.0	+.7
Grand total, FS and GS	12,743	2,067	16.2	12,793	2,050	16.0	−.2

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MINORITY EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			
	Total population	Total minorities	Percent	Total population	Total minorities	Percent	Percent difference
ALL FOREIGN SERVICE (FSO/R/RU AND FSSO/FSS)							
CA							
CM	39	1	2.6	38	1	2.6	
FSO/R/RU-1	450	10	2.2	440	12	2.7	+.5
FSO/R/RU-2	543	15	2.8	543	16	2.9	+.1
Subtotal, senior level	1,032	26	2.5	1,021	29	2.8	+.3
FSO/R/RU-3/FSSO-1	1,018	38	3.7	1,059	40	3.8	+.1
FSO/R/RU-4/FSSO-2	1,310	64	4.9	1,336	74	5.5	+.6
FSO/R/RU-5/FSSO-3	1,248	115	9.2	1,397	139	9.9	+.7
Subtotal, middle level	3,576	217	6.1	3,792	253	6.7	+.6
FSO/R/RU-6/FSSO-4	1,287	118	9.2	1,390	121	8.7	−.5
FSO/R/RU-7/FSSO-5	1,255	107	8.5	1,184	118	10.0	+1.5
FSO/R/RU-8/FSSO-6	775	54	7.0	749	59	7.9	+.9
FSO/R/RU-8/FSSO-7	464	33	7.1	570	34	6.0	−1.1
Subtotal, junior level	3,781	312	8.3	3,893	332	8.5	+.2
FSS-8	506	33	6.5	310	26	8.4	+1.9
FSS-9	100	7	7.0	108	8	7.4	+.4
FSS-10	41	1	2.4	37	2	5.4	+3.0
Subtotal, support level	647	41	6.3	455	36	7.9	+1.6
Total, FS	9,036	596	6.6	9,161	650	7.1	+.5
FOREIGN SERVICE OFFICER (FSO)							
CA							
CM	39	1	2.6	38	1	2.6	
FSO-1	341	8	2.3	335	9	2.7	+.4
FSO-2	310	9	2.9	315	8	2.5	−.4
Subtotal, senior level	690	18	2.6	688	18	2.6	
FSO-3	655	16	2.4	683	18	2.6	+.2
FSO-4	803	31	3.9	773	36	4.7	+.8
FSO-5	590	68	11.5	613	71	11.6	+.1
Subtotal, middle level	2,048	115	5.6	2,069	125	6.0	+.4
FSO-6	397	24	6.0	486	18	3.7	−2.3
FSO-7	318	2	.6	160			−.6
FSO-8	61			11			
Subtotal, junior level	776	26	3.4	657	18	2.7	−.7
Total, FSO	3,514	159	4.5	3,414	161	4.7	+.2
FOREIGN SERVICE RESERVE (FSR)							
FSR-1	60	1	1.7	49	2	4.1	+2.4
FSR-2	126	5	4.0	119	6	5.0	+1.0
Subtotal, senior level	186	6	3.2	168	8	4.8	+1.6
FSR-3	198	15	7.6	178	12	6.7	−.9
FSR-4	285	16	5.6	270	13	4.8	−.8
FSR-5	378	28	7.4	430	41	9.5	+2.1
Subtotal, middle level	861	59	6.9	878	66	7.5	+.6
FSR-6	462	55	11.9	476	52	10.9	−1.0
FSR-7	534	71	13.3	592	81	13.7	+.4
FSR-8	183	19	10.4	130	14	10.8	+.4
Subtotal, junior level	1,179	145	12.3	1,198	147	12.3	
Total, FSR	2,226	210	9.4	2,244	221	9.8	+.4

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MINORITY EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			
	Total population	Total minorities	Percent	Total population	Total minorities	Percent	Percent difference
FOREIGN SERVICE RESERVE UNLIMITED (FSRU)							
FSRU-1	49	1	2.0	56	1	1.8	−.2
FSRU-2	107	1	.9	109	2	1.8	+.9
Subtotal, senior level	156	2	1.3	165	3	1.8	+.5
FSRU-3	108	5	4.6	146	8	5.5	+.9
FSRU-4	124	13	10.5	191	20	10.5	----------
FSRU-5	109	6	5.5	173	11	6.4	+.9
Subtotal, middle level	341	24	7.0	510	39	7.6	+.6
FSRU-6	166	14	8.4	183	26	14.2	+5.8
FSRU-7	95	12	12.6	98	16	16.3	+3.7
FSRU-8	9	1	11.1	8	1	12.5	+1.4
Subtotal, junior level	270	27	10.0	289	43	14.9	+4.9
Total, FSRU	767	53	6.9	964	85	8.8	+1.9
FOREIGN SERVICE STAFF (FSSO/FSS)							
FSSO-1	57	2	3.5	52	2	3.8	+.3
FSSO-2	98	4	4.1	101	5	4.9	+.8
FSSO-3	171	13	7.6	181	16	8.8	+1.2
Subtotal, middle level	326	19	5.8	335	23	6.9	+1.1
FSSO-4	262	25	9.5	245	25	10.2	+.7
FSSO-5	308	22	7.1	334	21	6.3	−.8
FSSO-6	522	34	6.5	600	44	7.3	+.8
FSSO-7	464	33	7.1	570	34	6.0	−1.1
Subtotal, junior level	1,556	114	7.3	1,749	124	7.1	−.2
FSSO-8	506	33	6.5	310	26	8.4	+1.9
FSSO-9	100	7	7.0	108	8	7.4	+.4
FSSO-10	41	1	2.4	37	2	5.4	+3.0
Subtotal, support level	647	41	6.3	455	36	7.9	+1.6
Total, FSSO/FSS	2,529	174	6.9	2,539	183	7.2	+.3
ALL CIVIL SERVICE (GS/GG)							
GS/GG-18	2	----------	----------	2	----------	----------	----------
GS/GG-17	4	----------	----------	3	----------	----------	----------
GS/GG-16	22	1	4.5	22	----------	----------	−4.5
Subtotal, senior level	28	1	3.6	27	----------	----------	−3.6
GS/GG-15	121	12	9.9	101	11	10.9	+1.0
GS/GG-14	98	4	4.1	100	7	7.0	+2.9
GS/GG-13	158	15	9.5	158	20	12.7	+3.2
GS/GG-12	181	41	22.7	177	40	22.6	+.1
Subtotal, middle level	558	72	12.9	536	78	14.6	+1.7
GS/GG-11	281	98	34.9	285	95	33.3	−1.5
GS/GG-10	67	18	26.9	68	21	30.9	+4.0
GS/GG-9	407	157	38.6	361	149	41.3	+2.7
GS/GG-8	270	122	45.2	245	117	47.8	+2.6
GS/GG-7	512	234	45.7	527	222	42.1	−3.6
Subtotal, junior level	1,537	629	40.9	1,486	604	40.6	−.3
GS/GG-6	463	221	47.7	463	215	46.4	−1.3
GS/GG-5	518	249	48.1	535	231	43.2	−4.9
GS/GG-4	317	126	39.7	332	130	39.2	−.5
GS/GG-3	176	100	56.8	175	96	54.9	−1.9
GS/GG-2	94	63	67.0	70	42	60.0	−7.0
GS/GG-1	16	10	62.5	8	4	50.0	−12.5
Subtotal, support level	1,584	769	48.5	1,583	718	45.4	−3.1
Total, CS	3,707	1,471	39.7	3,632	1,400	38.5	−1.2

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MINORITY EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			
	Total population	Total minorities	Percent	Total population	Total minorities	Percent	Percent difference
CIVIL SERVICE (GS)							
GS-18	2			2			
GS-17	3			3			
GS-16	21			22			
Subtotal, senior level	26			27			
GS-15	112	11	9.8	91	10	11.0	+1.2
GS-14	89	4	4.5	90	7	7.8	+3.3
GS-13	143	15	10.5	144	20	13.9	+3.4
GS-12	170	41	24.1	166	40	24.1	
Subtotal, middle level	514	71	13.8	491	77	15.7	+1.9
GS-11	268	96	35.8	272	93	34.2	−1.6
GS-10	54	14	25.9	55	17	30.9	−5.0
GS-9	377	147	39.0	333	139	41.7	+2.7
GS-8	237	110	46.4	212	104	49.1	+2.7
GS-7	472	229	48.5	485	217	44.7	−3.8
Subtotal, junior level	1,408	596	42.3	1,357	570	42.0	−.3
GS-6	372	202	54.3	344	190	55.2	+.9
GS-5	492	246	50.0	500	227	45.4	−4.6
GS-4	316	126	39.9	329	130	39.5	−.4
GS-3	175	100	57.1	175	96	54.9	−2.2
GS-2	92	63	68.5	69	42	60.9	−7.6
GS-1	16	10	62.1	8	4	50.0	−12.1
Subtotal, support level	1,463	747	51.1	1,425	689	48.4	−2.7
Total, GS	3,411	1,414	41.5	3,300	1,336	40.5	−1.0
CIVIL SERVICE (GG)							
GG-18							
GG-17	1						
GG-16	1	1	100.0				−100.0
Subtotal, senior level	2	1	50.0				−50.0
GG-15	9	1	11.1	10	1	10.0	−1.1
GG-14	9			10			
GG-13	15			14			
GG-12	11			11			
Subtotal, middle level	44	1	2.3	45	1	2.2	−.1
GG-11	13	2	15.4	13	2	15.4	
GG-10	13	4	30.8	13	4	30.8	
GG-9	30	10	33.3	28	10	35.7	+2.4
GG-8	33	12	36.4	33	13	39.4	+3.0
GG-7	40	5	12.5	42	5	11.9	−.6
Subtotal, junior level	129	33	25.6	129	34	26.4	+.8
GG-6	91	19	20.9	119	25	21.0	+.1
GG-5	26	3	11.5	35	4	11.4	−.1
GG-4	1			3			
GG-3	1						
GG-2	2			1			
GG-1							
Subtotal, support level	121	22	18.2	158	29	18.4	+.2
Total, GG	296	57	19.3	332	64	19.3	
SUMMARY BY PAY PLAN							
Foreign Service:							
CA							
CM	39	1	2.6	38	1	2.6	
FSO	3,475	158	4.5	3,376	160	4.7	+.2
FSR	2,226	210	9.4	2,244	221	9.8	+.4
FSRU	767	53	6.9	964	85	8.8	+1.9
FSSO/FSS	2,529	174	6.9	2,539	183	7.2	+.3
Total, Foreign Service	9,036	596	6.6	9,161	650	7.1	+.5

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MINORITY EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			
	Total population	Total minorities	Percent	Total population	Total minorities	Percent	Percent difference
Civil service:							
GS	3,411	1,414	41.5	3,300	1,336	40.5	−1.0
GG	296	57	19.3	332	64	19.3	
Total, civil service	3,707	1,471	39.7	3,632	1,400	38.5	−1.2
Grand total	12,743	2,067	16.2	12,793	2,050	16.0	−.2

Sources: Per/Mgt/OS Quarterly Summary of Employment and FADPC Computer Report (excluded are noncareer chiefs of mission, FS/GS unclassified, consular agents, resident staff, wage board, WAE, and contract.)

WOMEN EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY

	Dec. 31, 1977			Dec. 31, 1978			
	Total	Women	Percent	Total	Women	Percent	Percent difference
COMBINED FOREIGN SERVICE AND CIVIL SERVICE							
Senior level:							
CA							
CM	39			38			
FSO/R/RU-1 and GS/GG-18/17	456	12	2.6	445	14	3.1	+0.5
FSO/R/RU-2 and GS/GG-16	565	23	4.1	565	28	5.0	+.9
Subtotal, senior level	1,060	35	3.3	1,048	42	4.0	+.7
Middle level:							
FSO/R/RU-3, FSSO-1, and GS/GG-15/14	1,237	123	9.9	1,260	115	9.1	−.8
FSO/R/RU-4, FSSO-2, and GS/GG-13	1,468	198	13.5	1,494	209	14.0	+.5
FSO/R/RU-5, FSSO-3, and GS/GG-12	1,429	326	22.8	1,574	352	22.4	−.4
Subtotal, middle level	4,134	647	15.7	4,328	676	15.6	−.1
Junior level:							
FSO/R/RU-6, FSSO-4, and GS/GG-11/10	1,635	538	32.9	1,743	563	32.3	−.6
FSO/R/RU-7, FSSO-5, and GS/GG-9/8	1,932	885	45.8	1,790	804	44.9	−.9
FSO/R/RU-8, FSSO-6/7, and GS/GG-7	1,751	985	56.3	1,846	1,137	61.6	+5.3
Subtotal, junior level	5,318	2,408	45.3	5,379	2,504	46.6	+1.3
Support level:							
FSS-8 and GS/GG-6	969	728	75.1	773	575	74.4	−.7
FSS-9 and GS/GG-5	618	479	77.5	643	481	74.8	−2.7
FSS-10 and GS/GG-4/3/2/1	644	509	79.0	622	504	81.0	+2.0
Subtotal, support level	2,231	1,716	76.9	2,038	1,560	76.5	−.4
Grand total, FS and GS	12,743	4,806	37.7	12,793	4,782	37.4	−.3
ALL FOREIGN SERVICE (FSO/R/RU AND FSS/FSSO)							
CA							
CM	39			38			
FSO/R/RU-1	450	11	2.4	440	14	3.2	+.8
FSO/R/RU-2	543	20	3.7	543	25	4.6	+.9
Subtotal, senior level	1,032	31	3.0	1,021	39	3.8	+.8
FSO/R/RU-3/FSSO-1	1,018	89	8.7	1,059	81	7.6	−1.1
FSO/R/RU-4/FSSO-2	1,310	144	11.0	1,336	155	11.6	+.6
FSO/R/RU-5/FSSO-3	1,248	236	18.9	1,397	265	19.0	+.1
Subtotal, middle level	3,576	469	13.1	3,792	501	13.2	+.1
FSO/R/RU-6/FSSO-4	1,287	342	26.6	1,390	367	26.4	−.2
FSO/R/RU-7/FSSO-5	1,255	384	30.6	1,184	359	30.3	−.3
FSO/R/RU-8/FSSO-6	775	344	44.4	749	370	49.4	+5.0
FSO/R/RU-8/FSSO-7	464	238	51.3	570	349	61.2	+9.9
Subtotal, junior level	3,781	1,308	34.6	3,893	1,445	37.1	+2.5

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

WOMEN EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total	Women	Percent	Total	Women	Percent	
FSS-8	506	353	69.8	310	204	65.8	−4.0
FSS-9	100	57	57.0	108	69	63.9	+6.9
FSS-10	41	37	90.2	37	34	91.9	+1.7
Subtotal, support level	647	447	69.1	455	307	67.5	−1.6
Total, FS	9,036	2,255	25.0	9,161	2,292	25.0	
FOREIGN SERVICE OFFICERS (FSO)							
CA							
CM	39			38			
FSO-1	341	8	2.3	335	11	3.3	+1.0
FSO-2	310	8	2.6	315	9	2.9	+.3
Subtotal, senior level	690	16	2.3	688	20	2.9	+.6
FSO-3	655	39	6.0	683	40	5.9	−.1
FSO-4	803	51	6.4	773	57	7.4	+1.0
FSO-5	590	85	14.4	613	94	15.3	+.9
Subtotal, middle level	2,048	175	8.5	2,069	191	9.2	+.7
FSO-6	397	75	18.9	486	104	21.4	+2.5
FSO-7	318	57	17.9	160	26	16.3	−1.6
FSO-8	61	14	23.0	11	3	27.3	+4.3
Subtotal, junior level	776	146	18.8	657	133	20.2	+1.4
Total, FSO	3,514	337	9.6	3,414	344	10.1	+.5
FOREIGN SERVICE RESERVE (FSR)							
FSR-1	60	3	5.0	49	3	6.1	+1.1
FSR-2	126	6	4.8	119	11	9.2	+4.4
Subtotal, senior level	186	9	4.8	168	14	8.3	+3.5
FSR-3	198	19	9.6	178	15	8.4	−1.2
FSR-4	285	51	17.9	270	35	13.0	−4.9
FSR-5	378	64	16.9	430	72	16.7	−.2
Subtotal, middle level	861	134	15.6	878	122	13.9	−1.7
FSR-6	462	105	22.7	476	87	18.3	−4.4
FSR-7	534	110	20.6	592	106	17.9	−2.7
FSR-8	183	20	10.9	130	24	18.5	+7.6
Subtotal, junior level	1,179	235	19.9	1,198	217	18.1	−1.8
Total, FSR	2,226	378	17.0	2,244	353	15.7	−1.3
FOREIGN SERVICE RESERVE UNLIMITED (FSRU)							
FSRU-1	49			56			
FSRU-2	107	6	5.6	109	5	4.6	−1.0
Subtotal, senior level	156	6	3.8	165	5	3.0	−.8
FSRU-3	108	21	19.4	146	16	11.0	−8.4
FSRU-4	124	16	12.9	191	33	17.3	+4.4
FSRU-5	109	38	34.9	173	48	27.7	−7.2
Subtotal, middle level	341	75	22.0	510	97	19.0	−3.0
FSRU-6	166	31	18.7	183	39	21.3	+2.6
FSRU-7	97	11	11.6	98	16	16.3	+4.7
FSRU-8	9	1	11.1	8			−11.1
Subtotal, junior level	270	43	15.9	289	55	19.0	+3.1
Total, FSRU	767	124	16.2	964	157	16.3	+.1

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

WOMEN EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total	Women	Percent	Total	Women	Percent	
FOREIGN SERVICE STAFF (FSSO/FSS)							
FSSO-1	57	10	17.5	52	10	19.2	+1.7
FSSO-2	98	26	26.5	102	30	29.4	+2.9
FSSO-3	171	49	28.7	181	51	28.2	−.5
Subtotal, middle level	326	85	26.1	335	91	27.2	+1.1
FSSO-4	262	131	50.0	245	137	55.9	+5.9
FSSO-5	308	206	66.9	334	211	63.2	−3.7
FSSO-6	522	309	59.2	600	343	57.2	−2.0
FSSO-7	464	238	51.3	570	349	61.2	+9.9
Subtotal, junior level	1,556	884	56.8	1,749	1,040	59.5	+2.7
FSSO-8	506	353	69.8	310	204	65.8	−4.0
FSSO-9	100	57	57.0	108	69	63.9	+6.9
FSSO-10	41	37	90.2	37	34	91.9	+1.7
Subtotal, support level	647	447	69.1	455	307	67.5	−1.6
Total, FSSO/FSS	2,529	1,416	56.0	2,539	1,438	56.6	+.6
ALL CIVIL SERVICE (GS/GG)							
GS/GG-18	2			2			
GS/GG-17	4	1	25.0	3			
GS/GG-16	22	3	13.6	22	3	13.6	
Subtotal, senior level	28	4	14.3	27	3	11.1	−3.2
GS/GG-15	121	19	15.7	101	16	15.8	+.1
GS/GG-14	98	15	15.3	100	18	18.0	+2.7
GS/GG-13	158	54	34.2	158	54	34.2	
GS/GG-12	181	90	49.7	177	87	49.2	−.5
Subtotal, middle level	558	178	31.9	536	175	32.6	+.7
GS/GG-11	281	146	52.0	285	150	52.6	+.6
GS/GG-10	67	50	74.6	68	46	67.6	−7.0
GS/GG-9	407	280	68.8	361	246	68.1	−.7
GS GG-8	270	221	81.9	245	199	81.2	−.7
GS/GG-7	512	403	78.7	527	418	79.3	+.6
Subtotal, junior level	1,537	1,100	71.6	1,486	1,059	71.3	−.3
GS/GG-6	463	375	81.0	463	371	80.1	−.9
GS/GG-5	518	422	81.5	535	412	77.0	−4.5
GS/GG-4	317	258	81.4	332	273	82.2	+.8
GS/GG-3	176	134	76.1	175	142	82.6	+6.5
GS/GG-2	94	67	71.3	70	47	67.1	−4.2
GS/GG-1	16	13	81.3	8	8	100.0	+18.7
Subtotal, support level	1,584	1,269	80.1	1,583	1,253	79.2	−.9
Total, CS	3,707	2,551	68.8	3,632	2,490	68.6	−.2
CIVIL SERVICE (GS)							
GS-18	2			2			
GS-17	3			3			
GS-16	21	3	14.3	22	3	13.6	−.7
Subtotal, senior level	26	3	11.5	27	3	11.1	−.4
GS-15	112	17	15.2	91	13	14.3	−.9
GS-14	89	15	16.9	90	18	20.0	+3.1
GS-13	143	48	33.6	144	49	34.0	+.4
GS-12	170	85	50.0	166	82	49.4	−.6
Subtotal, middle level	514	165	32.1	491	162	33.0	+.9

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

WOMEN EMPLOYEES—BY GRADE AND PAY PLANS: 1-YR STUDY—Continued

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total	Women	Percent	Total	Women	Percent	
GS-11	268	139	51.9	272	142	52.2	+.3
GS-10	54	44	81.5	55	40	72.7	−8.8
GS-9	377	264	70.0	333	230	69.1	−.9
GS-8	237	201	84.8	212	179	84.4	−.4
GS-7	472	370	78.4	485	384	79.2	+.8
Subtotal, junior level	1,408	1,018	72.3	1,357	975	71.8	−.5
GS-6	372	308	82.8	344	287	83.4	+.6
GS-5	492	403	81.9	500	383	76.6	−5.3
GS-4	316	258	81.6	329	272	82.7	+1.1
GS-3	175	134	76.6	175	142	81.1	+4.5
GS-2	92	67	72.8	69	47	68.1	−4.7
GS-1	16	13	81.3	8	8	100.0	+18.7
Subtotal, support level	1,463	1,183	80.9	1,425	1,139	79.9	−1.0
Total, GS	3,411	2,369	69.5	3,300	2,279	69.1	−.4
CIVIL SERVICE (GG)							
GG-18							
GG-17	1	1	100.0				
GG-16	1						
Subtotal, senior level	2	1	50.0				
GG-15	9	2	22.2	10	3	30.0	7.8
GG-14	9			10			
GG-13	15	6	40.0	14	5	35.7	−4.3
GG-12	11	5	45.4	11	5	45.5	
Subtotal, middle level	44	13	29.5	45	13	28.9	−.6
GG-11	13	7	53.8	13	8	61.5	+7.7
GG-10	13	6	46.2	13	6	46.2	
GG-9	30	16	53.3	28	16	57.1	+3.8
GG-8	33	20	60.6	33	20	60.6	
GG-7	40	33	82.5	42	34	81.0	−1.5
Subtotal, junior level	129	82	63.6	129	84	65.1	+1.5
GG-6	91	67	73.6	119	84	70.6	−3.0
GG-5	26	19	73.1	35	29	82.9	+9.8
GG-4	1			3	1	33.3	+33.3
GG-3	1						
GG-2	2			1			
GG-1							
Subtotal support level	121	86	71.1	158	114	72.2	+1.1
Total, GG	296	182	61.5	332	211	63.6	+2.1
SUMMARY BY PAY PLAN							
Foreign Service:							
CA							
CM	39			38			
FSO	3,475	337	9.7	3,376	344	10.2	+.5
FSR	2,226	378	17.0	2,244	353	15.7	−1.3
FSRU	767	124	16.2	964	157	16.3	+.1
FSSO/FSS	2,529	1,416	56.0	2,539	1,438	56.6	+.6
Total, Foreign Service	9,036	2,255	25.0	9,161	2,292	25.0	
Civil service:							
GS	3,411	2,369	69.5	3,300	2,279	69.1	−.4
GG	296	182	61.5	332	211	63.6	+2.1
Total, civil service	3,707	2,551	68.8	3,632	2,490	68.6	−.2
Grand total	12,743	4,806	37.7	12,793	4,782	37.4	−.3

Sources: Per/Mgt/OS Quarterly Summary of Employment (excluded are noncareer chiefs of mission, FS/GS unclassified, consular agents, resident staff, wage board, WAE, and contract).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Question 3. How many minorities (meaning blacks, Hispanics, Oriental Americans and American Indians) and women ambassadors does the United States have and where are they representing the United States?

Answer. Currently there are 15 minority ambassadors, 10 black and five Hispanic, and 13 women ambassadors. The posts at which these ambassadors are serving as chiefs of mission are:

Black Chiefs of Mission: Algeria, Botswana, Cameroon, German Democratic Republic, Haiti, Kenya, Mali, Romania, Spain, and United Nations.

Hispanic Chiefs of Mission: Argentina, Colombia, Ecuador, Guatemala, and Honduras.

Women Chiefs of Mission: Barbados, Grenada and Dominica, Belgium, Burma, Cameroon, Finland, Honduras, Ivory Coast, Mali, Malta, Netherlands, New Zealand, Suriname, and Togo.

Question 4. Which are the key positions presently being held by women and minorities (meaning blacks, Hispanics, Oriental Americans and American Indians) officers in the Department and abroad other than ambassadors?

Answer. Some of the key positions, in addition to chief of mission, held by women and minority officers are:

Women

	Number
Department of State:	
Assistant Secretary	3
Deputy Assistant Secretary or equivalent	10
Overseas:	
Personal rank of ambassador during appointment to present position	1
Deputy Chief of Mission	2
Principal Officer	5

Minority officers

Department of State:	
Assistant Secretary	1
Ambassador-at-Large	1
Personal rank of ambassador during appointment to present position (USUN)	1
Deputy Assistant Secretary or equivalent	5
Chief of Protocol	1
Overseas:	
Deputy Chief of Mission	3
Principal Officer	1

Question 5. What is the Administration doing to improve the personnel situation for minorities (meaning blacks, Hispanics, Oriental Americans and American Indians) and women at the State Department?

Answer. A number of steps have been taken to increase the number of minority group members and women hired as Foreign Service officers, including the establishment of numerical goals for members of minority groups entering the service as junior officers, and for members of minority groups and women entering at mid-career officer levels. The affirmative action junior officer program has been in existence in one form or another since 1967. As of January 1980, a total of 244 officers have been hired through the program, of whom 205 remain in the Foreign Service and 69 are now career Foreign Service officers.

At mid-career levels, 52 women and minority officers have entered since 1975 when the program began, 49 of whom remain in the Service. Most mid-level entrants are not yet eligible to seek conversion to career status.

Assignment procedures have been adopted to try to assure that members of minority groups and women receive full and fair consideration for executive level and program direction assignments in the Department and at posts abroad. A systematic effort is made to involve minority and woman officers heavily in designing and carrying out recruitment and examination programs for the Foreign Service, including staff and specialists as well as FSOs.

Question 6. Why is the State Department having so many problems recruiting minorities (meaning blacks, Hispanics, Oriental Americans and American Indians) and women for the foreign service?

Answer. It is a matter of interpretation whether the Department has had exceptional problems recruiting members of minority groups and women for the Foreign Service. In the past two years, 82 minority officers have come into the Service through the Affirmative Action Junior Officer Program (AAJOP) for

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

members of minority groups, and an additional 32 have come in through the mid-level affirmative action program for members of minority groups and women. This is a significant number in a corps of only about 3,600 officers altogether. Minority officers now constitute eight percent of Foreign Service officers and candidate Foreign Service Reserve officers and women over 11 percent. Without any numerical goals for hiring of women, 25 percent of junior officers entering this group in FY–1979 were women, an increase of about ten percentage points over the average of recent years.

Although the Department has had reasonable success in hiring minority and women officers in the last two or three years, some problems were experienced. Members of minority groups historically have not applied for the Foreign Service in large numbers, and it was decided to reorient recruiting efforts to reach audiences with large minority components. Much greater attention is now given to contact with colleges and universities with large numbers of minority and women students. The Department sends recruiters to meetings and conventions of organizations representing minority groups and women, and advertises career possibilities in publications with predominantly minority readership. Approximately ten percent of candidates appearing for the Foreign Service written examination in December 1979 identified themselves as members of minority groups, reflecting the favorable results of these intensified efforts to recruit minority candidates. This emphasis is to be retained.

An additional factor affects efforts to recruit women. Some potentially qualified women do not seek careers in the Foreign Service because they do not consider themselves available for assignment world-wide.

Question 7. Please provide details on the operation and record of the EEO junior- and mid-level hiring practices at the State Department.

Answer. An Affirmative Action hiring program was established in the Department of State in 1967. As a result of this Foreign Service Officer Affirmative Action Hiring Program, we have hired 244 minority Junior Officers, 69 of whom have been commissioned as Foreign Service Officers and granted tenure. Thirty-nine have left the Service and 135 are probationary Foreign Service Officer candidates. In the Mid-Level program, we have hired 52 Foreign Service Officer candidates in grades 5, 4 and 3 since 1975.

The Secretary each year establishes Affirmative Action hiring goals for Junior and Mid-Level candidates. In FY–78 of a total hiring goal of approximately 200, the minority goal was 43, and 43 minorities were appointed as Junior Foreign Service Officer candidates. In FY–79, out of a total of 200, the Junior Officer Affirmative Action goal was 43 and we hired 39 minority candidates. For FY–80 the Junior Officer Affirmative Action goal is 47. During the first quarter of this year we hired 9 Junior Officer minorities.

In the Mid-Level hiring program the goal for FY–78 was 29, appointments were 18; for FY–79 the goal was 33, appointments were 12; the goal for this year is 33 and to date 5 have been appointed.

The Department emphasizes opportunities for members of minority groups and women in its regular recruitment program for Foreign Service Officers, especially for applicants making the required passing score on the FSO written examination. All female Junior Foreign Service Officers are appointed through this process. The number of minority applicants passing the written examination, however, has not provided an adequate pool to permit us to meet the Affimative Action goal through this method alone. We therefore have conducted direct recruitment of minorities, substituting the requirements of college education for a passing score on the FSO examination.

Qualified minority candidates recruited directly are scheduled to take the oral assessment along with non-minority candidates who have passed the written examination. Minority candidates who achieve a passing score in the oral assessment are eligible for further processing, which consists of security investigation, medical examination, and the Final Review Process. The Final Review Process (FRP) is a review by four FSO's in the Office of Recruitment, Examination and Employment—two Examiners, the Staff Director of the Board of Examiners for the Foreign Service, and the Executive Director—of all information available on the candidate. The scores which these four Examiners give the candidate are averaged and constitute 25% of the candidate's total score.

In the Mid-Level program, direct recruitment is undertaken for minorities and women. The examination consists of three phases: (1) Initial review to determine that the application meets the minimum qualifications of age, citizenship,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

and experience to compete in the program. (2) A Qualifications Evaluation Panel (QEP) which reviews in detail the background and qualifications of the candidate with regard to time, duration, and quality and to identify the presence of functional skills needed in the Foreign Service. (3) Candidates whom the QEP determines have the background and qualifications necessary for a successful career in the Foreign Service are then examined by a three person Board of Examiners Panel. Candidates who pass the one and one-half hour oral examination are then subjected to security investigation, medical examinations, and Final Review by a suitability panel. Candidates who pass all phases of the examination are offered appointments in the middle levels of the Foreign Service (FSR 5, 4 or 3).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

APPENDIX

GOVERNMENT ACCOUNTABILITY PROJECT,
INSTITUTE FOR POLICY STUDIES,
Washington, D.C., January 4, 1980.

Hon. CLAIRBORNE PELL,
Chairman, Subcommittee on Arms Control, Oceans, International Operations and Environment, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Government Accountability Project, we want to thank you for requesting our testimony on S. 1450. The bill would restructure the Foreign Service personnel system, purportedly to "strengthen and improve" the Foreign Service. Our testimony will concentrate on sections 205 and 1101–1131, establishing an office of Inspector General and restructuring the grievance process, respectively, and sections 602 and 641, concerning the proposed Senior Foreign Service.

The Government Accountability Project (GAP), a project of the Institute for Policy Studies, is a non-profit public interest group formed in 1975 to help restore and maintain confidence in the federal system by making public officials accountable for their activities. In pursuit of these goals, GAP works to broaden public understanding of the role of the federal employee in preventing illegal government activities.

GAP has been especially concerned about civil servants whose careers are destroyed for having spoken out against governmental wrongdoing. Through public education, personal counseling and selective legal action, GAP works to protect the right of all federal employees to initiate criticism without fear of retaliation, and to provide these men and women with vital support. See, e.g., GAP's publication, "*A Whistleblower's Guide to the Federal Bureaucracy*" (1977).

The Foreign Service Act is particularly timely, in light of the State Department's own perspective on the proper role of a Foreign Service officer. In a speech reported in the October 15, 1979 issue of the Federal Times, Under Secretary of State David D. Newsom described the two principle qualifications as loyalty and competence. Wisely he defined competence as including "warning your principals of problems to come . . ." Understandably, senior officials do not want to be caught by surprise on an issue.

But what is the proper response if the responsible senior official refuses to listen, or even recognize a serious national problem? Apparently, in that event the State Department expectation is that the Foreign Service officer will serve his or her boss, rather than the public. Under Secretary Newsom characterized "discipline of expression" as a key component of loyalty. He described foreign service officers who follow their conscience through public disclosures as a serious threat to national interests, warning that "never has the problem been as grave as it is today."

In our opinion, this blanket philosophy is a prescription for coverups and unconstitutional repression of freedom of speech. As the Supreme Court noted almost twelve years ago in a landmark First Amendment decision, *Pickering* v. *Board of Education*, 391 U.S. 563, 572 (1968), it is "essential" that public officials who are the most informed about issues of public importance "be able to speak out freely on such questions without fear of retaliatory dismissal." Although all citizens must obey legitimate restrictions against disclosure of classified information, the Foreign Service appears to impose severe restraints upon the individual conscience as a condition of employment. That philosophy is a disservice to accountable government.

I. PREMISES

From GAP's experiences with personnel systems throughout the federal government, we have found several premises which are essential for the efficient, pro-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

ductive, and equitable management of all employees. Each of these premises emphasizes the need for personnel mechanisms which are allowed to operate independently of the agency in which they are involved. GAP has examined S. 1450 in light of these premises, determining if the proposed legislation will provide:

1. A guarantee of due process, enforced by an independent office free from even the appearance of conflict-of-interest, for participants in the system.
2. An adequate structural safeguard to protect against reprisals for those employees who disclose abuses or participate within the grievance system.
3. Meaningful sanctions against supervisors and managers who impose such reprisals.
4. An independent mechanism to examine the substantive issues raised by whistleblowers, allowing them a place to make confidential disclosures of wrongdoing.
5. Maintenance of employees' high morale and resulting productivity, through concrete protection of their rights.

S. 1450 is alarmingly deficient in each of these categories, making the possibility of a strong and efficient Foreign Service personnel system a dream rather than reality. Because of the blatant disregard of these essential premises within this proposed legislation, implementation of S. 1450 would be actually a step away from efficient management of employees. While the sponsors of S. 1450 correctly assert that the strength and competence of the Foreign Service rests upon its personnel system, the proposed legislation itself would do little to correct the well-known inequities of that system. Following closely in the footsteps of the Foreign Service Act of 1946, S. 1450 embraces many of the shortcomings found in the earlier legislation. Three areas about which S. 1450 continues to be sorely lacking, as is existing law, are in the provisions for the office of the Inspector General, the grievance system, and the Senior Foreign Service. The Foreign Service personnel system will continue to be inefficient and inequitable until the essential premises for a balanced system are incorporated in these areas. Any meaningful personnel system must provide for the establishment of:

1. an Inspector General operating independently of the Secretary of State,
2. a grievance system guaranteeing due process to grievants, and
3. a Senior Foreign Service with equivalent merit system safeguards as the Senior Executive Service in the Civil Service Reform Act.

II. ANALYSIS OF LEGISLATION

A. Inspector General—Chapter 2, Section 205

In December of 1978, the Comptroller General reported to Congress that "Essential changes must be made in the Foreign Service Act of 1946, as amended, if the State Department's Office of the Inspector General, Foreign Service, is to have the flexibility it needs to improve its evaluation processes." Section 205 provides for the establishment of the Office of the Inspector General. However, it falls short of providing for an Inspector General with the independent operating authority he needs to discharge his duties effectively.

One change proposed, Section 205(a) of S. 1450, would extend the maximum time period between inspections from two to three years, as recommended by the Comptroller General. This change was intended to alleviate the burden of inspections placed on an inspection staff that is "sometimes spread too thin to do a thorough analytical job."[1] However, cutting back on the number of evaluations made by the Inspector General would not necessarily lead to more thorough analysis.

Instead a positive approach is needed to increase the efficiency of the Inspector General, such as a guarantee of adequate staff and resources. A benefit from increased staff and resources would be the formulation of a clearer mandate and stronger support for the functions of the office. The evaluation and review functions of the Inspector General should be central to the process of strengthening the Foreign Service and its personnel system, particularly by identifying inappropriate acts and procedures. To reduce the amount of required inspections, as done in Section 205(a), in the interest of "flexibility" is to sacrifice the Inspector General's much needed oversight capabilities.

Another major impediment to an active and objective Inspector General is the decisive role of the Secretary of State in the Inspector General's activities. The

[1] Comptroller General Report, State Department's Office of Inspector General, Foreign Service, Needs to Improve its Internal Evaluation Process 1(1978).

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Inspector General's independence is severely limited by the influence of the Secretary's management offices, which not only approve the budget and operations of the Inspector General, but also decide on the suitability of his recommendations. Throughout Section 205, the Inspector General is tied even closer to the Secretary, bound again and again to "the direction of the Secretary." This clause could easily be used to subvert every mandate of authority given to the Inspector General and runs contrary to the very principles of objective evaluation and oversight as expressed by Congress in the Inspector General Act of 1978. This act, while not binding on the State Department, can be viewed as the voice of Congress supporting the necessary independent movements of an Inspector General. It is worth noting the observable differences between Section 205 of S. 1450 and the Inspector General Act of 1978.

Section 205(b) implicitly limits the Inspector General as to what programs and activities can be evaluated by virtue of the "under the direction of the Secretary" stipulation. By allowing the Secretary the authority to guide the direction of the Inspector General's inspections, the effectiveness and objectivity of these inspections are severely compromised. By implementing the words "under the direction of the Secretary." Section 205 runs contrary to Section 3(a) of the Inspector General Act of 1978 which states:

"The Inspector General reports to, and is under the general supervision of the head of the Agency. However, *the head of the Agency may not prohibit, prevent or limit the Inspector General from undertaking and completing any audits and investigations which the Inspector General deems necessary, or from issuing any subpoenas deemed necessary in the course of such audits and investigations.*" (Emphasis added).

Section 205(c) also affords the opportunity for a misuse of authority by giving the Secretary "blank check" authority to dismiss any Foreign Service Inspector, or to suspend from duty any member of the Service other than a Chief of Mission. Characteristically, in the Department of State, such authority is actually exercised by the management officials whose activities would be most susceptible to criticism by a truly independent Inspector General. So any unchecked authority given to the Secretary can be presumed to be unchecked authority delegated downward to those who would be least in favor of the independent operations of the Inspector General.

Finally, Section 205 omits a vital component of the Inspector General Act of 1978. This is Section 5(b) of the Act which serves to maintain the independent behavior of the Inspector General by guarding against any alteration or deletion of the Inspector General's findings by an Agency head—in this case, the Secretary. A comparable statement to that of the Inspector General Act of 1978, Section 5(b), should be included within Section 205 of S. 1450, reading as follows:

"The head of the Agency may submit his own comments along with the Inspector General's report, but may not generally prevent the report from going to Congress or alter or delete the report."

With these recommended changes in Section 205, the Inspector General would be better equipped to pursue the vigilant and independent course of action designated by Congress. Thus the Inspector General would be allowed to direct remedial attention to improper, inefficient, inequitable, or illegal conduct wherever it may be found within the scope of the Inspector General's investigations.

We do not perceive any valid reason to deny Foreign Service employees an independent Inspector General. While the State Department often engages in sensitive assignments, Foreign Service whistleblowers are not excluded from coverage of the Office of the Special Counsel under the Civil Service Reform Act. As the Conference Report on the Reform Act observed, "Foreign Service officers are not excluded from coverage of the prohibited personnel practices." (S. Rept. No. 95–1272, 95th Congress, 2d Session 128 (Comm. of Conference 1978).) It would be unfortunate for the Special Counsel of the Merit Systems Protection Board to become overburdened with complaints from the Foreign Service, due to the absence of an independent office at the State Department.

B. Grievances—Chapter 11

The urgent need for a fair and equitable grievance system within the Foreign Service has been a recurrent issue before this subcommittee since 1971. As Representative Lee Hamilton of Indiana, testifying before a House Subcommittee, stressed: "Unless all employees believe that the grievance system is fair and impartial, no grievance system will work." Under the proposed legislation of

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

S. 1450, the grievance system continues to suffer from a "credibility gap," a gap which seriously impedes the airing and resolution of grievances within the system. The problems of the Foreign Service grievance system continue and promise to continue as long as the guarantee of due process is sidestepped. Throughout Chapter 11 of S. 1450, provisions are qualified and the language is couched in terms which evade the guarantee of due process to grievants. We urge the subcommittee to adopt, in place of these inadequate provisions, a more comprehensive guarantee of due process as formulated in H.R. 9805 which was introduced by Representative Hamilton on September 24, 1975, or in the identical S. 1080 introduced by Senator Bayh on the same day.

Section 1101. Definition of Grievance.—Within Section 1101, as contained in this draft legislation, the definition of grievance is so narrow that many very serious grievances are excluded, such as promotions, assignments, discrimination, selection-out and retaliatory attrition or limited appointments. In effect, this section handcuffs the system to a position of very limited jurisdiction. A much more inclusive definition of grievances is needed within this legislation to replace the exclusive nature of the present wording. One such inclusive and more appropriate definition of grievance can be found in S. 1080.

(B) 'grievance' shall mean a complaint against any claim of injustice or unfair treatment of such officer or employee arising from his employment or career status, or from any actions, documents or records, which could result in career impairment or damage, monetary loss to the officer or employee, or deprivation of basic due process, and shall include, but not be limited to, actions in the nature of reprisals and discrimination, actions related to promotion or selection-out, the contents of any efficiency report, related records, or security records, and actions in the nature of adverse personnel actions, including separation for cause, denial of a salary increase, (in-step increase in salary), written reprimand placed in a personnel file, or denial of allowances."

Section 1103(b) Freedom of Action.—Under this section, 1103(b), the union becomes the exclusive representative for grievants within the bargaining unit. Several serious problems stem from this provision:

First, individual members of the bargaining unit would thereby be deprived of the right to choose their own representative for presenting their positions to the Grievance Board. Besides putting undue demands upon an organization that lacks suitable resources, this also places a large amount of authority within the union. Operating under this stipulation, the union as the exclusive representative becomes a determining factor in who is allowed access to the Grievance Board. In lieu of these shortcomings of Section 1103(b), it is our recommendation that the working of this passage be amended as follows:

"The grievant has the right to a representative of his/her own choosing at every stage of the proceedings." S. 1080

It is significant that in December 14, 1979 testimony, even Robert H. Stern of the American Foreign Service Association reported, "Indeed, we would prefer that the monopoly on access to the grievance board not be imposed." Mr. Stern's position was echoed in December 14, 1979 testimony by Kenneth T. Blaylock, President of the American Federation of Government Employees.

Section 1111 Composition of the Grievance Board.—Although S. 1450 makes the gesture of requiring Grievance Board members to be "well-known for their integrity," the specifics of Section 1111 may defeat this premise. Former members of the "interim" Grievance Board or the Department's Office of Personnel would be eligible as well as any former officers or employees of the Department or any other foreign affairs agencies. We agree with Foreign Service Reserve Officer Cynthia Thomas' December 14, 1979 criticisms of these loopholes. She noted perceptively that former members of the grievance or personnel system "can be expected to perpetuate the evils of the interim grievance procedures which an independent and impartial membership would have eliminated." She further observed that even a retired officer retains a potential conflict of interest through his or her status as Foreign Service Reserve appointee, "a desirable and lucrative position."

Section 1112 Board Procedures.—This section outlines the regulations and procedures under which the Grievance Board operates. Again, the language includes too many reservations and qualifiers to allow the Grievance Board to perform its functions adequately. Section 1112 (1–2) and Section 1112 (8) are the most troublesome provisions.

Section 1112(1) delineates the circumstances under which the Board could hold a hearing. Section 1112(2) follows this by describing the circumstances

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

under which the hearing could be open to others. These two sub-sections, 1 and 2, give the Board arbitrary authority. The question of whether or not to hold a hearing is fundamental to the grievance process. To allow the Grievance Board discretionary authority to determine the worthiness of a grievance, i.e., the necessity of a hearing, is to invite misuse of this power. However, this potential misuse of authority could be avoided if the Board were required to conduct hearings whenever the grievants request them. Likewise the operation of these hearings should be assumed to be open unless the Board determines for good reason that they should be closed. Again, this openness would reinforce the guarantee of due process within the grievance system. S. 1080 addresses these two points in a more evenhanded manner:

"The Board shall conduct a hearing in any case filed with it. A hearing shall be open unless the Board for good cause determines otherwise."

Section 1112(8) Suspension of Action.—Section 1112(8) also poses some serious problems in its attachment of a stipulation to its Suspension of Action passage. Again, the purpose of this provision is thwarted by the qualifications and reservations placed on it. A better provision would suspend departmental actions which are related to or may affect a grievance pending before the Board until the grievant from any reprisals made by the Department until the Grievance Board has ruled on the case. However, within S. 1450 the head of the agency, or the Chief of Mission, or principal officer is allowed to exclude the grievant from the premises or relieve him from his functions before the Board comes to any ruling. Thus the grievant is stripped of this protection from reprisals pending a decision from the Grievance Board. To amend this passage, a more equitable provision would be written as follows:

"If the Board determines that (a) the Department is considering any action (including, but not limited to, separation or termination) which is related to, or may affect, a grievance pending before the Board, and (b) the action should be suspended, the Department shall suspend such action until the Board has ruled upon such grievance." S. 1080

With this amended wording, the authority to suspend action rests in the Grievance Board's hands rather than in the hands of those who are very likely the source of the grievance. This seems to us to be a much wiser appropriation of authority.

Section 1113 Board Decisions.—One of the major weaknesses of the whole grievance system is to be found in this section. The Grievance Board's lack of authority to make binding its own ruling undermines its raison d'etre. By only being able to recommend a remedy to the Agency head, the Grievance Board is rendered fairly impotent. If the Grievance Board is to be more than a kangaroo court, it must be able to back its ruling with some authority. As it reads in Section 1113, the agency head may choose whether or not to follow the Board's recommendation according to an ambiguous definition of the ruling's compliance to "the needs of the Service." To allot the Grievance Board authority in regards to its rulings would be to issue a vote of confidence in the grievance system itself. However, to hold back on this transfer of authority from the agency head to the Grievance Board is to diminish the value of the grievance system as a whole. It is for this reason that we strongly urge that Section 1113 be amended to make the decisions of the Grievance Board binding. A provision as found in S. 1080 could be used in place of the current wording.

"The Board's recommendations are final and binding on all parties, except that the Secretary may reject any such recommendation only if he determines that the foreign policy or security of the United States will be adversely affected. Any such determination shall be fully documented with the reasons therefore and shall be signed personally by the Secretary, with a copy thereof furnished the grievant.

"After completing his review of the resolution, recommendation, and Record of Proceedings of the Board, the Secretary shall return the entire record of the case to the Board for its retention. No officer or employee of the Department participating in a proceeding on behalf of the Department shall, in any manner, prepare, assist in preparing, advise, inform, or otherwise participate in, any review or determination of the Secretary with respect to that proceeding."

We are similarly disturbed by the narrow scope of Board remedies. There is no provision for disciplinary action against the perpetrators of illegal reprisals. While Section 1113(b)(5) permits "other remedial action as may be appropriate in procedures agreed to by the Department and the exclusive representative"

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

it is highly unlikely that the State Department would voluntarily accept disciplinary sanctions.

The significance of this loophole, as well as the effective limitations on the Board's authority to suspend pending actions, is that a supervisor has nothing to lose by engaging in a frivolous reprisal. At most the retaliation may be neutralized eventually at no penalty to the perpetrator of the reprisal, and after the grieved employee has suffered significant emotional, professional and financial hardship. Section 1113(b) should have specific provision for disciplinary sanctions against those responsible for illegal reprisals that violate merit system principles.

C. Senior Foreign Service Sections

We agree with Professor Herz's December 14, 1979 testimony that the specific provisions for the Senior Foreign Service appear "tailor-made for unscrupulous use against senior officers suspected of holding views divergent from those of an incoming new administration." The problem is not with the concept of a Senior Foreign Service but with the absence of safeguards against partisan manipulation. The Act should be modified to conform to the analogous Senior Executive Service established by the Civil Service Reform Act.

The flaws of the proposed Senior Foreign Service (SFS) include:

1. The priority given to attrition in Section 602(b), in direct conflict with the merit principle of retaining employees on the adequacy of their performance.
2. The absence of a "parachute clause" in Section 641 entitling those removed from the SFS for reasons other that misconduct or malfeasance to placement in a meaningful non-SFS position; and
3. The unprecedented authority in Section 641(b) for the Secretary to make "limited extensions" of SFS appointments, thereby stifling dissent and creativity by leaving SFS members in a constant state of uncertainty about their future.

III. MINIMUM PRINCIPLES FOR AN EFFECTIVE SYSTEM

Any legislation which promises, as does the Foreign Service Act of 79, to strengthen and improve the personnel system must provide a safe mechanism for the disclosure of agency misconduct. However, it is increasingly obvious that that the Foreign Service Act of 1979 fails to institutionalize effective protection for Foreign Service Officers who disclose agency abuses. It is ironic that legislation which proposes to increase "compatibility between the Foreign Service and Civil Service" actually contributes to a growing disparity between the two systems. The Civil Service Reform Act includes Foreign Service employees under the umbrella of the Office of the Special Counsel. But in terms of internal Foreign Service personnel policy, S. 1450 represents a major step away from the "governmental self-cleansing mechanism" established by the Reform Act. At a minimum an effective Foreign Service personnel system should include:

1. an explicit commitment to pursue merit system principles (5 U.S.C. 2301) and to guard against prohibited personnel practices (5 U.S.C. 2302).
2. establishment of structural guarantees to insure the independence of the office of the Inspector General from agency interference and pressures. The Inspector General should be appointed by the President, with the advice and consent of the Senate. But only the President should be authorized to remove the Inspector General, and only for inefficiency, neglect of duty or malfeasance. While the Inspector General Office would be formally a part of the State Department, it should present a separate budget annually for congressional approval. This would build congressional oversight into the system.
3. a mandatory duty to investigate any allegation of reprisal against a Foreign Service employee to determine whether the whistleblower's disclosure was based on a reasonable belief that illegal or improper activity has occurred, and whether there are reasonable grounds to believe the reprisal was linked to the disclosure. Whenever these conditions are met, the Inspector General should have the authority to issue recommendations for agency action to neutralize the retaliation. If the Secretary does not comply within a reasonable period, the Inspector General should have the authority to request the Merit System Protection Board to order compliance.
4. authority for the Inspector General to investigate confidential disclosures from Foreign Service employees or former employees, and order the Secretary to investigate and report on any disclosure, if the Inspector General determines that there is a substantial likelihood the information discloses violations of any law, rule or regulation, mismanagement, gross waste of funds, abuse of authority,

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

or substantial and specific danger to the public health and safety. The Inspector General should work with the whistleblower to evaluate the adequacy of the Secretary's investigative report and corrective action. Both the report and the evaluation should be available to the public, with appropriate deletions mandated by the Privacy Act and the FOIA.

5. authority for the Inspector General to issue a complaint to the Merit Systems Protection Board recommending disciplinary action against any official responsible for an illegal reprisal against a Foreign Service whistleblower.

6. a requirement for the Inspector General to submit semi-annual reports to Congress summarizing the activities of the audit, investigative and inspection units of the Foreign Service. These reports should include instances of significant wrongdoings or patterns of wrongdoings as determined by the Inspector General; a summary of matters referred for prosecution and the results of such prosecutions; and a statistical summary of audit and inspection records completed during the reporting period. Under no circumstances should the Secretary of State be permitted to alter or delete the contents of any Inspector General reports.

7. modification of the proposed grievance system to incorporate broad jurisdiction; the employee's right to a representative of his/her choice; a district prohibition against even potential conflicts of interest in Grievance Board membership; the right to an open hearing; Board authority to suspend contested personnel actions during pending investigations; and Board authority to issue final decisions, including disciplinary sanctions against those responsible for illegal personnel actions.

8. modification of the Senior Foreign Service provisions to conform to the Senior Executive Service of the Civil Service Reform Act.

We apprecate the opportunity to submit this testimony. Please do not hesitate to request our further assistance.

Sincerely,

LOUIS A. CLARK,
Director.
DEBORAH K. BURAND,
Intern.

BETHESDA, MD., *January 12, 1980.*

HON. CLAIBORNE PELL,
Committee on Foreign Relations,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PELL: Having recently retired from the Department of State as a senior Foreign Service Officer, I would like to express my views on the proposed restructuring of the Foreign Service (revision of the Foreign Service Act of 1946).

Let me begin by saying that I fully support the consolidation of overseas employees into a single Foreign Service and of domestic employees into the Civil Service, thereby eliminating the dog's breakfast of FSOs, FSS, FSR, FSR–U, etc. I also favor the provision which would bring about pay comparability between the Foreign and Civil Services. These changes are long overdue and have widespread support within the Foreign Service.

There are, however, many other provisions in the proposed restructuring with which I and my former colleagues do not agree.

First, I question the whole need for a Senior Foreign Service. The main thrust of the Senior Executive Service is toward what the Foreign Service already has: a rank-in-the-man system based on regular competition for promotion. I have a sense of change simply for administrative conformity between the Civil and Foreign Services. I am particularly concerned over the threat which Ambassador Martin Herz has so sbly set forth for yolr Committee—that as proposed, the Senior Foreign Service would open the upper ranks of the Foreign Service to serious political abuse and critically weaken the ability of senior officers to press differing views on their political superiors without fear of losing their appointments and ending their careers. Many of my senior colleagues sti llserving share this view.

I also oppose the concept of performance pay, on which Ambassador Sheldon Vance has testified. I understand the Air Force tried and abandoned something like it. The local press has reported the Penna. Ave. Development Agency's unhappy experience with performance pay, and I've been told that other Federal agencies are having difficulties trying to develop criteria for awarding such pay equitably. The Foreign Service will have the same problems. Frankly, it's

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

an insult to our Ambassadors and Sub-Cabinet officers and other senior officers, who aren't in their jobs for more money. A large part of the impetus for performance pay comes from an effort to break out of the freeze on top executive salaries. The Congress should find a solution to this problem directly, without trying an indirect solution that will cause more problems than it will cure.

My colleagues and I appreciate your interest in the Foreign Service as a career and I am guardedly optimistic that your Committee will correct the deficiencies in the Administration's proposal to give the Service a bill that will truly strengthen it. As events are proving, the country clearly needs it.

With best wishes,

Sincerely,

MONCRIEFF J. SPEAR.

P.S.—I hope that you will ask the Department of State for the draft regulations for the implementation of this proposed legislation. I think it will give you a much better idea of what they really have in mind for the Senior Foreign Service.

RESTON, VA., *January 15, 1980.*

Hon. FRANK CHURCH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHURCH: I enclose a copy of a letter I am sending to the Chairman of the Senate Subcommittee that is considering Foreign Service "reform" legislation, urging that he support amendments to the Bill proposed by State Management to incorporate provisions paralleling the "Bayh Bill" that passed the Senate four times in the early 1970's.

I urge you to impress upon Senator Pell your continuing support for due process in Foreign Service personnel operations.

Sincerely,

JOHN J. HARTER.

RESTON, VA., *January 15, 1980.*

Hon. CLAIBORNE PELL,
Subcommittee on International Operations, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Government Accountability Project (GAP), in a letter of January 4 to you, contends that better Foreign Service grievance procedures and more independence for the State Department Inspector General would serve the intent of S. 1450, to "strengthen and improve" the Foreign Service.

Many Foreign Service Officers share the view that the GAP analysis and proposals would, if reflected in the final bill that will be recommended by your Committee, significantly benefit professional diplomacy.

The GAP approach parallels the eloquent testimony of Cynthia Thomas before your Committee, as well as provisions of the "Bayh Bill" that received Senate approval in four consecutive years (1971–75), only to be blocked by Congressman Wayne Hays.

As you may recall, my own analysis of the Foreign Service personnel system was spelled out in testimony before the Senate Foreign Relations Committee, as published in the Committee's hearing records on the "Bayh Bill" (October, 1971), the Macomber confirmation hearing (March, 1973), and the Foreign Service promotion list (February, 1976). I hope you will ask your staff to review this critique, in the context of other information that has come to its attention with S. 1450.

The thrust of that testimony was that guarantees of due process could, in due course, sharply rectify the inequities and inefficiencies that have plagued the Foreign Service, particularly during the Watergate years.

State Management has held that such fundamental reforms—carefully avoided in the original version of the bill you are considering—are incompatible with existing Foreign Service personnel operations. That is true. Due process would mean Foreign Service promotions and assignments would be less based on the arbitrary and capricious manipulation that has determined Foreign Service careers in the past, and more on experience, proven ability, and prior achievements.

The attached memorandum reflects some serious health and family problems that have arisen as a consequence of the system as it now exists.

I urge you to weight the GAP recommendations very carefully.

Sincerely,

JOHN J. HARTER.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

U.S. GOVERNMENT—MEMORANDUM,
November 26, 1979.

To: (Addressee deleted.)
From: PGM/PPO—John J. Harter.
Subject: Paper on the Iranian crisis and the Foreign Service image.

Betty Ann Weinstein of the I.C.A. Advisory, Referral, and Counselling Service contends there is an urgent need for authentic information to document the stress that normally characterizes life and work in the Foreign Service.

I have so far been unable to identify reliable or comprehensive data to illustrate hazards related to terrorist activity experienced in recent years by I.C.A. personnel or attacks on our overseas libraries. I.C.A. sources assume such information from State would probably include relevant incidents involving I.C.A. and A.I.D. personnel. If this should not prove the case, I can pursue this further. Alternatively, I might be able to develop specific information relating to past situations that attracted public notice in Cairo, San Salvador, and Santo Domingo.

However, Ms. Weinstein suggests that such dramatic developments represent only a part of the threats to psychological health in the Foreign Service.

"Many distraught families, with very serious problems, appeal to our office for help," she says, "and in many cases the problems stem from direct conflicts between family needs and work requirements."

For example, she explained, many officers have felt compelled to save or advance their careers, to accept assignments at difficult posts, at which dependents were not allowed, or did not choose to go to. The Officers believed such assignments would lead to their promotion and improved professional outlook that would compensate them for the temporary disadvantages.

"When a personnel officer urges such an assignment," she said, "it puts tremendous strain on the officer to accept it. He naturally wants his career to prosper, and he is persuaded that a temporary sacrifice will, in the long run, be beneficial."

In some cases, temporary separation seems the only way of avoiding selection out, she said. But in practice, she has found, the resulting situation—where the wife and children remain in the United States without support from the head of household—puts "intolerable strain" on families, and has, in many cases, led to critical family, psychiatric, or even cardiac difficulties.

Wife and child abuse has resulted in some cases, she says.

"Generally, no one knows about this. The wife who turns to our Center for help feels compelled to keep her problem secret for fear of further increasing the threat to her physical well being, or her husband's career."

Ms. Weinstein emphasized that her comments were "subjective impressions." She said to date there has been "no scientific study" of these issues. "We need objective information" about these matters, she emphasizes.

WOMEN'S ACTION ORGANIZATION,
DEPARTMENT OF STATE,
December 18, 1979.

Hon. Senator CLAIBORNE PELL,
Chairman, Subcommittee on Arms Control, Oceans, International Operations and Environment, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Subcommittee has before it the proposal by the Department of State called "The Foreign Service Act of 1979". The Women's Action Organization of State, A.I.D. and U.S.I.C.A. are concerned because the proposed legislation does not mandate equal opportunity in employment, its definition of "merit principles" does not prohibit discrimination based on sex, race, etc., nor provide for affirmative action, and does not establish a basis in law for the offices charged with equal employment opportunity in the three agencies.

We are especially concerned by these lacunae in the proposed legislation because there are important groups who claim that the Department of State, AID and ICA are not bound, in their dealings with their Foreign Service employees, by the amendment to the Civil Rights Act of 1963 in Title VII, nor the Executive Orders on equal opportunity and affirmative action because the Civil Service Commission was designated the implementing agency.

The need for a legislative mandate becomes clearer when the role and status of current women employees in the three foreign affairs agencies is examined. As you might expect, there are few women officers and fewer in the upper grades and in the most advantageous occupational categories (career cones). Nor do current trends appear to be directed toward a significant improvement in the foreseeable future.

I understand that your Subcommittee had only one day for hearings on the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

proposed legislation. The Women's Action Organization wishes to submit for the record two recent documents summarizing the role of women employees. One is our testimony before the House Subcommittees on International Operations and on Employee Ethics and Utilization on July 18, 1979, concerning the legislation. (We wish to note that subsequent to that tesimony our professional association—the Ameri-Can Foreign Service Association—reversed itself and came out in favor of equal opportunity in employment and affirmative action.) The second is a "Profile of Women in AID" prepared by our organization in September 1979.

We believe that the Foreign Service of the United States should be representative of the American population as a whole: to bring to the effort of developing and implementing our foreign policy the best talent available, to present to the peoples and governments abroad tangible evidence of the diversity of our great nation, and to ensure equal justice for all current and prospective federal employees.

Thank you very much for your consideration.

Sincerely,

MARGUERITE COOPER KING,
Vice President for State.

Attachments: As stated.

STATEMENT BY MARGUERITE COOPER KING, VICE PRESIDENT FOR STATE OF THE WOMEN'S ACTION ORGANIZATION

The Women's Action Organization represents employees—and their spouses—of the three foreign affairs agencies: State, AID and USICA. It began as an Ad Hoc Group in 1970 dedicated to the removal of discrimination from our personnel system and to promote equal opportunity for all employees, regardless of sex.

This Ad Hoc Group to Improve the Status of Women in the Foreign Affairs Agencies received the Presidential Management Improvement Award for 1972 for the reforms it stimulated. These included the revision of policies and regulations to remove barriers and penalties imposed on Foreign Service women employees who married, to prohibit discrimination in assignments, to establish the right of family members to be considered "private persons" and the right to work abroad, among other reforms.

In recent years we have supported upward mobility programs for support and officer level employees in the Civil and Foreign Services, participated in the Department's review and formulation of an affirmative action program, supported class action suits against the Department of State for sex discrimination, sponsored the Spouses' Skills/Data Bank and the formation of the Family Liaison Office, and provided a series of programs for all employees explaining the available procedures for personal career advancement.

I have come before you today on behalf of the Women's Action Organization to ask that equality of opportunity in all aspects of employment in the Foreign Service be included as a statutory requirement of the Foreign Service Act of 1979. In its present form, the legislation describes as an objective (sections 101 (a) (3) and (b) (2)) that the Foreign Service should be representative of the American people, operated on the basis of merit, with fair and equitable treatment for all. The Foreign Service Act of 1946 also called for a representative Service—but it is not now representative in numbers, grades, functions and regions.

We have not come here to complain but to set out the facts. And, to suggest some parts of the proposed legislation that need to be changed to facilitate equal employment policies and practices to ensure that American foreign interests are represented by the best that this nation has to offer.

Let me speak first about women employees of the Department with some mention of our sister agencies, AID and ICA. Then I will turn to the concerns of Foreign Service spouses—overwhelmingly, but not totally, women.

Foreign Service officer-level women in the three agencies face similar problems. They are few in number, they make up only a miniscule proportion of the senior grades and policy-making positions, they are not given positions commensurate with their qualifications and potential, and their promotions are slower than for their male colleagues.

Let us first look at Foreign Service Officers (FSOs) in the Department of State. Women make up only 10 percent of the FSO corps. I have provided a chart so that we can see where the women are and what kind of work they are doing. (Table at page 441 of the attached, part of a brief filed in the U.S. District Court for D.C. as part of two class action suits brought against the Department.)

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Before going to the chart, I want to draw some distinctions between the personnel systems of the Foreign Service and the Civil Service. In the former, there are eight Foreign Service Officer grades (plus Career Minister) going from the bottom (FSO–8) to the top (FSO–1, Career Minister). Second, unlike the Civil Service, Foreign Service personnel are not hired for a specific position in which they may hope to move up to increasing responsibility. Foreign Service Officers are considered generalists; they are given certain specialties or functions, and periodic assignments, usually within that broad specialty.

To go back to the chart, it tilts south-by-west: most women are in the junior levels, FSO–8 to 5. There is a dearth of women in the senior grades. Only 2.4 percent of all women FSOs are at the FSO–1 level and 1.8 percent are at the FSO–2 level. For purposes of comparison, those percentages for men FSOs are 8.6 percent and 10.0 percent, respectively. I wish I could say that we are at least doing better than before. That is not true. The percentage of women are actually decreasing in the top grades, as detailed on page 442 of the attached brief.

The chart also shows that women have been placed in career categories—specialties or functions—where the opportunities for advancement are severely limited. Senior grades are concentrated in the executive, program management, political and economic/commercial functions. But where are all the women found? Concentrated in the consular and administrative functions. The relationship between function and promotion is analyzed on page 442 of the attached.

There appears to be no rational, performance-related reasons for such concentrations based on sex. Until there is a more equal distribution, women can not hope to advance to the top in comparable percentages with their male colleagues nor can management be assured that they are getting the best personnel at the highest level of our career Service.

Key to advancement is assignments—made for each officer on the average of every two years. It is the way you gain additional experience and responsibility, learning how to deal with the varied and complex aspects of our foreign relations, to negotiate, represent, and develop policy on behalf of your country. Yet the assignment process is overwhelmingly in the hands of men where the "old boy" network perpetuates the selection of a few for the best positions, without requiring open competition among all qualified candidates.

In competing for assignments women candidates face several roadblocks—obstacles that exist largely in the minds of the men (and the few women) making personnel decisions. Women are not given supervisory positions generally: they fail to recognize the leadership qualities in women and often presume that men do not like to be supervised by women. Stereotypes about what kind of work is "appropriate" or "natural" to women limit their assignment choices. Let me give you some examples: women are seen as personnel or consular officers, but not as labor or politico-military officers. Such stereotypes ignore individual qualifications and limit assignments for women.

Gallant but old-fashioned assignment officers are often reluctant to assign women officers to hardship or hazardous posts. But, women took the same oath of office and expect to take their fair share of such duty. Such assignments can often be career advancing. It is this same old-fashioned attitude that makes assignment officers believe that women officers cannot be effective in countries where local law and/or custom accord low status to their women. The problem, I assert, is in the minds of American personnel officers rather than in the minds of other diplomats and host country officials.

Women have served with excellence in every part of the globe including the Middle East, Africa, Latin America and Asia. My personal experience has been that the prestige of the U.S. diplomatic corps is universal and that personal competence and skills—not sex—are the basic criteria for success as a diplomat, as in any other career.

The effect of such bias in assignments has been to limit the opportunities for women and to fail to use efficiently the resources of the Foreign Service. A study by my organization in 1975 showed that of all senior Foreign Service career women officers, 43 percent were serving in positions at least one grade beneath their personal rank. This is most graphically illustrated by career ambassadorial assignments. Not only are women chiefs of mission few and far between—six career women are such—but they are appointed to those countries to which we assign the lowest level of priority and importance in U.S. foreign relations (see page 443 of the attached).

There are other officer categories in the Foreign Service. The reserve limited and unlimited officer categories and Foreign Service Staff Officers face the same stereotypes by personnel officers that limit women's entry, assignments and promotions in disregard of their individual qualifications and potential.

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Most women in the Foreign Service are secretaries, at the staff or support level below the officer grades. The President of the American Foreign Service Association, Lars Hydal, mentioned these problems on July 9. We agree that they are deprived of appropriate professional status, adequate pay including compensation for long overtime and standby duty, and that they are unfairly hit by local duties and taxes their higher-salaried officer colleagues are exempt from. We support his call for priority negotiations by the Secretary to protect non-commissioned employees from such local duties and taxes and for increased funds to ensure appropriate language and area training for staff personnel.

In addition to these problems relating to the secretarial profession, Staff Corps women are also disadvantaged in comparison with their male colleagues. In promotions, in 1977, 67 percent of all Staff Corps women were eligible for promotion against 33 percent for men, yet their promotions were only 11.6 percent compared to 16 percent for men. In part, this is because men are concentrated in Staff functions that have higher career ceilings than women: women have difficulty breaking into those functions.

Outside of the Foreign Service proper there is a large segment of the employee population at State who are Civil Service. While we are here to address an Act titled and almost entirely concerned with the Foreign Service, the Civil Service is a little over one-third the size of the Foreign Service (3,632 versus 9,161). However, the Civil Service component at State has historically been neglected. That was the finding of a 1975 Civil Service Commission Study ("Personnel Management in the Department of State") which went on to say that "performance evaluation and training of Civil Service employees is ineffective, lacks adequate planning and follow-through and fails to meet even minimum requirements." It also said that "promotion program administration fails to meet even basic and minimal merit system requirements, causing serious violations and providing no assurance to management that the best qualified are selected and no assurance to the employees that they are being equitably considered." Civil Service women are overwhelmingly at the bottom of the ladder: only 6 percent of all Civil Service women employees at State are at the *senior and the middle levels*, 43 percent are GS–7 through 11, and 51 percent are GS–6 and below.

Because of the slow pace of progress, in 1976 we decided that it was necessary to seek justice by going outside of the Department. We joined in support of a class action suit charging systemic discrimination by the Department against women FSOs. After almost three years, that and a parallel suit have just been certified for class action last month. The Department has failed to respond to the issues and sought endless delays.

We must, in honesty, look at this situation from a historical perspective. So long as women had to be single as a condition of employment, a Foreign Service career was of limited appeal. Women employee's position today is the accumulated result of many years of discrimination that cannot be overturned at once. We believe that we must begin by ending current practices of discrimination and locating skills and resources that are now underutilized and take affirmative action to place those resources where we need them to get the job done.

For many years affirmative action plans have been time-consuming but largely ineffectual exercises. The Department paid only lip-service to equal opportunity: senior leaders made pronouncements that were ignored in practice. Secretary Vance made a new attempt when he came aboard and formed an executive level task force on affirmative action. The Women's Action Organization provided studies and suggested remedies. Although not as specific or effective as we had hoped, we joined with several employee groups representing minorities in support of the task force recommendations.

Those were, however, emasculated along the road when they were turned over to the career ranks to translate into specific plans of action. Those who believe in these stereotypes and do not realize that their gallantry is a form of discrimination, were unlikely to come up with relevant affirmative actions that would address the special problems of women and minorities. Even the surviving recommendations of modest effect were attacked and challenged by our own professional association, AFSA.

This is a bleak picture indeed, and it is no better for minorities at State. I wish I could tell you that the Department was moving toward becoming an equal opportunity employer. It is not. I do, however, want to record our appreciation for Secretary Vance's personal attention and leadership in awakening in State some realization that the present distribution of rewards and responsibilities reflects a long history of bias, and Assistant Secretary Moose's wise leadership of the affirmative action task force.

It should be clear from the above that the Department on its own is unable or unwilling to carry out the goals mentioned in the first chapter of the proposed

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

act—to be representative of the American people, to ensure merit principles for selection and advancement and equal opportunity in all aspects of employment. The Office of Equal Employment Opportunity is not mentioned in the bill; its mandate needs to be strengthened.

More than that, equal opportunity in all aspects of employment must be required under the law you are now considering. For that purpose we propose the following changes:

section 301 (General Requirements of Appointment) (b) should add "equal opportunity" following "merit" (to read "in accordance with merit and equal opportunity principles.")

section 511 (Assignments to Foreign Service Positions) (a) add "and equal opportunity" following "merit" (to read "in accordance with merit and equal opportunity principles")

section 601 (Promotions Based on Merit) (a) add "and equal opportunity" following "merit" (to read "shall be based on merit and equal opportunity principles".

In order to ensure oversight and implementation of this responsibility for the Department as a whole, it is proposed that the Inspector General's responsibilities should include an examination of whether merit and equal opportunity principles have been observed in the management of the Department and missions abroad (*section 205 (a)*).

The Act calls for maximum capability among the personnel system of State, AID and ICA. I regret to assure you that women Foreign Service employees of those agencies also face discrimination in all aspects of employment.

AID lags behind both State and ICA in the proportion of women in the senior ranks; in AID, women are generally absent from policy positions and from mid-level positions with significant programs and policy roles; entering junior officer classes have included few women; and, the Agency does not provide adequate opportunities for low- and mid-level women with *needed* skills, interest and potential to advance. In recent years, the position of Foreign Service career women has deteriorated while the Civil Service women have remained stationary. It is with considerable misgivings, therefore, that women in AID contemplate a change in the Agency's personnel system toward one more heavily staffed under Foreign Service than Civil Service rules.

In ICA, the percentage of women Foreign Service Information Officers is 16 percent, slightly better than the comparable figure in State. They are concentrated in the "cultural" rather than "informational" functions. There is the now familiar dearth of women in the senior grades, policy and managerial positions; there is discrimination in assignments to certain geographic regions. Women in the Civil Service are clustered in the lower ranks and in certain sex-stereotyped functions. ICA Foreign Service secretaries have many of the same problems as their State counterparts. This situation has not changed basically in the past two years. There has been an overall decrease of 1 percent of women FSIOs, a decrease in the intake of women as junior officers and in women Civil Service officers at the middle level.

Given the familiar pattern of discrimination and lack of progress toward equality of opportunity, we suggest that the Board of the Foreign Service, with an interagency mandate for Foreign Service personnel, include in its responsibilities the promotion of personnel policies and practices based on merit and equal opportunity principles (section 206).

While we support a strong professional association to represent employees' concerns, we have often found AFSA unsympathetic to the concerns of women officers and spouses. We understand the feelings against what has been called "reverse discrimination" and believe that steps taken in the name of affirmative action in other places have sometimes been foolish. I believe that the Women's Action Organization has been responsive to these fears and have proposed responsible remedial actions that would genuinely open up competition, so that women and minorities could compete on the basis of merit.

So long as AFSA's membership is preponderantly white males, we will continue to have misgivings about its willingness to represent our interests. For the moment, we have no changes to suggest in the proposed Act relating to Labor-Management relations but are studying them to ensure that our rights are protected.

Before I conclude, let me say something on behalf of Foreign Service family members. We sponsored the Spouses' Skills Bank because we support the employment abroad of spouses and believe that the Department is the loser when it fails to recognize spouses as potential employees and is being arbitrary and unjust when it places obstacles in the way of their employment outside of the mission. We worked along side the Association of American Foreign Service Women for

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the creation of the Family Liaison Office in the belief that information and counselling was essential for our Foreign Service families.

We are actively examining the problem, mentioned by the AFSA President, of Staff Corps perception that training and assignment benefits recently promoted for family members adversely affect Staff employees' opportunities. We do know that there is a regular cadre of qualified spouses who take their skills and desire for employment from post to post around the world. They serve with limited appointments and save the Government transportation and housing costs. Others serve in Part-time Intermittent and Temporary (PIT) positions to fill in during periods of peak workloads. Such employees have met American standards of job qualification and should not be expected to accept local standards of pay (section 333(a) and 451(a)(1)).

The women and men who have joined and supported the Women's Action Organization have done so because of their commitment to equal opportunity and their concern about being able to sustain a healthy family life despite the disruptions and difficulties of our mobile occupation.

I appreciate the time you have given today to consider the conditions of employment for women in the Department of State and our sister agencies and of the concerns and resources of family members of the Foreign Service. We hope you will see to it that equal employment opportunity is more firmly captured in your bill.

IV—Current Statistical Evidence Further Demonstrates Systematic Sex Discrimination by the Department of State

1. Intake of Women as FSOs

As we have noted previously (February 17, 1978, Mem., p. 9), while 44 percent of college graduates were women, in fiscal years 1970–1977 women made up only 7 percent, 6 percent, 17 percent, 16 percent, 22 percent, 13 percent, 20 percent, and 16 percent of the officers appointed to the Foreign Service. Memorandum, Junior Officer Intake, FY–66 through March 1977, Richard Masters, PER/BEX, to Dudley Miller PER/REE, March 2, 1977. In 1978, only 16 percent of the officers appointed were women. FSO Intake By Exam (By Sex), M/EEO, 10/5/78, Pl. Ex. 3. Thus, since 1975, the average intake has been only 16 percent women. This is in spite of the fact that recent statistics show women earning more bachelor's degrees than men in foreign area studies and foreign languages (Report on Women in America, The United States Commission for UNESCO, p. 16, Pl. Ex. 4):

BACHELOR'S DEGREES AWARDED IN 1974–75

	Females	Males
Foreign languages	14,879	4,600
Foreign area studies	1,739	1,464

2. Placement of Women in Cones and Promotions

We have explained previously how the Foreign Service is divided into functional fields of concentration which are referred to as cones. February 17, 1978, Mem., p. 9. Within cones, there is further division into functions. We have previously shown that female Foreign Service officers are disproportionately placed in cones which provide less responsibility and are less advantageous in terms of career advancement. Women are placed far more than men into the cones which have fewer positions in the upper classes and which receive fewer promotions. They therefore have far less opportunity to reach the top. See August 24, 1976, Mem., pp. 4, 12–14; February 17, 1978, Mem., pp. 32–33; July 7, 1978, Mem., pp. 6, 7.

Department of State statistics as of December 31, 1978, and of January 31, 1979, further demonstrate this disparity. The Department's own analysis of March 1979, shows that on December 31, 1978, only 36.4 percent of all women were in the Executive, Program Direction, Political, or Economic/Commercial cones or functions while 63.6 percent of the women were in the Administrative and Consular cones. Women FSOs by Primary Skill (Cone) 12/31/78, M/EEO. 3/79, Pl. Ex. 13. In addition, the following table, derived from the Department's own statistics, compares male and female FSOs by rank and cone or function as of January 31, 1979, and reveals little, if any, change from earlier statistical patterns.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

COMPARISON OF MALE AND FEMALE FSO'S BY RANK AND CONE OR FUNCTION

[Data as of Jan. 31, 1979]

Ranks	Cone or function														
	Executive		Program direction		Administration		Consular		Political		Economic/ commercial		Rank totals com- bined	Rank totals by sex	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		Male	Female
Fareer ambassador															
Career minister	14		3										17	17	
CSO–1	27	2	116	1	22	2	7	2	51	1	34		265	257	8
FSO–2	1		49		38	2	16	1	104	1	91	2	305	299	6
FSO–3			10		104	12	49	7	289	8	182	12	673	634	39
FSO–4					107	14	93	19	294	12	225	11	775	719	56
FSO–5					93	17	114	48	216	18	103	12	621	526	95
FSO–6					78	24	86	49	124	12	95	21	489	383	106
FSO–7					36	5	44	12	17	2	38	7	161	135	26
FSO–8					4		4	2				1	11	8	3
Subtotal (by sex)	42	2	178	1	482	76	413	140	1,095	54	768	66		2,978	339
Function column total	44		179		558		553		1,149		834		3,317	[1] 3,317	

[1] Combined total.

Note: In addition, there were 3 male specialists (doctors, lawyers, etc.) (1 FSO–1, 1 FSO–2, 1 FSO–3) and 1 female on detail (FSO–5). Grand total FSO's as of Jan. 31, 1979: 3,321.

Source: Data derived from Department of State computer printout as of Jan. 31, 1979, Pl. Ex. 5

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

This most recent data shows that while 34.7 percent (1.149 officers) of all FSOs are in the desirable and advantageous political cone, only 15.8 percent of female FSOs (54 officers) are in that cone. Even more dramatic is the fact that while 5.4 percent (174) of all FSOs are in the program direction cone, only 0.6 percent (1 officer) of all female FSOs are in that cone. In addition, 1.3 percent of all FSOs (44) are in the "Executive" function but only 0.5 percent of female FSOs (2) are in that function. Conversely, while only 16.7 percent (553 officers) of all FSOs are in the less desirable and less advantageous consular cone, fully 41.1 percent (140 officers) of all female FSOs are in that cone. The situation has remained the same or worsened since December 31, 1978. On that date there were four women in the Executive function and two in program direction. Pl. Ex. 13. Even that small representation had been halved by January 31, 1979. Thus, women continue to be kept out of professionally desirable and advantageous cones and functions in disproportionate numbers.

The desirability of certain cones and functions is also evident from the table. There were 232 FSO–1s occupying positions in the Executive function and the Program Director, Political and Economic/Commercial cones. They constituted 87.5 percent of all FSO–1s. There were 2073 men (69.9 percent of all men) in these cones and functions; only 123 women (36.2 percent of all women) were assigned to these cones and function. The administrative and consular cones are less desirable because they have only 33 FSO–1s assigned to them. This is only 12.4 percent of all FSO–1s and thus there is less opportunity for promotion to that rank in those cones. Nevertheless, 63.5 percent of all women (226) are assigned to these cones while only 30 percent of all men (895) were assigned to them. As has been noted above, the situation essentially the same on December 31, 1978. Pl. Ex. 13. These figures demonstrate that women are seriously handicapped as to promotions by their cone and function assignments.

During the years 1973, 1974, 1975, 1977, and 1978, FSO promotions to the high grades of FSO–1, FSO–2, and FSO–3 were unevenly distributed in favor of the executive, program direction, political and economic/commercial cones and functions, where most male FSOs are placed, and to the detriment of the consular and administrative cones where most female FSOs serve. This discriminatory distribution of promotions is apparent in the following tables (Sources: Department of State Newsletter, June 1974 and March 1975; M/EEO, 1977 and 1978 FSO Promotions By Sex, 2/77, 4/78, Pl. Ex. 6).

PROMOTIONS IN THE EXECUTIVE PROGRAM DIRECTION, POLITICAL AND ECONOMIC/COMMERCIAL CONES AND FUNCTIONS[1]

[By percent of all promotions to the class]

	1973	1974	1975	1977	1978
FSO–1	73.0	93.3	84.7	88.0	90.0
FSO–2	72.6	88.9	79.5	81.5	71.4
FSO–3	71.9	81.5	68.1	77.6	76.0

PROMOTIONS IN THE CONSULAR AND ADMINISTRATIVE CONES

	1973	1974	1975[2]	1977	1978
FSO–1	27.0	6.7	15.3	12.0	10.0
FSO–2	27.4	11.1	19.3	18.6	23.8
FSO–3	28.1	18.5	30.2	21.0	24.0

[1] The figures for 1973 and 1974 are based on materials which did not distinguish executive and program direction promotions.
[2] Plaintiffs have not been able to obtain figures for 1976.

Since, as we have seen, women are disproportionately placed in the consular and administrative cones, these figures again demonstrate that women are seriously harmed by their cone and function assignments.

Analysis of male and female officers by rank further demonstrates the discrimination in promotions. It remains a fact that a far higher proportion of men than women have reached the higher grades. As we have noted before, as of June 1974, 2.6 percent of the women and 6.8 percent of the men were FSO–1; in 1975, the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

figures were 2.9 percent of the women and 8.5 percent of the men; and in 1976, the women and men were 3.2 percent and 9.6 percent of the FSO–1 officers respectively. As of January 31, 1979, 2.4 percent of women were FSO–1s while 8.6 percent of men were in that grade. For 1974 through 1976, the percentages of women and men who were FSO–2s were 2.2 percent/11 percent, 2.2 percent/10.2 percent, 2.4 percent/9.5 percent. As of January 31, 1979, the percentages were 1.8 and 10.0, respectively. In grade FSO–3, during the years 1974–1976, the percentage of women and men were 12.1 percent/19.2 percent, 9.3 percent/19.5 percent and 10.5 percent/21.7 percent. As of January 31, 1979, the figures for FSO–3s were 11.5 percent of women and 21.3 percent of men. Department of State, M/EEO, Department of State Comparison of Status of Women Employees—By Grades and Pay Plans as of 12/31/74 and 12/31/75, p. 3 (March 1976) ; Department of State, M/EEO, Department of State Comparison of Status of Women Employees—By Grades and Pay Plans as of 12/31/75 and 12/31/76, p. 3 (March 1977) ; Table from p. 16. Thus, the proportion of women in each of these high grades has actually declined since 1974.

As of 1974, 38 percent of the men had attained class 3 or higher and 16.9 percent of the women had done so. The most recent data, as of January 31, 1979, show that 39.9 percent of men were grades FSO–1 through FSO–3 while only 15.7 percent of women held those ranks. Thus, again the disparities actually increased. Since, as we have seen, women are disproportionately placed in the consular and administrative cones, these figures again demonstrate that women are seriously harmed by their cone and function assignments.

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The distribution of male and female Foreign Service officers within each cone also shows that the women are disproportionately in the lower grades. For instance, in the political cone, as of June 1974, 34.4 percent of the men and only 17 percent of the women were in classes 1 through 3. In contrast, 66.1 percent of the women and only 34.1 percent of the men were in classes 5 through 7. Department of State, M/WA, Women FSO's by Cone as of 6/30/74. As of January 31, 1979, 40.5 percent of the men in the political cone were in classes 1 through 3 while only 15.0 percent of women in the political cone were in those classes. Classes 5 through 7 had only 32.6 percent of the men but had 48.5 percent of the women.

3. ASSIGNMENT TO KEY POSITIONS

We have previously shown a pattern of assigning women to the least critical positions available to individuals at that level and to the least important assignments within a particular job category. February 17, 1978, Mem., p. 13. This pattern continues. For instance, as of November 1978, there were only four career female FSOs who were ambassadors and none of them were assigned to Class I missions. Instead, they held ambassadorships to Surinam, Mali and

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Papua, New Guinea (three of the smallest, and least important embassies) and Finland. Department of State, M/EEO, Some Women in Key Positions (November 1978), Pl. Ex. 7.

Women principal officers (in charge of subordinate posts within a country) are located in Cebu, Izmir, Zanzibar, Monterrey, Mazatlan and Perth. *Ibid.* None of these cities are major posts and most people would be hard-pressed to locate them on a map of the world. Women Deputy Chiefs of Mission are located in Suva and Wellington, two obscure and insignificant posts. *Ibid.* Women are counselors of Embassy (in charge of a section) in only three posts. *Ibid.* In the United States, ten upper echelon women are assigned to administrative jobs and two have jobs in the consular cone. *Ibid.* As we have seen above, these are the least desirable areas of the Department. Only six women have high-ranking jobs in the political area and only one has a high-ranking position, in the Bureau of Economic Affairs. *Ibid.*

4. APPOINTMENT TO MIDDLE-LEVEL POSITIONS

The Middle-Level hiring program is supposed to be an affirmative action program for women and members of minority groups. It brings people in as reserve officers in classes 3, 4, and 5. Even within this program, however, women are not receiving equal treatment with men in that, as a group, they are being hired at lower ranks and at lower "steps" (pay levels) within ranks. As of January 1, 1979, 82.6 percent (23) of all women hired in the Middle-Level program came into the Foreign Service at the class 5 level. Only 13 percent (3) came in as class 4 officers and only 4.3 percent (1) was in class 3. In contrast 53 percent (8) of the men were hired for class 5 while 40 percent (6) came into class 4 and 6.6 percent (1) was a male class three officer. Therefore, although the program is intended to improve the balance of women as compared to men in the mid-grades, in fact it is increasing the imbalance because women are being hired in disproportionate numbers at the lowest grades, compared to the men being appointed. M/EEO, Midle-Level Hires as of 8/15/78 and 1/1/79, Pl. Ex. 8.

There is also a significant difference between women and men in the step level within each grade. Of the 19 women hired as FSR–5, 63 percent were hired at FSR–5/4 or below whereas only 12 percent of men hired as FSR–5 were hired at FSR–5/4 or below. The same pattern is repeated in the hiring of FSR–4. 100 percent of the women were hired at FSR–4/4 or below, whereas only 33 percent of the men were hired at FSR–4/4 or below. *Ibid.*

V—Additional Current Evidence of Systemic Sex Discrimination Within the Department of State

Both the Department of State itself and the Justice Department Task Force on Sex Discrimination in the Federal Government have found important aspects of systemic sex discrimination in the Department.

1. FAILURE TO ACCORD WOMEN EQUAL PROFESSIONAL STATURE

A survey of overseas posts by the Equal Employment Opportunity Office of the Department of State found that female officers in some cases did not even attend country team or staff meetings, were kept poorly informed about activities and issues, and were only rarely included in policy-making. Department of State Newsletter, October 1978, pp. 23–24, Pl. Ex. 9. The Justice Department Task Force noted that "the participation of women as official delegates [to international conferences] remains very low," that "women professionals are often given less substantive work than are male counterparts," and that "[w]omen generally have less private office space than men." Interim Report to the President by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice, October 3, 1978, Pl. Ex. 10, pp. 245, 250.

2. FAILURE TO ASSIGN WOMEN IN A NON-DISCRIMINATORY MANNER

The Justice Department Task Force stated that "the Department continues to fail to assign women to certain countries as a result of traditions and cultures of the receiving country." Pl. Ex. 10, p. 242. It also noted that this violates a Presidential Memorandum that all overseas assignments are to be made in a non-discriminatory manner. *Ibid.*

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

FAILURE OF EFFORTS TO RECRUIT WOMEN

The Director of Equal Employment Opportunity for the Department, Under Secretary of State for Management Ben H. Read, has acknowledged publicly that the Department has been failing in its efforts to bring representative numbers of women into the FSO corps. Speaking at the Department's "Open Forum," he said (Department of State Newsletter, March 1978, p. 57, Pl. Ex. 11):

> It showed * * * the percentage of women up to 9 percent * * * [an increase of] 3 percent, in an entire decade. The midlevel affirmative action program to which you refer, was instituted in 1975, [with] a goal of 20—10 minority, 10 women—in each year. The grand total of 17 had been taken in by the end of the last fiscal year and, as of then and as of today, there has not been one conversion [from reserve to FSO status] from that group. * * * The * * * comparison is very, very modest * * *.

It should be noted that in 1959 and 1960 9 percent of all FSOs were women. M/EEO Women Foreign Service Officers (FSO), Twenty-Year Study, 2/78, Pl. Ex. 12. Thus, all that the Department has accomplished is to get back to the level which had been achieved in those years. As Mr. Read tacitly acknowledges, this hardly corrects the discrimination which women have suffered.

CONCLUSION

For the reasons stated above, the accompanying evidence, and the memoranda of August 24, 1976, February 17, 1978, and July 7, 1978, we respectfully submit that Plaintiffs' Motions for Orders Certifying these suits as Class Actions should be granted and that the class certified should consist of all present and future female Foreign Service Officers and applicants.

Respectfully submitted,

BRUCE J. TERRIS,
DELMAR KARLEN, JR.,
Attorneys for Plaintiffs.

April 17, 1979.

A PROFILE OF WOMEN IN AID, SUBMITTED BY WOMEN'S ACTION ORGANIZATION

I. INTRODUCTION

When WAO attempted to assess the probable impact on women of the proposed unified personnel system, based upon past experience under the Agency's foreign service and civil service systems, it became apparent that historical information and analysis of women's employment in AID is woefully inadequate. In a letter to the Deputy Administrator in March 1979, we urged that the Agency undertake immediately a study of its women employees, in order to lend an historical perspective on how women have fared under the dual system; to develop baseline data from which to make better judgments about the probable effect on women of the proposed unified system; and to provide a basis for recommending future actions which might improve women's employment status. While AID management agreed in principle to sponsor such a study and accepted WAO's offer to consult on the scope of the investigation, it does not appear that the study will be undertaken in the near future, ostensibly because there are no funds to support it.

Believing that the need for AID management to have this information is urgent, WAO has compiled from both official and unofficial sources a profile of women in AID. We used the best data we could obtain, fully aware that the information we have gathered has limitations. But even with these limitations, the picture revealed is: that women's overall position in AID is not improving; that at the higher levels in both civil and foreign service it is deteriorating; that civil service appears to have provided women better career opportunities than the foreign service; that women are lower graded in both systems than their male colleagues; and that women remain underrepresented in occupations other than those in which they have traditionally been found (e.g., secretary/clerical, health, education). Regrettably, we are forced to conclude that the overall impact of affirmative action on the status of women has been, at best, marginal.

Analysis of the attached tables covering various aspects of employment will support these assertions.

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

II. HISTORICAL PERSPECTIVE ON NUMBERS AND PERCENTAGES (SEE TABLES I AND II)

A. Civil service (GS)

The overall number of civil service employees dropped from 1971 to 1975 and began to increase again by 1978. The total number of women employed followed this same pattern: 1359 in 1971 (61 percent); 963 in 1975 (61 percent); and 1170 (64 percent) by December 1978. It should be noted that the greatest increase in the percentage of women came at grades GS–11 and below.

With the exception of 1 female GS–16 on board in 1975, there have been no women in GS–16, 17 or 18 positions.

The number of women at the GS–15 level dropped from 18 in 1971 to 10 each in 1975 and 1978, a decrease in percentage from 8 percent in 1971 to 6.7 percent in 1978. There has been a minor increase in women employed at the GS–14 level.

The only real improvement in the entire GS scale is at the GS–13 level, where the percentage of women increased from 27 percent in 1971 to 31 percent in 1975 and to 38 percent in 1978. Women continue to be found in greatest numbers at the GS–12 level and below.

Overall increases or decreases in the GS population seem to have had no effect on women's advancement. The status of GS women has failed to improve in either situation.

B. Foreign service reserve (FSR)

The total number of FSRs decreased substantially from 1971 to 1975 and further decreased by 1978. In these three years, the percentage of women FSRs was 5 percent, 5 percent and 8 percent.

The largest increase in the number of women came at the FSR–6, 7 and 8 levels: 7 percent in 1971, 16 percent in 1975 and 35 percent in 1978. At the same time that more women were being employed at the lower levels, the percentages of women at the FSR–1, 2 and 3 levels declined from 3 percent in 1971 to 1.6 percent in 1978.

The comparison of numbers of men and women employed at the three highest FSR ranks is especially striking: 827 men *vs.* 13 women (as of December 1978).

The percentage of women FSR–4's and 5's increased from 7 percent in 1971 to 10 percent in 1978; in December 1978 there were 85 women at these levels compared with 839 men.

C. Foreign service staff (FSS)

The overall number of FSS employees has steadily decreased over the years, and is now less than half of what it was in 1971. While the overall numbers decreased, the percentage of women increased: 93 percent in 1971, 97 percent in 1975 and 96 percent in 1978.

At the same time the overall percentage of FSS women was increasing, the percent of women in the top grade (FSS–3) declined from 71 percent in 1971 to 50 percent in 1978.

It is difficult for FSS employees to achieve the top levels, since the number of senior FSS overseas positions (i.e., FSS–5 and above) has decreased markedly in recent years, especially since 1975. Moreover, FSS employees have rarely been permitted to occupy equivalent senior administrative positions in AID/W because of the potential for blocking advancement of GS employees to these higher levels.

D. Administratively determined appointments (AD)

Only in AD positions have women increased in both numbers and percentages employed overall and at the higher grades. The overall percentage of women ADs was 18 percent in 1971 and 26 percent in 1975. When the number of AD employees increased to 93 in 1978, the overall percentage of women increased by only one percent, to 27 percent.

At the AD–15 level and above, there were 15 women in 1978, up from 1 in 1971, an increase from 2 percent to 21 percent. During this time the total number of appointments at AD–15 and above fluctuated from 61 in 1971, to 46 in 1975, to 70 in 1978.

While women ADs improved percentage-wise at the higher levels, they fell behind at the AD–12 to 14 levels: 36 percent in 1971, 33 percent in 1975 and 28 percent in 1978.

Women accounted for 77 percent of the appointments at AD–11 and below in 1971. By the end of 1978, AD appointments at these levels were 100 percent female.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

III. WHERE WOMEN WORK IN AID AND THE COMPARISON WITH MEN (SEE TABLE III AND IV)

While we do not have complete data on all occupations within AID, we find that the available statistics point to a concentration of women in a few traditionally female occupations; limited representation in the other fields, and a consistently lower average grade for women than their male colleagues in the same field.

As one would expect, the greatest numbers and the highest percentages of women in AID are found in the secretarial, clerical and personnel fields in both the civil service and foreign service. In the other occupations, civil service women are found in the higher percentages in most fields than their female foreign service colleagues. The highest percentage of GS women, excluding clerical, administrative and personnel, are in education (50 percent) program (43 percent) and community and social development (38 percent). In the foreign service the highest percentages of females are found in health (25 percent), food for peace (11 percent) and community and social development (11 percent). Because of the areas where female IDIs are being selected, the IDI program will not improve to any extent the representation of women in the various foreign service occupations.

A noteworthy feature of all professions is the consistently lower average grades of women as compared with men. While this might be expected in the foreign service because of the increased number of women at the lower levels, we were surprised to find that it is also true in the civil service. In the GS Program Analyst category where 59 women are found (the highest number of women outside of the clerical area), the average grade for the women is GS–11.1 compared with GS–14.0 for men.

Only recently have women been appointed to be Mission Director and Deputy Mission Director positions in the foreign service. It is interesting to note that of the 3 women, who have been appointed Mission Directors to date only 1 came up through the foreign service system. The other 2 were converted from GS–15 to FSR–2. These women and those recently appointed as Deputy Mission Directors and AID representatives, come mostly from the program area in the foreign service. While some appointments of women have been made at these higher levels, there are few women either in GS or foreign service who have advanced sufficiently in rank to be considered for further higher level appointments.

IV. AGE (SEE TABLE V)

Another indication of inhibited advancement of women in AID is the striking difference between men's and women's ages in relation to rank achieved. A significant number of younger and middle-age women have been able to advance in the civil service, while the few foreign service women serving at comparable middle and higher grades are much older than their male counterparts. Women in their 40's seldom have achieved the FSR-1, 2 and 3 levels. In contrast, even with the limitations on promotions in recent years, some younger men have been able to rise rapidly in the foreign service, as evidenced by the number of men in their 30's at FSR-3 and above.

Mandatory retirement at age 60 will have a devastating impact on the number of foreign service women in the senior ranks over the next few years, since there were (as of December 1978) only 3 women under the age of 50 at these levels.

While women progressed in overall numbers and percentages in higher level AD appointments, there is a noticeable difference in the ages of men and women. Women have a much higher average age than men, and the low age for women at the AD–16, 17 and 18 levels is 23, 13 and 25 years higher than men's low age for the same grade levels.

Note: The age-grade data to which we had access is limited to white men and white women. If we were able to include the few minority women and men AD's in the statistics, it would only marginally affect the average figure, and might lower the low age for women ADs.

V. INTERNATIONAL DEVELOPMENT INTERNS (IDI) (SEE TABLE VI)

From the inception of the IDI program in 1968 to January 1979, the overall percentage of female IDIs was 18.7 percent or 80 out of a total of 428. From 1968 to 1976 few women were chosen to be IDI's. Only since 1976 has there been an increased number of women in the program. Fifty-four of 67 percent of the 80 female IDI's have been selected in the past three years.

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Female IDI's are being selected principally in areas where women have traditionally been found in AID: 29 percent of the women IDI's are in Health/Population/Nutrition; 19 percent in Program; and 12.5 percent in Education, Health/Population/Nutrition and Education have accounted for approximately 41 percent of female IDI's. These are areas which have limited potential for promotion to the higher levels in the Agency.

Women in Capital Development, Agricultural (another area of limited promotion potential to the higher levels) an Economics are few in number and their limited numbers are not in any meaningful way increasing the representation of women in these occupations.

The retention rate of IDI's (excluding those currently in training) is 73 percent for females and 79 percent for males. To date we estimate that more women than men IDI's have converted to GS.

VI. RECRUITMENT (SEE TABLE VII AND VIII)

AID's Office of Personnel and Management (PM) does not keep longitudinal statistics on its employees and cannot find out, except by reviewing individual personnel folders, when a person was hired, at what grade, and how fast he or she has risen in AID. What does exist is data on all present employees by year hired and their *present* grade. By reviewing who was hired since 1976 and who was still on board in July 1979, some useful information can be obtained on AID recruiting patterns.

The most dramatic statistic is that AID has not hired women for any position above the FSR–4 level, at least not in the past ten years. In the foreign service we find that women are being hired predominantly in health, nutrition, education, and population, while men are hired in the complete range of occupations. It is interesting to note that so far this year, 5 of the 14 men hired at the FSR–3 level were in health and population. One new area for women in the foreign service is that of Housing Advisor.

The percentage of GS women hired in 1978 and to July 1979 was 40 percent (15 out of 37) and 32 percent (11 out of 34). In marked contrast, it was 10 percent (15 out of 144) and 14 percent (17 out of 123) in the foreign service. There were 3 women out of a total of 19 AD appointments during the same time frame.

While AID's hiring of women, in overall percentage terms, is much better in the civil service, even GS women are consistently hired in much greater numbers in the lower grades. In contrast to the foreign service, GS women hired at grades GS–12 and above are found in a wide range of occupations.

VII. PROMOTIONS

Our statistics on promotion presently cover only the foreign service. AID only published the names and grades of the FS promotions and no analysis is made of the promotions as is done by the Department of State.

Last fall, the promotions included 6 FSR-3s to FSR-2. Of the 6 promoted, 1 was a woman. The ages for the men were 39, 41, 42, 46 and 53. The woman was 55. In the spring 1979 promotions, 6 FSR-3s were promoted to FSR-2. All 6 were men whose ages ranged from 41 to 43 and had been in grade from 8 to 11 years.

Of the 25 FSR–4s promoted to FSR–3, 1 was a woman aged 49, in the program area. The average age for the men was 45. Eleven of the men were under the age of 40 and 1 was 31. Ten of the promotions were in the program category, 4 in capital development, and 3 each in personnel-administration, population, and controller/audit. Four were promoted with three years in grade, 3 with four years in grade, 3 with six years, 4 with seven years, and 3 with nine. The woman was six years in grade.

From the FSR–5 to FSR–4 level, there 50 promotions, including 7 women. We have information on 6 of the 7. Two women were age 33, 1 was 37, 1 was 50, and 2 were 59.

As these statistics show rapid advancement has been possible for men, but not for women in the foreign service.

VIII. OTHER

There are a number of other aspects of women's employment which need to be analyzed. We do not know the number of GS women who have converted from FS to GS. This information needs to be compared with the number of FS men who have converted to GS as well as those who would like to convert. We know of several GS women who have sought conversion to FS for overseas assignments

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without success apparently because there were no jobs. Most have been in the program field.

We do not know the number of GS women who already have overseas experience. In reviewing the GS women who have been hired at GS–12 and above, we found many who appear to already have overseas experience.

Although the number of FS jobs overseas appear to be remaining stable or decreasing slightly, the Agency is requiring that a GS employee cannot convert to FS unless there is an overseas job for immediate assignment. Thus, there will be few conversions. GS women, already with FS and overseas experience, who cannot be subjected to world wide availability of service, will be eliminated from any career with AID.

There has been a growing number of GS women who work part time. Of the 196 GS women from GS–12 to GS–15, 15 or 7.6 percent are part-time. We have no information as to whether these women will ever wish full-time employment.

We do not know the exact number of married FS women with spouses in the foreign service or outside. However, the number is growing and unmarried women no longer predominate in the foreign service. While there is increasing concern and awareness of employment of spouses in the foreign service, WAO continues to find FS employees having great difficulties in finding employment for their spouses overseas.

Data and analysis are urgently needed to understand the full impact the unified system will have on the already low status of women in AID. However, there can be no doubt that foreign service women are far behind their female GS colleagues and that any decrease in the status of GS women will have a very damaging impact on the overall status of women in AID. It is clear that the unified system will dramatically lower the status of GS women.

EMPLOYMENT AND WOMEN IN AID—A COMPARISON
[Full and parttime]

	1971		1975		1978		Percentage female to total		
	Total	Female	Total	Female	Total	Female	1971	1975	1978
GS–18			1		1			0	0
GS–17	5		3		4		0	0	0
GS–16	9		8	1	4			12.5	0
GS–15	223	18	138	10	149	10	8.0	7.0	6.7
GS–14	196	35	164	27	195	37	18.0	16.0	19.0
GS–13	195	53	164	51	185	70	27.0	31.0	38.0
GS–12	145	76	127	56	155	79	52.0	44.0	51.0
GS–11	149	95	100	66	95	66	64.0	66.0	69.5
GS–10	4	3	12	12	17	12	75.0	100.0	71.0
GS–9	211	149	113	78	127	97	71.0	69.0	76.0
GS–8	49	44	64	54	62	54	90.0	84.0	87.0
GS–7	298	247	194	171	189	160	83.0	88.0	85.0
GS–6	227	205	204	185	255	239	90.0	91.0	94.0
GS–5	262	226	179	161	241	221	86.0	90.0	92.0
GS–4	182	147	92	78	133	107	81.0	85.0	80.0
GS–3	65	50	14	12	16	15	77.0	86.0	94.0
GS–2	15	11	1	1	4	3	73.0	100.0	75.0
GS–1	1								
Total	2,236	1,359	1,578	963	1,832	1,170	61.0	61.0	64.0
AD–18	13		12	3	13	2	0	25.0	15.0
AD–17	14		5		9	2	0	0	22.0
AD–16	13		14	1	25	3	0	7.0	12.0
AD–15	21	1	15	3	23	8	5.0	2.0	35.0
AD–14	4		3		8	1	0	0	12.5
AD–13	5	3	5	3	5	2	60.0	60.0	40.0
AD–12	2	1	1		5	2	50.0	0	40.0
AD–11	4	2					50.0		
AD–10			1	1				100.0	
AD–9	9	8	4	4	4	4	89.0	100.0	100.0
AD–8			1	1				100.0	
AD–7			2	1	1	1		50.0	100.0
AD–6			1					0	
AD–5	2	1	2				50.0	0	
AD–4									
AD–3									
AD–2									
AD–1									
Total	87	16	66	17	93	25	18.0	26.0	27.0

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Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

EMPLOYMENT AND WOMEN IN AID—A COMPARISON—CONTINUED
[Full and parttime]

	1971		1975		1978		Percentage female to total		
	Total	Female	Total	Female	Total	Female	1971	1975	1978
FSR-1	185	1	103	2	69	1	1.0	1.0	1.0
FSR-2	500	11	287	5	252	5	2.0	1.7	2.0
FSR-3	1,044	32	546	11	506	7	3.0	2.0	1.0
FSR-4	843	46	488	23	589	44	3.0	5.0	7.5
FSR-5	611	56	334	32	250	41	9.0	10.0	16.0
FSR-6	277	22	35	5	78	63	8.0	14.0	37.0
FSR-7	122	5	33	6	31	11	4.0	18.0	35.5
FSR-8	3				2		0		0
Total	3,585	173	1,826	84	1,775	138	5.0	5.0	8.0
FSS-1	1						0		
FSS-2									
FSS-3	7	5	5	3	4	2	71.0	60.0	50.0
FSS-4	28	23	23	20	12	10	82.0	87.0	83.0
FSS-5	76	69	58	58	42	42	91.0	100.0	100.0
FSS-6	144	139	90	86	74	70	97.0	96.0	95.0
FSS-7	184	173	120	119	56	56	94.0	99.0	100.0
FSS-8	99	94			3	3	95.0		100.0
FSS-9	8	7			11	11	87.5		100.0
FSS-10	5	4			1	1	80.0		100.0
Total	552	514	296	286	203	195	93.0	97.0	96.0

TABLE II.—EMPLOYMENT AND WOMEN IN AID—A COMPARISON BY GRADE GROUPINGS
[Full and part time]

	1971		1975		1978		Percentage female to total		
	Total	Female	Total	Female	Total	Female	1971	1975	1978
GS:									
15-18	237	18	150	11	158	10	8	7	6
12-14	536	164	455	134	535	186	31	29	35
7-11	711	538	483	381	490	389	76	79	79
1-6	752	639	490	437	649	585	85	89	90
Total	2,236	1,359	1,578	963	1,832	1,170	61	61	64
AD:									
15-18	61	1	46	7	70	15	2	15	21
12-14	11	4	9	3	18	5	36	33	28
7-11	13	10	8	7	5	5	77	88	100
1-6	2	1	3				50		
Total	87	16	66	17	93	25	18	26	27
FSR:									
3-1	1,729	44	936	18	827	13	3	2	1.6
5-4	1,454	102	822	55	839	85	7	7	10
8-6	402	27	68	11	111	40	7	16	36
Total	3,585	173	1,826	84	1,777	138	5	5	8
FSS:									
3-1	8	5	5	3	4	2	63	60	50
7-4	432	404	291	283	184	178	94	97	97
10-8	112	105			15	15	94		100
Total	552	514	296	286	203	195	93	97	96

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

TABLE III.—WOMEN AND SELECTED OCCUPATIONAL CATEGORIES IN AID, 1978

Occupation	Total women	Female total (percent)	Women [1]		Average grade			
					Civilian service		Foreign service [2]	
			CS	FS	Male	Female	Male	Female
Secretary	471	99	311	160	----------	6.7	6.0	6.1
Clerk-typist	111	85	111	----------	----------	3.9	----------	----------
Clerk-stenographer	90	97	87	3	5.0	4.9	----------	8.0
Program analyst	87	20	59	25	14.0	11.1	3.5	5.0
International cooperation	31	16	27	4	13.5	12.9	2.8	5.0
Administrative officer	25	34	19	6	13.2	11.0	3.4	6.0
Accounting	22	11	18	4	12.5	10.0	3.7	4.5
Personal management	22	51	12	9	13.2	11.8	3.3	4.4
Public health program	19	33	3	16	13.8	13.0	3.9	4.8
Contract procurement	22	28	22	----------	12.9	11.3	3.1	----------
Economist	17	10	11	6	13.7	10.5	3.6	4.8
Financial analyst	17	9	5	12	13.8	11.6	3.5	5.0
Social science	17	25	9	8	14.6	12.6	3.5	4.3
Computer specialists	16	29	16	----------	12.7	12.2	----------	----------
Program management	8	5	1	4	15.0	15.0	2.4	3.8
Financial management	5	8	----------	5	15.0	----------	2.9	6.2
General attorney	3	6	3	----------	14.4	13.0	2.8	----------
General biological science	3	4	----------	3	14.7	----------	3.2	5.0
General engineer	2	3	----------	2	14.4	----------	3.1	5.0

[1] Number of civil service and Foreign Service do not always equal total number of females. Difference is due to AD and EX females.
[2] Excludes FSR limited (Ls) except where Ls are a major component of the total number.

TABLE IV.—FUNCTIONAL DISTRIBUTION OF WOMEN IN AID BY MAJOR SKILL AREA, FULL TIME, JULY 1978

	Foreign service		Civil service	
	Women	Percent of total	Women	Percent of total
Executive management:				
1 Executive personnel	3	3	6	18
2 Program and economic officers	26	8	99	43
9 Program management	8	6	1	50
20 Business and finance	2	8	12	23
Subtotal	39	7	118	37
Program/project development and implementation:				
10 Agriculture	4	2	4	18
15 Food for Peace	3	11	0	0
25 Engineering	1	1	2	12
50 Health	12	25	1	6
55 Population	3	6	2	3
60 Education	4	10	17	50
70 Public administration	0	0	0	0
80 Community and social development	3	11	5	38
94 Capital projects/development loans	5	4	8	24
95 International development interns (IDI's)	35	31	0	0
Subtotal	70	10	39	27
Program and project support:				
3 Administrative management	9	9	118	54
4 Comptrollers	6	4	26	37
6 General service	3	6	3	43
8 Administrative management	0	0	6	15
27 Equipment operations and maintenance/computer specialists	0	0	2	100
85 Legal	0	0	6	19
91 Participant training	1	7	2	22
93 Procurement	0	0	21	28
Foreign Service staff	189	96	0	0
7 Administrative support—Secretary-stenographer, administration	0	0	224	69
5 Administrative support—Clerical, mail	0	0	537	67
Subtotal	208	32	945	70
Grand total	317	16	1,102	61

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

TABLE V.—AGE COMPARISON OF WHITE[1] MEN AND WHITE[1] WOMEN IN AID, DECEMBER 1978

Grade	Total		Average age		Low age	
	Men	Women	Men	Women	Men	Women
GS–15	130	9	51.1	44.0	34	34
GS–14	148	70	47.0	46.9	31	29
GS–13	96	57	44.3	43.3	27	27
GS–12	54	41	40.1	44.0	27	28
AD–18	10	2	45.9	63.0	37	62
AD–17	7	2	44.1	52.0	37	50
AD–16	22	2	47.0	53.0	30	53
AD–15	13	7	43.8	46.0	32	35
AD–14	6	1	42.5	55.0	29	55
AD–13	2	2	34.0	32.0	34	31
AD–12	3	2	28.0	37.0	29	34
FSR–1	59	1	53.1	57.0	37	57
FSR–2	220	5	51.5	55.6	38	45
FSR–3	447	7	49.7	48.4	34	38
FSR–4	401	24	43.2	48.2	29	31
FSR–5	133	30	35.3	38.9	27	27
FSRL–1	2	----	56.0	----	57	----
FSRL–2	7	----	54.7	----	43	----
FSLR–3	26	----	48.3	----	36	----
FSLR–4	80	17	40.8	37.8	28	29
FSLR–5	43	3	37.1	41.7	30	28

[1] Includes all employees except black, Hispanic, native American, and Asian.

INTERNATIONAL DEVELOPMENT INTERNS, FEMALE, JANUARY 1968 TO JANUARY 1979

Field	Total female	Percent of total female	On board July 1979	Departed by July 1979
Health/population/nutrition	23	29.0	19	4
Program	15	19.0	13	2
Education	10	12.5	10	0
Capital development	8	10.0	6	2
Agriculture/agriculture economics	7	9.0	6	1
Anthropology/sociology	6	7.5	4	2
Accounting/controller	5	6.0	4	1
Economics	3	4.0	3	0
Administration	1	1.0	1	0
Science and technology	1	1.0	1	0
Engineering	1	1.0	0	1
Total	80	100.0	67	13

TABLE VII.—PRESENT AID EMPLOYEES BY YEAR HIRED AND PRESENT GRADE

	1979[1]		1978		1977		1976	
	Total	Female	Total	Female	Total	Female	Total	Female
GS–18								
GS–17					1	----		
GS–16								
GS–15	6	1	6	1	4	----	10	----
GS–14	6	1	9	2	19	3	14	5
GS–13	17	5	14	8	18	3	4	2
GS–12	5	4	8	4	15	4	6	1
Total	34	11	37	15	57	10	34	8
AD–18			2	----	7	1	----	----
AD–17			----	----	2	----	----	----
AD–16	1	1	3	----	5	1	4	----
AD–15	5	----	2	----	7	4	1	----
AD–14	4	1	----	----	4	1	----	----
AD–13			1	----	3	1	----	----
AD–12			1	1	1	----	2	1
Total	10	2	9	1	29	8	7	1
FSR–1					4	----	2	----
FSR–2	1	----	4	----	4	----	1	----
FSR–3	14	----	8	----	10	----	9	----
FSR–4	44	3	67	6	22	5	13	5
FSR–5	24	5	30	2	44	11	56	12
FSR–6	10	1	15	5	32	12	----	----
FSR–7	29	8	18	2	5	3	----	----
FSR–8	1	----	2	----	----	----	----	----
Total	123	17	144	15	121	31	81	17

[1] To July 19, 1979.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

TABLE VIII.—PERCENTAGE FEMALE OF OVERALL RECRUITMENT

	1979 [1]	1978	1977	1976
GS-18			0	
GS-17				
GS-16	17	17	0	0
GS-15	17	22	16	36
GS-14	29	57	17	50
GS-13	80	50	27	17
GS-12				
Total	32	40	18	24
AD-18		0	14	
AD-17			0	
AD-16	100	0	20	0
AD-15	0	0	57	0
AD-14	25		25	
AD-13		0	33	
AD-12		100	0	50
Total	20	11	28	14
FSR-1			0	0
FSR-2	0	0	0	0
FSR-3	0	0	0	0
FSR-4	7	9	23	26
FSR-5	21	7	25	21
FSR-6	10	33	38	
FSR-7	28	11	6	
FSR-8	0	0		
Total	14	10	26	21

[1] To July 19, 1979.

FOREIGN AFFAIRS EMPLOYEES COUNCIL,
Washington, D.C., December 17, 1979.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Arms Control, Oceans, International Operations and Environment, Committee on Foreign Relations, The Senate, Washington, D.C.

DEAR SENATOR PELL: May I submit for the consideration of your Subcommittee some specific comments on S. 1450. I do so on behalf of the Foreign Affairs Employees Council, composed of American Federation of Government Employees unions in foreign affairs agencies. If you wish, I would, of course, be glad to testify at further hearings. Otherwise, I hope that you will consent to place this material in the record of your hearings.

(1) A major purpose of S. 1450 is to undo by legislation a costly evasion of both Civil Service and Foreign Service laws by a previous administration. We ask why State does not liquidate its mistake by administrative action what it had created by regulation. The U.S. International Communication, utilizing its authority under the Pell-Hays Act of 1968 accomplished this result by negotiating a practical and mutually satisfactory agreement with AFGE 1812. We insist that the formula should not be altered by post facto legislation. To do so would be to dishonor the essence of the employee-management relationship under Executive Order 11636 which the Department of State had arranged with President Nixon.

(2) We also oppose very vigorously any language which would or could be interpreted to dilute USICA control of its Foreign Service. Any absorption of the FS Information Officer Corps into a State Department-controlled Foreign Service would sorely impair the professionalism of public diplomacy. We believe that experience has shown the wisdom of your reasoning when in 1965–66 you opposed the absorption of the then USIA Foreign Service Career Officers into the FSO system and when you sponsored the legislation which established the FS Information Officer system under the control of the Director. We believe that it would be a disservice to the FSO Corps to create another "cone" and dilute the professionalism of political and economic officers and communicators by interchangeability. We need more expertise rather than generalism within the two agencies.

(3) The grievance appeals system needs strengthening. In addition to matters discussed at the hearing on December 14, we urge you to provide authorization for the payment of attorneys' fees along the lines of the provisions contained in

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

the Civil Service Reform Act. However meritorious the complaint may be, few officers can afford the costs of litigation against an agency which can drag out proceedings in extensive paper work and delaying tactics. Costs in *Lindsay v. Kissinger* approximate $60,000 and in the six or seven years since then, fees have at least doubled. The four plaintiffs certainly could not afford such an undertaking and the Thomas Legal Defense Fund had to resort to borrowing substantial amounts in order to win the decision which for the first time introduced the constitutional right of due process within the State Department's Foreign Service system. It cost the AFGE about $50,000 to prove the flagrant illegality of the original FAS regulations, leaving regrettably a judicial loophole through which State proceeded to fabricate the system which State now asks Congress to destroy. Neither individual officers nor outside organizations should be forced to expend such sums to challenge management abuse of its authority or other administrative errors without hope of recompense.

(4) With reference to the request of AFGE National President Blaylock for the inclusion of provision for FS Retirement annuity credits for certain former BiNational Center "grantees." I recall that you personally had sponsored such an item in 1977 within the Authorization Bill and that it was stricken during the conference committee negotiations at the insistence of a House Committee member on the basis that the matter had not been considered by the House and that the costs had not been analyzed. I therefore request that you include in the record a copy of data which I submitted on August 3 of this year to the joint subcommittees of the House. It shows that the number of prospective beneficiaries appears not to exceed nine and that the amount of their annuities would probably average $2,000. Each would of course be required to contribute their share of the costs as if the amounts had been withheld originally, plus interest. I refer to Attachment A.

(5) On other issues such as incentive pay, and especially to the whole subject of legislative and administrative background for S. 1450, I ask you also to consider and include in the record Attachment B which I prepared on the basis of more than 20 years' experience.

Sincerely,

BERNARD WIESMAN, *President.*

ATTACHMENT A

FOREIGN AFFAIRS EMPLOYEES COUNCIL,
Washington, D.C., August 3, 1979.

Hon. DANTE B. FASCELL,
Chairman, House Foreign Affairs Subcommittee on International Operations,
Hon. PATRICIA SCHROEDER,
Chairwoman, House Post Office and Civil Service Subcommittee on Employee Ethics and Utilization.

DEAR MS. CHAIRWOMAN, DEAR MR. CHAIRMAN: In connection with the amendment to provide Foreign Service Retirement credits for an extremely limited number of individuals once employed as BiNational Center Grantees by the Department of State and/or the International Communications Agency (while operating as the U.S. Information Agency), as petitioned for by AFGE National President Kenneth T. Blaylock, I wish to supply a complete listing of the only persons whom I know to be eligible under such an amendment.

To its credit, USIA eventually admitted that BNC grantees had in fact been employees and vainly sought the concurrence of the Civil Service Commission in granting credits since Staff employees had at that time been under the CS system. In 1966 USIA terminated the BNC fiction which State had originated at a time when Embassy personnel were not expected to have direct contact with the citizens of other nations outside of diplomatic channels. USIA appointed the younger grantees as FS Staff officers. As testified, the Federal Court in 1973 swept aside the fiction and declared that the individuals as a class had been Federal employees.

But some gross inequities remain. Citizens who would now be FS Retirement annuitants if the 1973 decision had been in effect during their employment have been refused any credits by the strict application of the letter of the law by the Department of State. Even at a time when that Department was pressing domestic employees to accept the advantages of the FS Retirement formula, it has persistently resisted granting credits for BNC employment in four successive

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Federal Court proceedings until forced to yield. Our appeal to you is on behalf of a handful of former BNC grantees whose potential annuities might not total as much as that of a single senior officer retiree at today's scales.

Having been the AFGE 1812 officer handling all BNC matters since about 1966, inquiries from possible claimants have been referred to me. Yet I am aware of only nine individuals who might benefit from the proposed amendment, and one of those can qualify for an annuity even if the amendment were not adopted because he is currently employed in a GS position and can get credit for his BNC years through a contribution to the Civil Service Retirement Fund. The nine are as follows:

Paul Y. Johnson, Newport, R.I., BNC grantee Feb. 17, 1960—Feb. 26, 1966; FSS Feb. 27–April 9, 1970 under a "limited indefinite" appointment because of an Agency policy at that time against appointment of persons of his age (then 54) to a regular Staff position when he would be eligible to continue until age 70 (USIA Staff was then under CS Retirement, coming under FS only in 1968 under PL90–494).

Isabel L. de Herwig, Los Angeles, Calif., FS Staff, Rio de Janeiro, 1945–1953; BNC grantee, Brazil, Jan. 1955–Feb. 1966. Under State practice at the time, she withdrew her contributions in 1953 and so is ineligible for any annuity even for that period unless the amendment is passed. Yet she has had 19 years of Federal service!

George P. McCallum, Madrid, BNC grantee, Sept. 1948–Jan. 1951, GS employee State and USIA, Jan. 1951–Oct. 1953 (when RIF'd in the severe budget cut of that year and required under State-USIA practice at the time to withdraw his contributions from the CS Fund), BNC, July 1955–Aug. 1959, a total of nine years plus 3 years Army in WW II.

William R. Hughes, Viburnum, Missouri, Army Dec. 17, 1941–Jan. 11, 1945, BNC grantee Nov. 2–Feb. 26, 1966, FSS Limited Indefinite (same age problem as Johnson's)—Feb. 27, 1966–April 18, 1970; FS Limited Reserve, April 1970–Nov. 20, 1970 (when he and several other PSRs had their appointment canceled because of a severe budget cut); a total of eight years plus Army.

The following five were given FS Staff appointments and under CS Retirement coverage as were all other USIA FS personnel (except Limited Indefinites) until the FS career legislation of 1968, but were persuaded by an announced Agency intention of terminating FSS appointments in BNC director positions to accept FSR appointments in April of 1970, thereby losing FSS tenure and becoming subject to career cancellations in the November budget cuts of that year:

Roger D. Hinkley, Springfield, Va. BNC May 1955–June 1966, FSS June 1–April 1970, FSR Apr.–Nov. 1970, 15½ years total service.

Wallace E. Whipple, BNC Aug. 1965–July 1967, FSS July 1967–Apr. 1970, FSR Apr.–Nov. 1970. Total 5¼ years.

William T. Cozort, Cortland, N.Y. BNC 1961–1966, FSS, 1966–Apr. 1970, FSR Apr.–Nov. 1970. Total 9 years.

Gordon L. Scott, Gardena, Calif. BNC, May 1960–Feb. 1966, FSS Feb. 1966–Apr. 1970 FSR Apr.–Nov. 1970. Now in a GS position and under CS Retirement system. Total 10½ years.

James O. Ferguson, Address unknown and service dates not known by me.

Their grades were around the FSR–4 levels which in 1970 were about $10,000 and for an average of 10 years service would average about $2,000 in FS Retirement annuities.

I trust that this data will demonstrate the extremely low cost of providing long-overdue equity to officers who had served their country well.

Sincerely,

BERNARD WIESMAN, *President.*

ATTACHMENT B

STATEMENT OF FAEC PRESIDENT BERNARD WIESMAN ON THE PROPOSED REWRITING OF THE FS ACT

The Secretary of State has asked Congress to enact a new Foreign Service Act and to complete the task this year. He did so on June 21 when less than six months of Congressional deliberation are possible and even then he was unable to present to the joint committees any final agreed-upon text from the Executive Branch.

The Foreign Service Act of 1924, while often amended, has been rewritten only once and that was in 1946 when World War II had dramatized the extreme inadequacy of the pre-war diplomatic machinery. If a similar emergency exists

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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today, revision should indeed become a top priority for this Congress. No such hypothesis should be accepted, however, without clear proof: first, of actual emergency; secondly, of persuasive evidence that the specific legislative changes are required; and thirdly, of plausible argument that the requested revision would actually produce beneficial results.

I submit that no showing of real urgency has been offered. I suggest that the inability of the Executive Branch to agree upon a basic text prior to June 21 indicates inadequate study, inconclusive discussion, and cut-and-paste draftsmanship. I believe that some of the proposed changes would be more destructive than constructive.

As the Commission on the Organization of the Government for the Conduct of Foreign Policy ("Murphy Commission") concluded in June 1975, after an intensive study of State's personnel, "the problem is not statutory."

The asserted purpose of the Secretary's presentation is to correct trouble in the Foreign Service which was created not by statute but by management fiat. It can be corrected as easily by administrative regulation. In fact, much of the Secretary's text would constitute a Congressional repealer of a personnel system concocted under the mantle of previous Secretaries by bureaucratic assertions of statutory authorization. To those of us who spent time and money in protracted effort to prevent the original abuse, the Department's present proposals seem both sanctimonious and farcical.

We are indeed eager to achieve some minor amendments of the Foreign Service Act, but we see great danger in any hasty rewriting of a 55-year-old statute which is broad enough to encompass by competent management almost all the provisions which the Secretary asks you to engrave into the U.S. Code. As for any such legislation, careful research and discussion should be a prerequisite to your consideration. Delay will be far less dangerous than any premature tinkering with an intricate system.

Let me demonstrate the prudence of my advice by a summarization of the recent personnel history of the Department of State and the International Communication Agency (formerly U.S. Information Agency) there I was employed from January 1 of 1945 until my voluntary retirement as a GS–15 in 1970 and in which I have been an officer of AFGE 1812 since it was chartered on January 1, 1958. I shall mention A.I.D. only briefly because its system has been generally quite separate from State and I.C.A., but I do call attention to the fact that the Same Executive Branch which sponsors most. if perhaps not all, of the Secretary's text has similarly endorsed a personnel plan for AID which is diametrically opposite the Department's proposal.

In sketching this history as briefly as possible, I urge your Committees not merely to accept my recital but to subject my comments to detailed study by your staffs or by the Library of Congress or the G.A.O.

ORIGINS OF THE PROBLEM

The Rogers Act of 1924 climaxed many years of effort to build a career service by combining the Diplomatic Service and the Consular Service into the Foreign Service of the United States. The aim was to create a highly professional corps of carefully chosen officers who would progress from junior officer even to ambassadorial rank and eventual retirement. It was to professionalize, to avoid politicalization of, the Foreign Service. The current proposal would at top grades reverse that commitment.

The Foreign Service Act of 1946 was framed as an outgrowth of the experience in World War II when the small corps of professionals had to be greatly augmented by experts from many fields. Under the Act. the Foreign Service Officer was to be the professional diplomat, the careerist for service abroad; the FS Reserve Officer was to be an expert appointed for a tour of not over 55 years to supply skills needed in the Foreign Service; SF Staff officers were to supply clerical or technical services abroad; Civil Service officers who might be appointed as FSR experts were to be assured resumption of GS status in the Government agency from which they had been recruited. Within the Department, the Civil Service Act continued to govern domestic staffing with the continuity customary in any agency. Only FSOs were originally covered by the Foreign Service Retirement and Disability System. Thus a Ralph Bunche, for example, who came in during the war as a G.S. officer to provide domestic guidance on dependent areas continued as such even when detailed to a series of international conferences.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

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The Foreign Service Act of 1946 set forth first as a purpose, and still does even after 34 years of amendments, "to enable the Foreign Service to serve abroad the interests of the United States."

Well, what Secretary Vance is asking now in effect is merely to reiterate that basic criterion of the Foreign Service and to end the distortion of the FS Reserve by which his predecessors had induced by stick and carrot so many hundreds of GS employees, new or old, into an obviously self-contradictory "domestic Foreign Service."

If an amendment to the law were needed to accomplish this reform, I would urge immediate action. But let us look at the record. In USIA where a previous management had dutifully followed State's dictum and created an identical "Foreign Affairs Specialist" system on intelligent leadership sat down with AFGE 1812 as the exclusive bargaining agent for both GS and FS and negotiated a simple and sensible formula to restore the 1946 principles to all future recruitment and staffing, making due allowance for the rights of those who had been induced to enter the FAS program. This course was ratified by the present Director of ICA, a career officer who had witnessed the abortive experiment.

Why can't State do likewise now, instead of asking Congress to put into rigid statute what management can do by regulation? I suggest that State's personnel management has for many years been exceptionally incompetent and evasive. For many years its people found the restriction of the Civil Service uncomfortable. They longed for the so-called flexibility of the Foreign Service where an officer could be moved about at will and controlled by the spectre of selection-out. Now, having been forced to operate the long-touted unified system, they seem unwilling to accept the responsibility of undoing their own concoction and, once again, prefer to dream up another grand plan to merchandise.

It has been almost routine procedure for many years to have special studies made as to how foreign affairs should be administered. Usually State has been well represented on the commissions created for this purpose.

The first Hoover Commission of 1949, the Rowe Committee of 1950, and the Wriston Committee of 1954 all assumed that the Departmental and Foreign staffs should be combined under Foreign Service. Hence from 1954 to 1957, "Wristonization" was the order of the day, with Civil Service officers facing orders to join Foreign Service or seek employment elsewhere. An FSO corps of some 1900 in 1954 became a Wristonized force of 3,700. Though once dogma in Foggy Bottom, the Wristonization program in retrospect is now generally admitted to have been a gross example of overkill.

Prior to Wristonization, relatively few FSOs were assigned to Washington duty but the Congressional directive that FSOs must be "reAmericanized" by a required tour of at least three out of the first fifteen years of duty increased the number substantially. For such assignments, FSOs had to demonstrate qualifications for whatever position they were given and had to be paid extra if the Civil Service position level exceeded the salary for the FS class of the assignee.

In 1960, to facilitate "reAmericanization" assignments to the U.S. and for the stated purpose of saving the estimated $200,000 to $300,000 added pay costs, the Department sought and secured an amendment to authorize the Secretary "notwithstanding, the provisions of the Classification Act of 1949 as amended to classify positions in or under the Department which he designates as Foreign Service officer positions to be occupied by officers or employees of the Service" (Section 441B), Legislative history is sparse. The Department stated its need and the estimated savings; Congress enacted the provision, not to displace GS employees but simply to facilitate temporary placement of FS officer while on U.S. duty. No mention was made of FS Reservists who, after all, were to be hired only for temporary duty overseas and not to need "reAmericanization."

The postwar proliferation of overseas functions for the Department of State and of domestic agencies with overseas involvements brought extensive use of reserve and staff appointments. The Marshall Plan was but one example of overseas staffing under separate administration. In 1953, when Secretary Dulles sought to concentrate the Department's energies on political and economic issues and avoid the distractions of other functions, the postwar overseas information and exchange activities were taken out of State and placed in a new agency, the U.S. Information Agency. Authorities were delegated to USIA for appointment of FSS and FSRs, both serving under the CS Retirement system.

Meanwhile, following another study, this time by the Herter Commission, Deputy Under Secretary William J. Crockett proposed to bring all overseas civilian officers under State's Foreign Service and to bring all domestic positions

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

in State, USIA, and AID, even typists and messengers, into a new Foreign Service categroy. Other agencies balked at the plan and it was further modified after arrival on the Hill where it became the Hays Bill of 1965, endorsed by President Johnson and the Civil Service Commission. Sharp opposition by AFGE, AFL-CIO, and veterans group almost blocked approval in the House and led to the designation of a special subcommittee in the Senate to examine the Bill and an accompanying proposal to appoint almost all USIA "FS Career Reserve" officers as FS Officers. By late 1968, the Senate Committee on Foreign Relations effectively buried the measure.

Even though the Department had argued that passage of the Hays Bill was necessary in order to authorize the Foreign Service to take over the domestic staffing of State, AID, and USIA, Deputy Under Secretary Crockett blandly asserted that the Department could proceed by administrative action to accomplish what it had failed to win through legislation. He said the process would merely take more time. He proceeded to offer Foreign Service appointments to GS officers with salary increases of varying amounts and at the same time to announce that GS officers would have little chance of ever getting promoted.

State and later USIA negotiated an agreement with Civil Service whereby career FS officers with 3 years experience could receive GS career status within their areas of competence and GS careerists could get FS tenure. This simplified the Crockett operation even though it did not purport to legitimize FS displacement of GS staffing. Within USIA, a different course was being followed. The Senate had also refused to consent to the Rowan-Rusk agreement fostered by Crockett for appointment of veteran FSR-USIA officers to FSO status. The new Director, Leonard Marks, informed AFGE 1812 that he would make every effort to win career status for overseas staffers and invited the Local to cooperate by offering suggestions. #1812 responded with a full text, some of which Marks believed would never receive the required concurrent of State, where Crockett had been succeeded by a protegee, Idar Rimestad. A compromise was readily agreed upon. Marks, for example, promised to eliminate the secrecy of "development appraisal reports" within GS by his own authority and to work towards elimination within FS where State was in violation of the obvious intent of a statutory provision permitting officers to have access to their personnel records.

With Administration approval, a Bill to create a career FS system for USIA was introduced in early 1967, sponsored by Senator Pell. It conferred upon the Director of USIA the same authorities with respect to USIA FS personnel as those lodged in the Secretary of State for State's FS and brought FS Information Officers within the FS Retirement System. It also gave USIA FSS personnel the same FS retirement provisions as had a few years earlier been given State's. The Bill moved through the Senate but encountered delays in the House Subcommittee chaired by Wayne Hays.

After public hearings had been completed by that subcommittee in the spring of 1968, Chairman Hays called State and USIA management to conference with himself and his staff. He demanded that the USIA legislation amending the FS Act include a never-before discussed provision to grant tenure and FS Retirement coverage to FS Reserve officers after at least three and not more than 5 years of satisfactory service if State or USIA certifies a need for their services. If not so appointed as FSR with Unlimited Tenure or moved into FS or GS, the individual must be terminated. He asserted that State had abused the FSR authority and kept many officers dangling even atfer 15 or 20 years service, with the constant threat also that State's authority to extend the 5 year appointments was dependent upon a waiver in the annual appropriation bill where a single Member could eliminate it by a point of order (as had recently occurred temporarily). State's representatives accepted this far-reaching amendment with an alacrity which later seemed of possible significance. USIA and #1812 saw the new provision as not harmful to the career legislation and agreed. Chairman Hays directed his staff to draft the language, add it to the Bill and report the measure to the full Committee. The text was accepted without further hearing. With the same explanation offered on the floor by Chairman Hays, the amended Bill was approved at 12.05 pm on August 2, 1968. reported to the Senate where the amendment was accepted and the Bill enacted at 1.40 pm on the same day.

After the Bill had been signed, the leadership of AFSA called a public meeting on September 6 to demand that the new FSRU category be "frozen" until a number of steps be taken and until after the arrival of the next administra-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

tion. It was denounced as constituting a new career category, creating a drain on the FS Retirement Fund, and inviting politicization. AFGE responded by insisting that AFSA not interfere with USIA's implementation of its career legislation, and noting that AFSA had actually endorsed the amended measure prior to House approval,

Prior to September 6, USIA and AFGE had readily accepted a draft Executive Order which called for a minimum of 5 years overseas service for eligibility for FS Retirement. Later we learned that the draft EO had been shelved because State preferred the great flexibility of a Departmental regulation. No such restriction was ever promulgated.

RISE AND FALL OF THE "FAS"

In November 1968, the American Foreign Service Association unveiled a plan for reorganizing the Department of State and the Foreign Service along the lines of the repudiated Hays Bill. The lengthy text, entitled "Toward a Modern Diplomacy," produced under a foundation grant, prefaced by Ambassador Graham Martin, and highly publicized was never submitted to AFSA membership but, except when specific aspects were challenged, praised as an AFSA initiative. The plan would make USIA a unit within State, speed up promotions through greater use of selection out, and bring GS people into the FS system.

Management in State praised the initiative of its professional association. The new Deputy Under Secretary, William Macomber responded by setting up an elaborate apparatus with 250 professionals serving in 13 task forces to make recommendations on reorganization. They spent countless hours and produced a 610 page "Program of Management Reform for the Department of State" entitled "Diplomacy for the '70s." Extensively ballyhooed in the press as an example of self-analysis, admission of failures, and sweeping reform, the 500 recommendations were included in the November 30, 1970 report to the Secretary of State.

The central proposal was "that all officer-level positions in the Department and abroad be brought into a unified personnel system" by using the authority of Public Law 90-494 of August, 1968 (the USIA Career FS Act) which created the new category of Foreign Service Reserve Officer with Unlimited Tenure. The Report asserted that this authority would permit the establishment of a career system of "Foreign Affairs Specialists" (FAS) parallel to the FS Officer and FS Information Officer Corps.

In briefing critical AFGE officers, Department sponsors stressed the advantages of flexibility in assignments but acknowledged that their goals were to bring all officers under selection-out and under mandatory retirement at age 60. To achieve these goals, they asserted that the expenses due to the announced conversion scale, faster in-class promotions, and higher annuities would be well justified even if it might take 10 or 20 years to complete the conversion through the "voluntary" system.

The FAS program was introduced in State early in 1971 with GS, FSR and FSS personnel invited to apply for the financial advantages and promotional prospects. Non-volunteers were reminded that they could remain in GS and wither on the vine of professional stagnation.

In USIA where Deputy Director Henry Loomis had already been implementing a program of hiring or promoting only through FS wherever at all possible and of terminating FSRs at age 60, the FAS program was not formally initiated until late spring.

After futile expressions of opposition to management, Locals 1534 in State-AID and 1812 in USIA appealed to national AFGE for advice and assistance against the FAS plan and also against FS selections out without appeals procedure, due process, or fair hearing. The latter is discussed below.

Upon General Counsel advice that the FAS plan was a clear violation of the Civil Service law and unauthorized under PL 90-494, the AFGE Legal Defense Fund went into court. In August, 1971 a preliminary injunction was issued by Judge Howard Corcoran with a finding that the Government had failed to show how PL 90-494 could possibly justify the wholesale substitution of "FAS" for the Civil Service System. Instead of waiting for a hearing before Judge Corcoran, State went to the Appeals Court and shifted its argument around to the allegation that the 1960 amendment authorized the plan. The vagueness of that amendment, originally justified as needed for the temporary placement of FSOs in Departmental positions during their "re-Americanization" tours, enabled the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Government lawyers to persuade the Appeals Court to modify the injunction and return the case to the District Court. This time Judge Corcoran again declared that PL 90–494 clearly permitted appointment only of FSRs after 3 years as FSRUs (FAS) and that GS, FSOs, FSIOs, FSS could not be appointed into immediate Unlimited tenure as FAS. The 1960 authority to designate Departmental positions for FS occupancy somehow seemed to him to justify the FAS innovation. While the issue of appointment of FSRs for domestic staffing had not been specifically raised, the judge volunteered the opinion that the advantages of a single system had been affirmed by various study groups and was an initiative within the prerogatives of management.

To the disappointment of the union, management decided to proceed with the plan, postponing for three years the date upon which FSRU appointments could be made for GS and FSS officers but urging employees to apply for FSR appointments with various safeguards including retreat rights to GS effective up to such time as the FSRU status could be granted. Those already labeled FAS were treated as FSRs from the date of appointment.

AFGE could not appeal the decision because of the Court's finding that PL 90–494 had been misused, but we continued to regard the use of FSRs for domestic staffing a violation of both FS and CS Acts. We protested to Congressional chairmen, CSC, and GAO and even the Civil Service Reform League and received no response. Because of the illness of original counsel, delay occurred until Lawrence Speiser was engaged to file a new suit specifically on the misuse of the FSR appointing authority. Judge Gerhard Gesell dismissed the second suit, agreeing with State's insistence that the issue was "res judicata."

Having spent nearly $50,000 in legal costs and many months of unpaid labor, AFGE 1812 reluctantly advised members that, whatever our opinion might be, the modified FAS plan had been sanctioned by court decisions and the tacit acceptance of other authorities and that accordingly they should accept or reject the FS appointments according to the specific advantages or disadvantages of their individual circumstances under management's clearcut commitments.

Experience with the FAS program proved disappointing. The alleged disadvantages of flexibility were largely illusory. Except where personnel had remained unchanged, professional expertise was impaired and morale suffered.

The extensive reports of the Stanton Panel on March 11, 1975 and of the Murphy Commission in June, 1975 not only examined the scope of the conduct of foreign policy but also drew attention to the shortcomings of the FAS system. No longer did the concept of a unified Foreign Service seem a panacea. Congress prodded State to report on it.

Deputy Under Secretary Eagleburger and Ambassador Carol Laise as Director General of the Foreign Service came to the conclusion that the FAS program had been a mistake and that Civil Service recruitment should be resumed. Formal decision as to the future of the FAS plan was suspended because of the change in Administration.

When State's decision to abandon the concept of a unified service was communicated to USIA, management arranged a two-day conference with AFGE 1812 officers to examine ways in which the FAS program could be dismantled to constructive advantage without abrogating the commitments of management, based on court decision and apparent Congressional acquiescence. Agreement was readily reached. Essentially it was decided that FAS in the future would be used for specialists who must serve overseas at least part of the time but no new appointments would be made for domestic staffing. Those domestic specialists who had enrolled before the effective date could either retain their FAS status or revert to GS. Through formal agreement, details as to interrelationship were defined, USIA (now ICA) moved promptly to implement the decision.

The Department of State, however, has not used the management prerogative to reorganize FAS even though it had found that prerogative sufficient to institute the program. Instead State comes to Congress to seek statutory definition on FAS but does so with a proposal for other change in the FS system.

REFORMING STATE'S FS

The foregoing record of State's costly experiment with the FAS program is one indication of the fallibility of State's personnel administration. Another instance is its long-time abuse of FS personnel evaluation and selection-out.

While records of selection-out are difficult to ascertain, it was clear from the Herter Commission report that the number had increased substantially in the

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

early 60's following the large increase in FS staffing through Wristonization and political appointments. What had been a rarely used device for inducing "voluntary" retirements had become a savage Reduction-In-Force operated under arbitrary decisions and no procedure for appeals, but with top management deciding behind closed doors which individuals should be spared. Even though Congress had provided that an officer must be allowed to see his personnel records, State adopted a system of "Development Appraisal Reports," held secret from the appraised officer but shown to selection boards as candid evaluations of individual potential and hence of major weight in deciding ranking for promotion or selection-out. An officer in the bottom ten percent in rankings for two out of the previous three years was in those days subject to selection-out, even though he might be a completely satisfactory officer. The star chamber character of the process also permitted abuse; removal of papers from the personnel folder, or insertion temporarily of others, is alleged to have occurred under at least one top official no longer in the Department.

In USIA a budget cut in 1970 forced the agency to slash its FS staff in late spring. Despite its pledge not to select-out until after at least two selection boards had ranked officers after the 1968 passage of the career legislation, management consulted with AFGE 1812 as to how the cut could be made. It was conceded that the selection-out process would be the fairest approach provided that a board of review would examine all prospective removals. This decision was facilitated by the coincidence that a long delayed cost-of-living adjustment of about 10 percent, which AFGE had been very instrumental in winning after long and futile efforts by the Diplomatic and Consular Officers Retired (DACOR), would become available to those choosing to retire. However, the cut removed over 120 officers, over 10 percent of FSIOs and FSRUs, with significant concentration on the officers around age 60, and while the review process exempted a few from termination, it proved to be a makeshift device incapable of anything approaching due process.

Hence, when Local 1534 and Local 1812 appealed to the National Office on the FAS issue, equal time was devoted to discussing the inequity of existing selection-out processes. Executive VP Clyde Webber suggested that the two unions join in a Foreign Affairs Employees Council–AFGE and consider as a Council the setting up of a legal defense fund through which members and friends of the foreign affairs community could pool resources for defense of constitutional rights of employees and for handling issues of group concern. Both locals agreed and applied for a council charter which was promptly granted.

While the papers were being processed for the Fund, the tragic suicide of Charles William Thomas occurred. No case more graphically demonstrated the injustice of the Foreign Service personnel system as conducted by State. He had never been low ranked but primarily because highly commendatory evaluations had been erroneously filed in the folder of another officer of the same name, he had been passed over for promotion. And State then shortened the time-in-class requirement for selection-out. Repeated efforts to secure review simply led to a stiffening of Departmental attitudes against him, even to the extent of obstructing his efforts to secure other employment. Being only a Class IV officer and under 50, he was ineligible for any FS annuity until age 60. Heavily in debt he considered withdrawing his FS Fund contributions, but instead committed suicide in order to win a survivors' annuity for his wife and two daughters. His action shocked the foreign affairs community where he and his family were widely and favorably known. The facts in his case are a matter of public record in the Senate report by which a posthumous award was voted and approved by President Ford.

Fund officers decided, with Mrs. Thomas' permission to name the new unit the Charles William Thomas Memorial Legal Defense Fund. Retired Ambassador Fulton Freeman, who had authored the misfiled commendation, acted as convening chairman of the National Advisory Committee for the Fund. Application for income tax exemption was filed and achieved after 1½ years' effort. The firm of Hogan and Harston was retained to test the constitutionality of State's Foreign Service procedures.

As an effort to secure reform and relief without litigation, Fund officers and counsel laid the draft papers before the Assistant Secretary and the Director General, including specific cases of inequity, and urged that selections-out be suspended while corrective measures were being considered. A moratorium was agreed upon and continued for about two years. Although State worked out

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

settlements with some of the named plaintiffs, including reappointment of at least one who had been selected out, it refused to afford the remedies which the Fund deemed essential. Th facts were presented, therefore, to the Federal Court in *Lindsay* v. *Kissinger* on behalf of four named plaintiffs. Judge Gerhard Gesell agreed that Constitutional rights to due process and fair hearing had been violated and must be provided to the plaintiffs (Dec. 12, 1973: CA 1312–73). It is noteworthy that, despite failure to appeal the Court's decision, State evaded compliance with the order and left the plaintiffs dangling until the Fund went back to court almost one year later for a show cause order. Judge Gesell's comments to the Government attorney were so explicit as to cause both State and USIA to arrange hearings without further delay. All four plaintiffs were found to deserve retention despite the earlier selection-out orders.

The Fund's efforts to secure basic reform were being paralleled, meanwhile on Capitol Hill where the Senate Committee on Foreign Relations held special hearings on State's grievance procedure—or on the lack of it. In 1972 the Senate three times passed bills to set up grievance procedures in the Foreign Service, but each time State and Chairman Hays blocked House action. Sponsored by Senator Bayh, the Senate again acted in 1973 and 1974 but the bills did not reach the House floor.

State had attempted to cope with the demands for reform by providing virtual assurance that Class V and IV officers would not be selected-out for time in class before age 50 when they would be eligible for retirement annuities. State also set up a FS Grievance Board for all three agencies even while resisting any statutory system. Soon, as the Board began to order relief in individual cases, the agencies sought to evade. Finally the Board decided that its credibility and effectiveness were being so impaired that the public members announced they would quit.

This led to State's acceptance of a statutory system but only after negotiating for AFSA's acceptance of a weaker Bill which was thereupon cleared through the House and enacted in the winter of 1975.

LABOR-MANAGEMENT

In addition to protection afforded by the grievance board system against prejudicially erroneous evaluations, substantial protection against arbitrary or unfair practices by management has been built up through procedures negotiated under EO 11636 and union-management relations even earlier.

Representation of personnel in the foreign affairs agencies is a relatively recent development, especially in the Foreign Service.

One of the first locals in the American Federation of Government Employees, AFL–CIO, was chartered in the Department of State in the early '30s but it remained a small and inactive organization. It was succeeded in the late '60s by Local 1534 which had been established during the early days of the Marshall Plan with both domestic and overseas members. No. 1534 played an outstanding role in rallying support for the maintenance of civil service standards and the independence of AID where it is the exclusive representative of civil service personnel, as it is in ACDA and some GS units in State and FSI.

Local 1812 in USIA was chartered on January 1, 1958 and readily recognized by the then Director, Ambassador George V. Allen who consulted with it on issues affecting its GS, WB, and FS members. This practice continued with succeeding managements (Larsen, Murrow, Rowan) until it gained formal recognition under E.O. 10988 on behalf of GS and FS members. It took a major role in the defeat of the Hays Bill in 1966 and shared with Director Leonard Marks in the drafting, submission and legislative support of the USIA Career Foreign Service legislation in 1967–68.

The FS personnel in State from junior officers to ambassadors participated in the American Foreign Service Association as a professional and social organization, very influential on Capitol Hill as an alter ego voice for management, especially in securing the FS Act of 1946.

After Executive Order 11491 was issued, some FS and GS employees in certain units of State applied for exclusive recognition for AFGE 1534 within those units. State management and AFSA, whose then President was a senior official in one of the units, filed objections. A basic issue hinged on AFSA's eligibility to challenge in a labor management certification proceeding, it being demonstrated that all of its officers occupied high level supervisory status. Not sur-

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

prisingly, the Labor Department officials took the question into such deep consideration that no decision was ever issued. It became moot when Deputy Under Secretary Macomber and White House Counsel Colson sought a formula to remove the Foreign Service from EO 11491. Admittedly, a weekend negotiation between Macomber and top AFSA officers headed by Wm. Harrop, later an Ambassador, resulted in AFSA's acceptance of the text which became EO 11636, issued in December, 1971 by Pres. Nixon as an "Employee Management Relations" order. AFGE protested in vain but then took active part under Exec. VP Clyde Webber in the shaping of regulations as closely as possible to those under EO 11491 and the private sector.

Meanwhile, in May, 1971, AFGE 1812 won exclusive recognition under EO 11491 for all GS employees and WB relay station personnel in USIA.

In a contest under No. 11636, AFSA edged out AFGE 1812 for all FS personnel in USIA by a majority of four votes and it scored substantial majorities over No. 1534 in State and AID for FS personnel (No. 1534 having been certified for GS in AID, and in some domestic units of State and Foreign Service Institute). In April, 1976, three years later, AFGE 1812 displaced AFSA by a 60 percent to 35 percent margin and is the current exclusive representative for FS personnel in what is now the International Communication Agency (ICA).

One distinction which State pressed in justifying its plan for a separate Executive Order was that all FSO and FSIO appointments and promotions are by the president with the advice and consent of the Senate. AFGE has held that this is no adequate justification and noted that FSR, FSRU, and FSS appointments and promotions are by the Secretary or Director.

AFGE 1812 has pressed for a statutory system and welcomed the prospect of inclusion under Title VII provided that the unique character of the rank-in-person and the rotational assignments are recognized through maintenance of the present unit. FS rank is not determined by specific function, but by annual study of personnel records and evaluations by selection boards and their recommendations by "rank-order" of officers for possible promotion or selection-out. Management under negotiated precepts must predetermine in a sealed envelope the number to be promoted in each class, and follow the board's listing.

Rotation is another distinctive feature of FS careers. Today's Consul General or Public Affairs Officer may tomorrow be a research officer, or an advisor, chief of some branch or division, or a student at the War College or FS Institute. His rank remains the same whether he supervises or is supervised. Even Class I officers may in fact have no supervisory function and have as much reason as any junior officer to scrutinize his personnel file and "grieve" over erroneous material. Assignments are not static. Change every two or three years is common; to stay more than two tours in any spot is most exceptional. An FS secretary can with confidence challenge the evaluation of a current supervisor, aware that their careers will soon separate in any event, and the change can be hastened if relationships are unduly strained.

This is particularly true in ICA, where overseas support services reguiring American personnel are essentially furnished by State and where local nationals supply all but the classified typing, clerical, technical, and professional assistance. In most posts, ICA has only one or two American FSS secretaries and they have local assistants. A ratio of ten local nationals to one American ICA officer is not unusual.

If rivalry exists, it obviously is among officers of the same class, since however superlative every officer in the class may be, the selection boards must somehow select from among the class the individual most outstanding, the next most qualified, etc. down to a group of ten or twenty percent, as well as a bottom group. Under the system, if it were applied to the Supreme Court, one would be named for promotion and one named for selection-out, not on any allegation of incompetence or unsuitability but on the vague gauge of having failed to meet the competition of his class. . . . and next year, the class having again been raised to nine by promotions into the group the same process would occur.

In such a situation, obviously, the criteria which apply under Title VII to unit definition are unsuitable. While AFGE might disagree with AFSA on the inclusion or exclusion of a few specific officials, the union finds within its unit no feeling of conflict of interest and it has represented secretaries with no more difficulty than in handling the grievance of senior officer members.

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

It is hard to understand why State should have decided to propose a complete rewriting of the Foreign Service Act instead of merely complying with the directive from Congress to propose ways to strengthen and simplify the Foreign Service personnel system. This paper has shown that the Department has on previous occasions sought drastic changes and even proceeded by regulation to do what it could not win Congressional authority to legitimize and that its venture was a costly failure.

We welcome Sate's plan to halt the misuse of the Foreign Service Reserve authority. Why not simply liquidate it by regulation? Is it because State wants to win authority to do other things now forbidden and seeks through subtle language to sneak it across? Remember the misuse of the 1960 amendment concerning the designation of Departmental positions for FSOs on home assignment! I note with particular concern the provision for maximum conformity in other agencies with State's personnel system. PL 90-494 specifically grants ICA's Director the same authorities over ICA personnel overseas as granted the Secretary over State's. Is this a way to foist a unified FS upon the agencies? Let us face the facts that State has been signally inefficient and wasteful, not only in FS but in the domestic service. The Civil Service Commission's last survey was a sweeping indictment of State's practices. The 1970 "Diplomacy for the 70's" was even advertised as a self-criticism of its FS personnel system. Why then should Congress accept a blueprint from such a source.

We hail one aspect of State's plan. By dismantling FAS, State repudiates its former eagerness for age 60 mandatory retirement. Those who opt to return to GS will no longer be forced out at 60. We hope, though hesitantly, that State will soon seek the elimination of the age 60 mandatory retirement for FS personnel. We suggest that the current Bill would be a suitable vehicle for the legislation proposed by Congressman Pepper.

We also urge that any measure enacted to amend the FS Act include the long sought relief for half a dozen former "BiNational Center Grantees" which AFGE and Senator Pell proposed, individuals who by court decision were actually Government employees but labeled "grantees" as a matter of diplomatic fiction which was once deemed necessary. Somewhat similar is the case of a group of former employees of Radio Free Europe and similar agencies which were under concealed Government operation. We also supported the measure to assure wives a vested interest in annuities in the earnings of which they shared the labors, difficulties and hazards of overseas service but who lack any right to compensation in the event of divorce.

Finally may I comment on the proposals for a Senior Foreign Service. Without analyzing the provisions which are significantly more harsh than in the Senior Executive Service almost all the advantages of flexibility, incentive, assignability, and removability which are the alleged virtues of S.E.S. In fact one might argue that the Foreign Service is the model for the domestic system. When the so-called Civil Service Reform was enacted, the Foreign Service was deliberately excluded. Why now the eagerness to ape the system?

If I may express an opinion based on experience in both public and private sectors and in a position now personally as a retiree of being concerned only as a taxpaying private citizen, I would say that the two worst periods of State personnel management occurred under individuals who were in their heyday the apparent embodiment of the perfect manager envisioned in this measure. Unfortunately they were so determined to exercise their management prerogatives and so skillful in their manipulation of influence within both executive and legislative branches that they could and did foist upon the foreign affairs agencies costly vehicles which this proposal would now excise from the Foreign Service system.

And the issue of incentive pay is not new. It was once inserted into the Civil Service system with little notice until passed, and then touted as a great new way to reward the competent with "merit" step rate increases and to discipline the laggards by a withholding of periodic step increases. It happened back in the Federal Salary Reform Act of 1962. The supervisor needed only to find the latter had failed to meet "an acceptable level of competence", an undefined term which, however, was something higher than "satisfactory." Those thus deprived could only ask the top supervisor to "reconsider" which he or she would do for a minute or two before deciding the decision was correct. In our agency over eight percent of the first batch were thus penalized as management pressed supervisors to use the new authority vigorously . . . and soon an extraordinary balancing of "quality" increases and withholdings developed. We protested. AFGE went

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

to Congress. It was quickly corrected by the simple device of requiring justifications in writing and opportunity to appeal to a third person outside the immediate line of command. It had demoralized morale, created tensions, caused injustices . . . and as soon as it was amended to admit appeals, withholdings dropped from a high of 10 percent to less than half of one percent. I urge that this debacle not be repeated.

DIPLOMATIC AND CONSULAR OFFICERS, RETIRED, INCORPORATED,
Washington, D.C., February 11, 1980.

Hon. CLAIBORNE PELL,
Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: I am writing to you concerning an amendment to the proposed Foreign Service Act, now in the mark-up process in the House, which is of great interest to many retired members of the Foreign Service, and which I firmly believe to be in the national interest as well.

The amendment would apply to section 872 of the existing Foreign Service Act, which bears the same number in the last version I have seen of the proposed new Act. The legislation, as written, provides that a retired member of the Service "who is reemployed in the Government service in any part-time or full-time appointive position shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary *does not exceed during any calendar year the basic salary the member was entitled to receive under this Act on the date of retirement from the Service.*" The amendment desired would substitute for the italicized words above the following: "does not exceed during any calendar year the basic salary to which the member would be entitled under current legislation for the position held by him or her on the date of retirement from the Service."

As you know, the reason for the suggested change is that the operation of inflation, as reflected in the cost of living index adjustment, means that a Service member who has been retired for any substantial length of time is excluded by the present language from receiving any compensation whatever for service he may be asked to perform during temporary recalls from retirement. Even fairly recent retirees find the margin of additional compensation so thin as to make temporary reemployment practically unremunerative. A dramatic example has, I undertsand, been presented by the sad case of the hostages in Tehran. One of them is a retired member temporarily reemployed to do needed consular work who was due to leave shortly after the embassy seizure and whose entitlement to pay has been exceeded during his imprisonment. While some special provision may be made for this one case, it is symptomatic of the ridiculous rigidity of the present law.

It is my understanding that the Department of State desired to ask for a similar change when they presented the proposed new law to the Congress, but was precluded from doing so by a ruling from the Office of Management and Budget that such a change would constitute an undesirable precedent leading to Government-wide application, to which the Administration is opposed. My own feeling is that it is probably time, considering the facts of inflation, that this change be made Government-wide. However, there are special considerations applying to the Foreign Service which impel me to recommend that it be included in the Foreign Service Act, exceptionally, if it cannot be made of general application.

Service members now retire by law at 60 and have for some years retired at a younger age than most domestic civil servants. Their extended service abroad makes it more difficult for them to form the contacts and experience to start second careers in the private sector. Many of them, often because of their service abroad, have married late and still have dependent children or other personal commitments requiring supplementary earnings. Their training fits them peculiarly for employment in the Foreign Affairs field where the principal employer is the United States Government.

At the same time, the Government has a continuing need, to meet temporary contingencies, for services which the retirees are peculiarly competent to perform. Most of these are not glamorous jobs that one might be inclined to perform solely for prestige or intellectual challenge, but skilled drudgery, such as reviewing classified documents for declassification and/or release under the Freedom of

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Approved For Release 2008/10/27 : CIA-RDP85-00003R000100060001-4

Information Act. In some cases it may involve providing expert assistance to the Congress or other branches of government. Under the present law, the Government is deprived of a valuable, trained resource which would enable it to accomplish its work more efficiently.

I know that this problem is not new to you and that you have made efforts to correct it in past years. The continued, lamentable operation of inflation makes the need increasingly acute.

More of the retired members of the Service with whom I am in contact are raising this problem than ever before. I therefore hope that you can see fit to propose the change again and to push for its passage, even though the Department of State may raise *pro forma* opposition as a matter of Executive Branch discipline.

With renewed thanks for your constant support of a strong Foreign Service in the national interest and warm personal regards.

Sincerely,

C. BURKE ELBRICK.

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