

THE DOCUMENTS IN THIS FOLDER ARE  
NUMBERED FROM 1 TO 19.

WITHDRAWAL SHEET  
NATIONAL SECURITY FILES

ITEM #	DATE	DESCRIPTION	PAGES	CLASS.	R	Action Taken
1	<del>9/19/61</del>	<del>Robert H. Johnson memo for Arthur M. Schlesinger, Jr.</del>	<del>2</del>	<del>C</del>	<del>A</del>	D NLK-95-36 6/95
3	<del>4/17/62</del>	<del>Lucius D. Battle cover memo for McGeorge Bundy</del>	<del>1</del>	<del>C</del>	<del>A</del>	DECLASSIFIED State Guidelines, 11/96
3a /4	<del>4/18/62</del>	<del>NSAM 145</del>	<del>2</del>	<del>S</del>	<del>A</del>	D NLK-S92-2 8/94
6	<del>5/16/62</del>	<del>Abraham Ribicoff memo to JFK</del>	<del>1</del>	<del>S</del>	<del>A</del>	DECLASSIFIED HHS Guidelines, 11/96
15	<del>10/12/62</del>	<del>Michael V. Forrestal letter to Paul Nitze</del>	<del>1</del>	<del>C</del>	<del>A</del>	D NLK-95-36 6/95
19	<del>2/20/63</del>	<del>Michael V. Forrestal memo to McGeorge Bundy</del>	<del>2</del>	<del>C</del>	<del>A</del>	D NLK-95-36 6/95

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LOCATION: NSF:MEETINGS & MEMORANDA: NSAM 145, New Policy for U.S. Trust Territory of the  
Pacific Islands 4/18/62, 9/19/61-2/20/63

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WITHDRAWAL SHEET  
NATIONAL SECURITY FILES

NOTES:

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There are two copies of item 3 in the folder.

Items 3a/4 and 19 are also located in the James C. Thomson Papers: Trust Territories 1961-1966, Pacific Islands, Box 28.

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*Mr. Smith*  
~~CONFIDENTIAL~~

*Mr. Bundy*

September 19, 1961

MEMORANDUM FOR MR. ARTHUR SCHLESINGER, JR.,  
THE WHITE HOUSE

SUBJECT: U. S. Trust Territories

I am returning herewith the State position papers on U. S. Trust Territories which you loaned me last week. I have had a brief talk with Benjamin Gerig, Director of the Office of Dependent Area Affairs in Harlan Cleveland's shop, about this subject. I understand that, as a result of resistance from other departments concerned, a shorter, revised paper covering all of the territories has been prepared. As of Friday it was on its way to Secretary Rusk. You should receive it shortly. This new paper will make only two general recommendations for all of the U. S. trust territories:

a. That the U. S. refer briefly in its general statement opening the UNGA debate to its plans for consulting with the elected leaders of the various territories. This we would do anyway.

b. That State, Interior and Defense initiate a study of the longer-range problems, including recommendations to deal with those problems.

Gerig is of the view that the statement proposed in a above will suffice to deal with the present UN situation. You may want to react to the new State paper when it is received. My own feeling is that we ought to state in the UN that we are making a serious study of the long-range problems and will report the results at the next full UNGA meeting. I am not sure whether State plans to go that far.

Attached for your information is a copy of a letter written to Sam Belk by Tom Gladwin, an anthropologist friend of his who has spent sometime in the trust territories of the Pacific Islands. I know nothing about the problems of these islands other than what I have read in the State papers, but Mr. Gladwin's letter seems to me to contain a very intelligent analysis.

I have suggested to Walt Rostow, and he has agreed, that it would be desirable to have White House or NSC Staff representation

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NLR-95-36  
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on any interdepartmental group created to study the problems of the trust territories. Otherwise I fear that the natural resistance of Defense and Interior may produce glacial progress. Additional reasons for our participation include the President's interest in the subject and the fact that, since legislation is likely to be involved in any solution, the matter seems headed for ultimate Presidential consideration. Because State's interest is limited to the UN angle, its influence in any interdepartmental effort is likely to be rather marginal I fear.

I would, therefore, like to suggest that, when you get the new paper from State, you propose to Harlan Cleveland that we be represented in any interdepartmental group created to deal with the problem. In my conversation with Mr. Gerig I indicated that we might want to keep in touch with the further work on this subject. He seemed favorably disposed to the idea. I believe that State would welcome White House representation.

Robert H. Johnson

cc: Mr. Rostow  
Mr. Smith  
Mr. Belk

~~CONFIDENTIAL~~



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SIXTH GUAM LEGISLATURE  
TERRITORY OF GUAM  
AGANA, GUAM  
U.S.A.

A. B. WON PAT  
Speaker

October 5, 1961

The Honorable John F. Kennedy  
President of the United States  
The White House  
Washington, D. C.

Dear President Kennedy:

Transmitted herewith is a petition by the members of the  
Sixth Guam Legislature respectfully praying that you revoke Executive  
Order No. 8683 as it applies to the territory of Guam.

Very truly yours,

/s/

A. B. WON PAT  
Speaker

ABWP:jal



TO THE HONORABLE JOHN F. KENNEDY, PRESIDENT OF THE UNITED STATES:

Your petitioners, the only elected representatives of the people of Guam, respectfully represent that:

WHEREAS, on February 14, 1941, the late President Franklin D. Roosevelt promulgated Executive Order No. 8683 which established as a naval defensive sea area for purposes of national defense the "Guam Island Naval Defensive Sea Area," consisting of the territorial waters between the extreme high water mark and the three-mile marine boundary surrounding Guam, and forbade the entrance of any person, other than persons on public vessels of the United States, or any vessel, other than public vessels of the United States, or any aircraft, other than public aircraft of the United States, into this defensive area unless authorized by the Secretary of the Navy; and

WHEREAS, the Secretary of the Navy is still enforcing this executive order, promulgated in the face of imminent invasion from Imperial Japan, 20 years after its issuance, the enemy in the meanwhile having been vanquished and the danger of imminent invasion having long ago ceased; and

WHEREAS, in the enforcement of this executive order, the Navy has asserted the right to forbid the entry of any person--American citizen, alien, native-born resident of Guam, or anyone else, even though the Congress of the United States enacted and the President of the United States approved the "Organic Act of Guam" in 1950, which made residents of Guam American citizens and granted us a limited form of self-government with a locally elected Legislature, a Federal District Court, the Office of the United States Attorney, with a field office of the Immigration and Naturalization Service of the Department of Justice; and

WHEREAS, the enforcement of this executive order has prevented the development of any industry in Guam apart from the service industry dependent upon the military bases here, and has as well made impossible the development of any tourist trade since before a tourist can come to Guam he must first receive permission from the Secretary of the Navy; and

WHEREAS, the enforcement of this executive order in effect reduces the U. S. citizens resident on Guam to the status of second-class citizens since their entry into their home and place of residence--American soil both by treaty and Act of Congress--is subject to the whim of the Naval authorities who can and have denied entrance without giving any reason therefor; and



2a

WHEREAS, the necessity for the existence of the "Guam Island Naval Defensive Sea Area" has vanished along with the "Greater East Asia Co-Prosperity Sphere," the then enemy having been conquered, and the present enemy not being in a position nor having indicated any intention of invading this small island so remote from the Eurasian scene; and

WHEREAS, this restriction on entry into American soil is, to the knowledge of your petitioners, not imposed on any other area within the United States, even those of much more sensitive military importance, and ironically, even Okinawa, former enemy soil, occupied by former enemy aliens with a sizeable Communist minority, and with a much larger military complex, is of open access to all, compared to Guam whose people suffered and died for the United States during the war with Japan; and

WHEREAS, the USSR has raised in the United Nations the issue as to whether in fact the United States operates a colonial empire among the Pacific Islands whose citizens are alleged to be restricted in rights and deprived of any element of sovereignty and self-government, and although the people of Guam are eternally grateful to the United States Congress and the President for our priceless boon of American citizenship and limited self-government, which deep love and devotion to the United States we think we demonstrated during our three years of occupation by the enemy in the Second World War, nevertheless the existence of this outdated executive order has given rise to the conclusion that the Communist charge of colonialism in the Pacific has some element of truth in that an American military command can prevent a resident of Guam, or anyone else for that matter, from even entering this island, thus, ironically, creating an American Iron Curtain in the Pacific; and

WHEREAS, although the Secretary of the Navy recently announced the suspension of the operation of the executive order as far as it applies to American citizens, this suspension is only for six months, which makes impossible any planning to take advantage of the relaxation of this restriction since nothing can be accomplished if at the end of six months American citizens are again forbidden entry, all of which leads to the conclusion that the only permanent relief that should be properly requested by the people of Guam is the revocation by the President of the executive order in question;

NOW THEREFORE, your petitioners respectfully pray that the Honorable John F. Kennedy, President of the United States, revoke Executive Order No. 8683 as it applies to the territory of Guam.

IN WITNESS WHEREOF, we, the undersigned members of the Sixth Guam Legislature have hereunto set our hands, and the Legislative Secretary has affixed the seal of the Guam Legislature, at the City of Agana, territory of Guam, on the fourth day of October, in the year of our Lord



One Thousand, Nine Hundred and Sixty-One, and of the Independence of the United States of America the One Hundred and Eighty-Fifth.

/s/  
A. B. WON PAT  
Sinajana

/s/  
J. L. ANDERSON  
Agat

/s/  
G. M. BAMBA  
Agana Heights

/s/  
V. B. BAMBA  
Barrigada

/s/  
R. J. BORDALLO  
Tamuning

/s/  
J. C. CASTRO  
Agana Heights

/s/  
A. L. CRISTOBAL  
Barrigada

/s/  
J. P. CRUZ  
Talofofo

/s/  
A. S. N. FLORES  
Inarajan

/s/  
J. A. FLORES  
Piti

/s/  
J. C. OKIYAMA  
Yona

/s/  
P. D. PALTING  
Tamuning

/s/  
F. T. RAMIREZ  
Yigo

/s/  
J. Q. SAN MIGUEL  
Mongmong

/s/  
J. T. M. TOVES  
Asan

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EXECUTIVE ORDER 8683

ESTABLISHING NAVAL DEFENSIVE SEA AREAS  
AROUND AND NAVAL AIRSPACE RESERVA-  
TIONS OVER THE ISLANDS OF ROSE, TU-  
TUULA, AND GUAM

PACIFIC OCEAN \*\*

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water marks in the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval

Airspace Reservation", and "Guam Island Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1933 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D. ROOSEVELT  
THE WHITE HOUSE,  
February 14, 1941.

\* The word "in" was corrected by E.O. 8729 to read "and".

\*\* Under E.O. 10341, E.O. 8683 remains in force only as to the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation.



It appears to me that in the projected expenditures under the Alliance for Progress, which total approximately \$20 billion, there should be a place for the \$7 million required to launch Brazil into this area of independence from outside oil sources. I am certain, too, that the information and know-how which we can secure from the studies of an operating oil shale industry will repay our investment manifold. Such a loan is in the national interest and I am hopeful that it will be realized promptly.

APRIL 12, 1962.

The Honorable JOHN F. KENNEDY,  
The White House,  
Washington, D.C.

DEAR MR. PRESIDENT: I would assume that the recent conference with President Goulart precipitated new discussions about the possibility of our participation with Brazil in the development of the oil shale reserves there. Such discussions seem to be indicated after my proposal of last March that we participate in such a program by loaning Brazil some \$3.5 million to \$7 million for construction of a research-prototype plant.

The United States has already indicated its willingness to cooperate with Petrobras to undertake this development. It is my continuing hope that everything will be done to make this assistance available. Information and knowledge derived from participation with Brazil would be of untold economic value to both Brazil and the United States. It is understood, of course, that we would share in the benefits from all data, reports, and recommendations resulting from the operation of this prototype.

I am interested in the matter because my own State of Colorado has mountains of just such oil shale as exists in Brazil. The known reserves in this area alone amount to some 1½ trillion barrels of oil. This is more than double the entire known liquid petroleum reserves in the world today.

The attached article from the New York Times of March 18 makes the urgency of this matter common knowledge. The Soviet Union is endeavoring in every way possible to offer its money, technicians and resources.

Because of the points outlined here, and particularly the urgency of the matter, I would appreciate any information you can give me relative to any discussions or negotiations that have recently transpired, or are contemplated.

Best regards.

Sincerely yours,

GORDON ALLOTT.

U.S. AND SOVIET VIE ON HELP TO BRAZIL—BOTH WANT TO AID HER WITH SHALE OIL EXTRACTION

(By Juan de Onis)

RIO DE JANEIRO, March 17.—A belt of gray shale stretching across three Brazilian States has become a focal point of competition here between the United States and the Soviet Union.

The shale may solve one of Brazil's most serious economic problems. Impregnated with oil, the shale belt running from southern São Paulo through Parana to Rio Grande do Sul may provide the petroleum needed for Brazil's increasingly industrialized economy.

The production of oil in Brazil is a monopoly held by the state oil company, Petrobras S. A. The U.S. aid agency here has offered \$7 million in long-term credit to the company to finance the installation of an industrial pilot plant at São Mateus do Sul in the State of Parana.

This would determine whether the shale can be processed to produce crude oil at a cost that would be competitive with imported oil and oil produced in the State of Bahia, Brazil's only domestic source.

GORDON HOPEFUL

Ambassador Lincoln Gordon of the United States said in a speech yesterday in Curitiba

capital of Parana: "If this great resource could be exploited economically, it would revolutionize the power supply situation in Brazil. It would provide foreign exchange and at the same time give great impulse to industrial development of the entire southern region" of Brazil.

The Communist weekly Novos Rumos said in a front-page editorial, coinciding with Mr. Gordon's speech, that the "Alliance for Progress is making a grab for Brazil's shale." It said the American credit offer was really motivated by a plan of U.S. companies that now supply Brazil with oil to block production here.

Observers linked this editorial with the offer of the Soviet Union to provide the pilot plant and the technique to develop the shale oil on an industrial basis. In the middle of this politically charged issue was Petrobras, a federal corporation highly sensitive to criticism from Brazil's leftists.

A Petrobras engineer has studied the U.S. offer and has reported that the setting up of an industrial pilot plant and an experimental mine in the shale belt require only half the credit offered by the United States.

#### TECHNIQUE IS MAJOR ISSUE

His report favored acceptance of the offer, but the technique to be employed in working on the shale is a major issue. Involved are a laboratory formula developed by Petrobras technicians, a Soviet method and a U.S. plan based on experiences of the U.S. Navy experimental station with shale in Colorado.

The Petrobras annual report for 1961 issued this week said that the state company had drawn up specifications for a pilot plant and completed the mapping of the most promising area of the shale belt around São Mateus do Sul. The technical and political decision to put the shale program into motion now remains.

The importance of the shale project can be measured by the fact that last year Petrobras pumped 34 million barrels of oil from the Bahia fields. This amounted to only 30 percent of Brazil's petroleum requirements.

Brazil spent \$209 million to import products last year. Her oil needs are growing as her automotive industry increases production and as more power sources are required.

Brazilian oil reserves in Bahia are now estimated at 633 million barrels. In one area of 50 square miles in the shale belt the oil-bearing potential has been estimated at more than 600 million barrels.

The oil content of the shale that can be recovered is estimated at between 8 and 12 percent of the shale's total weight. Sulfur, hydrocarbon gases and other byproducts are also available, according to technical reports.

The decision taken by Petrobras and the Brazilian Government, which holds 62 percent of the company's stock, will provide a test for the Alliance for Progress here. Nationalists are campaigning to block cooperation between Petrobras and the U.S. Government.

The weekly newspaper of the Metropolitan University and Second Students Federation here launched a sharp attack on the Minister of Mines, Gabriel Passos, and on Francisco Mangabeira, president of Petrobras, for not being "nationalist enough." Both men are considered to be militant nationalists but not Communists.

The student group is affiliated with the National University Student Federation and both are considered Communist-influenced.

#### PROBLEMS AND POLICIES FOR GUAM

Mr. GRUENING, Madam President, on Thursday of last week, Senator LONG, of Hawaii, and I, who are both members of the Subcommittee on Territories of the Committee on Interior and Insular Affairs were hosts at a luncheon to give

the Honorable A. Wong-Pat, speaker of the Guam Legislature, an opportunity to present some of the problems which this westernmost possession of the United States in the Pacific faces.

We were happy to have present on this occasion Members of both the Senate and House, as well as staff members from the appropriate subcommittees of the Interior Committees of both Houses, as well as of the House Appropriations Committee, the Secretary of the Navy, the Honorable Fred Korth, the Honorable Harlan Cleveland, representing the State Department, and Mr. Spurgeon Keeny, representing the White House.

It is my own view, which I expressed at this luncheon, that we should proceed in the case of our remaining outlying possessions—the Virgin Islands, Guam, and Samoa—to accord them the maximum amount of self-government compatible with our Nation's responsibilities and compatible with their desires and their capabilities. A similar approach is indicated for the trust territories in the Pacific.

Obviously these areas, because of their small population and terrain, and limited economic resources, cannot become States, but they should be as little disadvantaged by that fact as it is possible for our Government to make them.

How rapidly the process will proceed depends, of course, on local conditions in each of these three areas—the Virgin Islands, Guam, and Samoa. Obviously, the ultimate objective should be to make them as nearly economically self-sufficient and self-sustaining as possible, to accord them at the appropriate time an elective governorship, a Delegate in the House of Representatives, and I hope, an opportunity to vote for President and Vice President. Every American citizen should have that right. None of these results can be achieved overnight, but they should represent our national purpose and direction. We should eliminate every vestige of colonialism in the areas under U.S. control as rapidly as it can properly be done.

Guam, as long the site of an important naval station, faces certain problems. The Navy has been of great assistance to Guam economically, and the importance of the Navy from the standpoint of national defense in that far western Pacific outpost is unquestionable. It is the Nation's traditional first line of defense and Americans rightly cherish it. Nevertheless, the presence of the Navy and certain of its established practices there have raised some problems which require congressional and Executive attention, which I am hopeful they will soon have.

This situation was reviewed in some detail in a scholarly article in the California Law Review of March 1960, entitled: "Peacetime Martial Law in Guam," by W. Scott Barrett and Walter S. Ferenz. In order that the problems involved may come to the attention of Congress and the appropriate Federal authorities, I ask unanimous consent that this article be printed at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:



## PEACETIME MARTIAL LAW IN GUAM

(By W. Scott Barrett and Walter S. Ferenz, members of the California and Guam bars)

According to the U.S. Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683<sup>1</sup> establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the U.S. Navy. To assist the Navy in enforcing the security clearance a number of regulations have been issued.<sup>2</sup> One section, which is not in the Instruction (naval directive, or regulation) issued to the general public, provides as follows:

"Compliance with laws and regulations. All persons, vessels, and aircraft entering the Guam Island Naval Defensive Sea Area or the Guam Island Naval Airspace Reservation, whether or not in violation of Executive Order 8683 \* \* \* shall be governed by such regulations and restrictions upon their con-

<sup>1</sup> 6 Fed. Reg. 1015 (1941). The Executive order reads:

"By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1946 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as Rose Island Naval Defensive Sea Area, Tutuila Island Naval Defensive Sea Area, and Guam Island Naval Defensive Sea Area; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as Rose Island Naval Airspace Reservation, Tutuila Island Naval Airspace Reservation, and Guam Island Naval Airspace Reservation.

"At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

"At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

"The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

"Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973)."

<sup>2</sup> For the latest version of these regulations, see 32 C.F.R. §§ 761.1-24 (Supp. 1959). Some have been printed in pamphlet form as OPNAV Instruction 5500.11B, Nov. 27, 1957. This pamphlet is made available to those requesting information on clearance regulations. No mention is made in the pamphlet of the other applicable regulations.

duct and movements as may be established by the commander, U.S. Naval Forces, Marianas, whether by general regulation or by special instructions in any case."

The foregoing regulation clearly purports to establish martial law in Guam. Civilians are under martial law whenever an Executive order authorizes a military commander to prescribe rules of action—make laws—governing civilians in military areas set up in domestic territories upon the sole standard of military necessity.<sup>3</sup>

One well might ask how the Navy derived authority from Executive Order No. 8683 to govern the conduct and movement of all persons on the island of Guam regardless of whether or not they had violated the order. If the Navy has that authority, then Guam is under martial law. It is the argument of this article that the foregoing regulation is illegal, and, further, that all of the regulations issued by the Navy under the ostensible authority of the Executive order are illegal and the power exercised by the Navy in administering the security clearance program is unauthorized and unconstitutional.

## HISTORY OF THE NAVAL SECURITY CLEARANCE PROGRAM IN GUAM

The unincorporated territory of Guam is an insular possession of the United States located in the Pacific Ocean about 5,200 miles southwest of San Francisco and 1,350 miles southeast of Tokyo. Guam is the largest and most southern island of the archipelago known as the Mariana Islands. It is 32 miles in length and varies from 4 to 10 miles in width. Its 206 square miles give it an area nearly 10 times that of Manhattan Island.<sup>4</sup>

The United States acquired Guam from Spain in 1898. By Presidential Executive order of December 23, 1898, the Secretary of the Navy was designated by the President to administer Guam. Except for Japanese occupation during World War II this administration continued until August 1, 1950. The island was therefore directly administered by a naval governor who was a naval officer assigned to the post for a tour of duty. Civil government was organized but only for the carrying out of such naval policies as might be established by the governor or the Secretary of the Navy.

For some years prior to the beginning of World War II it had been obvious that Japan had been building up military forces in the Pacific Islands. Saipan and Tinian are approximately 120 miles from Guam and Rota only 40 miles from Guam. All these islands were known by 1940 to be strongholds of Japanese military forces, both air and naval.

To preserve the security of the defense efforts in Guam and other Pacific Islands such as Wake, Johnston, and Midway, President Franklin D. Roosevelt promulgated Executive Order No. 8683.<sup>5</sup> Insofar as Guam was concerned the Executive order established two defensive areas known as the Guam Island Naval Defensive Sea Area and the Guam Island Airspace Reservation. The Secretary of the Navy was delegated the power to authorize entry at his discretion

<sup>3</sup> 32 C.F.R. § 761.21 (Supp. 1959).

<sup>4</sup> *Ochikubo v. Bonesteel*, 60 F. Supp. 916, 929 (S.D. Cal. 1945).

<sup>5</sup> See map, App. C. For a general survey of the history of Guam, see Stevens, "Guam, U.S.A., Birth of a Territory" (1953). For a concise review of current social, political and economic conditions in Guam, see 1958 Gov. Guam Ann. Rep.

<sup>6</sup> 6 Fed. Reg. 1015 (1941); see note 1 supra. For a case illustrating the scope accorded Executive orders validly promulgated, see *Perko v. United States*, 204 F. 2d 446 (8th Cir.), cert. denied, 346 U.S. 831 (1953).

and to prescribe such regulations as were necessary for carrying out the provisions of the order.<sup>6</sup>

When Guam was recaptured by the United States in July 1944, Executive Order No. 8683 was not immediately reinstated.<sup>7</sup> In May 1946 the naval government was reestablished and the Navy resumed administration of civil affairs in Guam. Following resumption of the naval government, the civilian economy of the island began to expand, and labor, goods, and services were in great demand. The Navy adopted the policy of preventing non-Guamanians from entering the island in order to enter business, unless there were no local people qualified or financially able to supply the particular service or handle the merchandise in question.<sup>8</sup>

This exclusion policy was enforced mainly through the business license provisions of the Government Code of Guam, as it existed at that time, and through regulations and orders issued by the naval governor. As a matter of fact the policy did not completely succeed because a considerable number of employees brought in by contractors eventually went into business for themselves.

In 1947 the Navy was confronted with an additional problem concerning business competition with local residents. Naval officers or personnel who had reached the age of retirement were attempting to return to Guam to enter business. To prevent this the Chief of Naval Operations issued a directive to the naval governor of Guam stating that former Navy officers or personnel who were retiring from active duty were not to be allowed to enter Guam for the purpose of engaging in private enterprise.<sup>9</sup>

<sup>7</sup> Executive Order No. 8683 expressly refers only to aircraft entering the airspace reservation and to vessels and persons entering the Defensive Sea Area. In practice, the Navy enforces the order in reverse, being apparently more concerned about "persons" entering Guam by aircraft than by vessel.

<sup>8</sup> "Guam is a naval base under naval government and the Harbor of Apra is a closed port, and shall not be visited by any commercial or privately owned vessel of foreign registry; nor by any foreign national vessel, except by special authority of the United States Navy Department in each case. (Executive Order 26 September 1912.) United States Navy Regulations, 1920, Article 78, paragraph 1: Certain military districts on the island are closed to visitors." "Civil Regulations With the Force and Effect of Law in Guam," ch. 34, at 73 (U.S. Gov't Printing Office ed. 1947) (hereinafter Civil Regulations). Though first promulgated in 1936, the "Civil Regulations" were reprinted in 1947 and no reference was made to Exec. Order No. 8683 in the 1947 edition. ("Civil Regulations with the Force and Effect of Law in Guam" were issued originally on March 1, 1936, by order of G. A. Alexander, Governor of Guam, and replaced the theretofore existing "Orders and Regulations with the Force and Effect of Law in Guam." The "Regulations" were suspended during Japanese occupation and were reestablished July 21, 1944, by order of Admiral Nimitz. For a brief discussion of the origin and development of "Civil Regulations," as well as of other pre-Organic Act Guam laws, see *United States v. Johnson*, 181 F. 2d 577, 580 (9th Cir. 1950).)

<sup>9</sup> Enlisted men were not allowed to engage in business if it "interfered with the customary employment \* \* \* of local civilians \* \* \*." Civil Regulations, ch. 2, para. 17, at 4.

<sup>10</sup> None of the specific orders or regulations are available to the writers, but this information is well verified by statements of reputable former naval officers now in business in Guam.



Since the Navy had complete control of the island and all of the inhabitants, no effort was made to enforce actively the provisions of Executive Order No. 8683 or to enact regulations thereunder.

#### A. Background and legislative history of the organic act

In July 1950 the U.S. Congress passed the Organic Act at Guam<sup>10</sup> which transferred administration of governmental affairs from the Navy to the Department of the Interior. The act provided a bill of rights, established civilian courts, and in other ways took away control of governmental affairs from the Navy. A district court of Guam was created and patterned after the Federal district courts. The legislature was given authority to create inferior courts and transfer causes from the district court to those inferior courts.<sup>11</sup>

The clear congressional intent of the Organic Act, as revealed by committee hearings and numerous exchanges of correspondence among Senators and others,<sup>12</sup> was to give U.S. citizens residing in Guam full civil rights.<sup>13</sup> The indications are that Executive Order No. 8683 was then dead and forgotten. However, the Navy resurrected the order on December 4, 1950, thus enabling it to retain its long-enjoyed power over the civilian community.<sup>14</sup>

<sup>10</sup> 64 Stat. 384 (1950), as amended, 48 U.S.C. §§ 1421-25 (1958).

<sup>11</sup> Organic Act of Guam § 22, 64 Stat. 389 (1950), as amended, 48 U.S.C. § 1424 (1958).

<sup>12</sup> S. Rep. No. 2109, 81st Cong., 2d Sess. (1950). See, e.g., Letter from Harry S. Truman to J. A. Krug, Secretary of the Interior, May 14, 1949, in id. at 3; Letter from J. A. Krug to Alben W. Barkley, May 3, 1949, in id. at 6-9. The report stated that "given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure." Id. at 4. The business community on Guam is generally agreed that the security clearance requirement has seriously hampered Guam's economic development, particularly as to tourist business. There are no public hotels on Guam though thousands of tourists transit the island annually. Navy red tape discourages stopovers.

<sup>13</sup> "All American tradition and history dictates that government shall rest upon law, rather than upon executive decree. By international treaty also, the Congress has a direct responsibility for the government of Guam. The second paragraph of Article IX of the treaty ceding Guam to the United States provides: 'The civil rights and political status of the native inhabitants of the Territories hereby ceded to the United States shall be determined by the Congress (30 Stat. 1759).' In addition to the obligation under the Treaty of Paris, the United States has additional treaty obligations with respect to Guam as a non-self-governing Territory. Under Chapter XI of the Charter of the United Nations, ratified by the Senate June 26, 1945 (59 Stat. at p. 1048), we undertook, with respect to the peoples of such Territories, to insure political advancement, to develop self-government, and taking 'due account of the political aspirations of the peoples' to assist them in the progressive development of their free political institutions" (S. Rep. No. 2109, 81st Cong., 2d Sess. 2 (1950)).

<sup>14</sup> See note 16 infra. What was perhaps the prime initiating cause of the resurrection of the order, and the reinstitution of the entry-clearance program, i.e., the Korean conflict, of course no longer justifies the Navy's conduct, even assuming it justified it then. See text at note 22 infra. See also text at note 56 infra.

#### B. The "security clearance" program after the Organic Act

Although the Navy officially stated that it was strongly in favor of the passage of the Organic Act,<sup>15</sup> the Chief of Naval Operations reinstituted the security clearance entry program for Guam less than 3 months after the act became effective.<sup>16</sup>

Since that time the regulations have been vigorously enforced by the Navy. All persons desiring to come to Guam<sup>17</sup> who are not within certain excluded categories<sup>18</sup> are required to obtain a security clearance from the Secretary of the Navy or his subordinates before they are permitted to enter. A person coming to Guam for the first time files the application directly or indirectly with the Chief of Naval Operations. In the case of a citizen of the United States who is a resident of Guam and who desires to leave Guam temporarily with intent to return, an application for a reentry permit must be made to the Commander, Naval Forces Mariana Islands.<sup>19</sup>

Enforcement of the naval security program is not difficult inasmuch as the only two permissible ways to enter Guam are through naval reservations. Apra Harbor is the only seaport, and it is within the confines of the naval station.<sup>20</sup> All port operations are under the direction of the commander, Naval Forces Marianas. This includes piloting, tugs boats, ship repair, and to a lesser extent, cargo operations. Persons entering Guam

<sup>15</sup> S. Rep. No. 2109, op. cit. supra note 12, at 9.

<sup>16</sup> Entry clearance requirements were reinstituted by Letter [Directive] From Chief of Naval Operations, serial no. 5235P21, Dec. 4, 1950. This directive was superseded by subsequent regulations.

<sup>17</sup> Prior to the passage of the Organic Act, Guam law provided: "Residents of Guam shall not be permitted to leave Guam without a passport issued by the Governor or a certificate of identification issued by the Department of Records and Accounts." Civil Regulations, ch. 21, para. 1, at 45. After passage of the Organic Act the Department of Immigration required United States citizens coming to Guam to have a passport until Nov. 7, 1958.

<sup>18</sup> 32 C.F.R. § 761.10 (Supp. 1959). See text at note 65 infra.

<sup>19</sup> So-called multiple-entry clearances are difficult for nonresidents to obtain and are usually limited to 1 or 2 years. Although residents are treated more liberally, those not favored with a multiple-entry clearance are required to fill out the forms and reapply for re-entry each time they leave or be excluded when they try to return to their homes. A sample multiple-entry clearance reads as follows:

DATE: \_\_\_\_\_

U.S. PACIFIC FLEET,  
Commander Naval Forces Marianas.

MY DEAR \_\_\_\_\_: Your application has been reviewed and authorization is hereby granted for \_\_\_\_\_ to enter and re-enter the Guam Defensive Sea Area for a period of 2 years beginning \_\_\_\_\_ for the purpose of making repeated business trips off the island. This letter \* \* \* must be in your possession when traveling in the above areas.

Sincerely yours,

Island Government Officer.

(Note that the administrator of the clearance program is called, significantly, "The Island Government Officer.")

<sup>20</sup> The Commercial Port of Guam is operated by the Government of Guam, but it is within the Apra Harbor area and access from the sea is controlled by the Navy. Both air and sea access to Guam in civilian areas could be arranged, however, if the Navy ceased requiring entry clearance to the entire island.

by way of air carrier are required to land at the naval air station. There are no civilian airport facilities in Guam.

To insure that persons entering Guam have the required entry-clearance documents, the Navy has ordered civilian transportation agencies to require these documents before allowing prospective passengers to purchase a ticket. This is true of the airlines and the steamship lines.<sup>21</sup>

After the reinstitution of the security clearance requirement, many U.S. citizens were faced with the necessity of obtaining a security clearance from the Navy to come to a U.S. territory. Many persons, citizen and alien alike, objected to the requirement, and some were refused entry for various reasons. In answer to the many complaints, letters were written by naval officers, the Chief of Naval Operations, and even the Secretaries of Navy and Interior. The reasons given for the continued enforcement of the security clearance requirement were many and included the following:

1. The clearance is necessary so long as the Korean war continues to exist.<sup>22</sup>

2. Because of the huge expenditure of appropriated funds on defense projects, Guam draws from nearly every walk of life civilians whose purpose is making as much money as possible, directly or indirectly, from the salaries of military and Government employees.<sup>23</sup>

3. Many aliens are excluded because their long-term presence would be detrimental to the effective use of Guam for its primary mission of defense.<sup>24</sup> (This reason did not prevent entry of aliens married to citizens if the citizen-spouses worked for the Government.)

4. The island of Guam is an important U.S. naval and military base, and its protection fully warrants those measures authorized by Executive Order No. 8688.<sup>25</sup>

<sup>21</sup> The carriers comply with Navy orders, and except for occasional oversights they will not sell a ticket to Guam passengers not holding a security clearance. The Navy contends that the carriers are "fully responsible for restricting the activities of the passengers in their custody so as not to permit violation of entry clearance requirements." Letter From Rear Adm. W. B. Ammon, Commander, U.S. Navy Forces, Marianas, to G. Selwyn, Manager, Pan American World Airways, September 6, 1956, on file with the authors. Unless otherwise noted, personal letters cited are on file with the authors.

<sup>22</sup> Letter From Ira H. Nunn, Navy Judge Adv. Gen., to Rear Adm. H. A. Houser, June 3, 1953.

<sup>23</sup> Letter from Comdr. Edward L. Beach, Naval Aide to the President, to F. L. Moylan, Guam Businessman, September 20, 1956, citing a certain report from the Secretary of the Navy. In a recent letter, answering a request for a copy of the full report, Commander C. E. Herrick stated that it could not be found. Letter From Comdr. C. E. Herrick, Office of Chief of Naval Operations, to W. Scott Barrett, July 31, 1959.

<sup>24</sup> "The very presence of large numbers of aliens owing allegiance elsewhere would constitute an obvious threat to security." Letter From Charles S. Thomas, then Secretary of the Navy, to Gayle Shelton, then President, Guam Chamber of Commerce, September 21, 1956.

<sup>25</sup> Ibid. This view was also expressed by Douglas MacKay, Secretary of the Interior. Letter From Douglas MacKay to G. M. O'Keefe, Guam Businessman, June 8, 1953 (during the Korean War). Pearl Harbor is also a naval defensive sea area, but no clearance is necessary to enter the island of Oahu, which is no more than twice the size of Guam. Also, almost as great a percentage of Oahu is occupied by military reservations.



5. The Navy is required by Executive Order No. 8683 to enforce the order.<sup>22</sup>

6. The clearance is necessary to enable the Navy to assist the local government in keeping the "riff-raff" out of Guam.<sup>23</sup>

7. Entry into Guam is limited to persons who contribute to its "strategic development."<sup>24</sup>

The validity of the foregoing reasons will hereinafter be discussed. Many of them are obviously invalid; keeping the "riff-raff" out of Guam and being concerned about whether civilians come to Guam to make money are simply not the concern of the U.S. Navy.

Officially, the Navy has set forth a number of grounds on which clearance can be denied,<sup>25</sup> although the regulations specifically state that the reason for a denial may not be given to any person.

## II

### THE LEGAL EFFECT OF THE ORGANIC ACT ON THE SECURITY CLEARANCE PROGRAM

Following the reinstitution of the security clearance program on December 4, 1950, the attorney general of Guam wrote an opinion<sup>26</sup> which concluded that the Organic Act had repealed Executive Order No. 8683 by implication. The opinion relied heavily upon the wording of section 33 of the Organic Act,<sup>27</sup> which authorized the President to designate parts of Guam as naval or military reservations.

By Executive Order No. 10178<sup>28</sup> the President expressly reserved to the United States parts of Guam for military bases. Those parts of Guam reserved to the military constitute less than one-third of the land area of the

<sup>22</sup> Letter From Ira H. Nunn, supra note 22: "The existence of this Defensive Sea Area is not inconsistent with the newly acquired status of Guam, nor is there any legal authority to discontinue security clearance as long as the Executive Order is in effect."

<sup>23</sup> Remarks of a naval officer, quoted in Bauer, "American Guam Off-Limits to Americans," *Portland Oregonian*, Aug. 4, 1957, p. 42, cols. 3-4.

<sup>24</sup> "Because of the strategic importance of Guam, entry into this area has been limited to persons who contribute to the strategic development of this area . . . . Inasmuch as Mr. McCready does not work for the United States Government, you do not qualify . . . (to enter Guam)." Letter From Adm. Arleigh Burke, Chief of Naval Operations, to Mrs. Gordon McCready, July 25, 1956. Mrs. McCready is the Japanese-national wife of many years of a local businessman. Mrs. McCready had asked why she could not join her husband when aliens married to government employees were allowed to enter. Subsequently Mrs. McCready entered without a clearance and promptly was granted one! Several other persons who have entered without a clearance are presently "at large" on the island and have never been prosecuted.

<sup>25</sup> 32 C.F.R. § 761.6 (Supp. 1959). The grounds listed include: (1) prior non-compliance with entry-control regulations; (2) wilfully furnishing false or misleading information in application for entry; (3) advocacy of the overthrow of the United States; (4) sabotage, espionage and sedition; (5) acting so as to serve the interests of another government detrimental to that of the United States; (6) deliberate unauthorized disclosure of classified defense information; (7) membership in subversive organizations; (8) serious mental irresponsibility or chronic alcoholism; (9) conviction of certain felonies; (10) illegal presence in the United States or being the subject of deportation proceedings.

<sup>26</sup> Dec. 13, 1951, in "Statutes and Amendments to the Codes of the Territory of Guam," First Guam Legislature, 1951-1952, at A-14 (1952).

<sup>27</sup> 64 Stat. 393 (1950), 48 U.S.C. § 1421k (1958).

<sup>28</sup> 15 Fed. Reg. 7313-15 (1950).

island. There is no indication that the Senate intended the whole island to be under military control. The Organic Act also gave the President power to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations. Had Congress been aware of Executive Order No. 8683 and intended to perpetuate it, the language of section 33 was surplusage. By saying in section 33 that "nothing contained herein shall be construed as limiting the authority of the President . . . to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations," Congress expressed an intent that the President has no authority to treat Guam as a closed port to U.S. citizens on domestic vessels and aircraft.<sup>29</sup> Thus, the Organic Act does supersede and overrule Executive Order No. 8683.

Subsequent to the Guam Attorney General's opinion, the Office of the Judge Advocate General of the United States Navy issued a contrary opinion.<sup>30</sup> Unfortunately, the opinion is classified and therefore not available to the general public.<sup>31</sup>

## III

### UNCONSTITUTIONAL ADMINISTRATION OF A VOID EXECUTIVE ORDER

Beyond the determination of the effect of the enactment of the Organic Act upon the present validity of Executive Order No. 8683, the question remains whether the administration of that order denies certain fundamental personal rights guaranteed by the Constitution of the United States. For example, if the United States Navy has failed to provide an adequate administrative hearing to persons denied a security clearance, such persons may be deprived of liberty or property without procedural due process of law. Likewise, if the regulations promulgated by the United States Navy exceed the authority of the order, or if Navy practices exceed the authority of its own regulations, persons denied a security clearance may be deprived of liberty or property without substantive due process of law.

#### A. Constitutional guarantees in an unincorporated territory

The question arises as to what extent U.S. citizens residing in Guam or attempting to visit Guam for any purpose are protected by guarantees extended by the Federal Constitution to U.S. citizens. The constitutional guarantees extended to a citizen residing within continental United States or in an incorporated territory are not always extended to U.S. citizens residing in unincorporated territories.<sup>32</sup> The status of Guam is similar to that of Puerto Rico at the time of the *Balzac* case.<sup>33</sup> In the *Balzac* case the U.S. Supreme Court held that a Puerto Rican cannot insist upon the right of trial by jury except to the extent it is conferred upon him by his own representatives in his own legislature.<sup>34</sup> In Guam, the Court of Appeals for the Ninth Circuit held that a U.S. citizen residing in Guam had no constitutional right to a grand jury indictment,<sup>35</sup> but that

<sup>29</sup> See note 12 supra.

<sup>30</sup> The opinion is cited in Letter, supra note 22.

<sup>31</sup> "I regret that the classification of this opinion makes it impossible to comply with your request." Letter From Capt. Wilfred Hearn, Asst. Navy Judge Adv. Gen., to W. Scott Barrett, July 30, 1959.

<sup>32</sup> *Balzac v. Porto Rico*, 258 U.S. 298 (1933).

<sup>33</sup> Compare the Organic Act of Guam § 3, 64 Stat. 384 (1950), 48 U.S.C. § 1421a (1958), with the Organic Act of Puerto Rico (Jones Act), ch. 145, 29 Stat. 951 (1917) codified in scattered sections of 48 U.S.C. relating to Puerto Rico, as construed in *Balzac v. Porto Rico*, supra note 36, at 305-14.

<sup>34</sup> *Balzac v. Porto Rico*, 258 U.S. 298, 309 (1922).

<sup>35</sup> *Pugh v. United States*, 212 F. 2d 761, 762 (9th Cir. 1954).

such citizen did have that right pursuant to the Federal Rules of Criminal Procedure.<sup>36</sup> Congress subsequently amended the Organic Act so as to require grand jury indictment only if made available by local law.<sup>37</sup>

Regardless, however, of whether or not all procedural constitutional guarantees are reserved to U.S. citizens residing in an unincorporated territory, there are certain fundamental rights that are reserved to all U.S. citizens. In the *Balzac* case, the Court stated:

"The guarantees of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty, or property without due process of law, had from the beginning, full application in the Philippines and Porto (former sp.) Rico."<sup>38</sup>

#### B. Substantive due process of law denied

In a very real sense exclusion from Guam by reason of denial or revocation of a security clearance is a deprivation of liberty and in some instances possibly of property. The only justification for depriving a citizen of liberty and the free choice of residing wherever he pleases within the confines of the United States, including its possessions, and in traveling freely throughout such areas, lies in the war power. However, the extent to which the war power can be used to deprive private citizens of their life, liberty, or property without due process of law has been carefully limited,<sup>39</sup> the courts often quoting Mr. Justice Holmes' language in *Chastleton Corp. v. Sinclair*:

"A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed."<sup>40</sup>

1. Liberty—The right to travel and work where one pleases:

"There is more absoluteness about the more directly personal aspects of freedom. However strong the reaction to interference with rights of property or trade, it does and ought to take second place to the reaction against interference with the legal safeguards of personal liberty. Vigilance against the temporary removal of such safeguards . . . is therefore more universally supported than protests against governmental powers over property."<sup>41</sup>

The right to travel, unrestricted by unreasonable regulations, is one of the rights guaranteed to U.S. citizens by the fifth amendment of the U.S. Constitution. The right to work and to reside in any area, State, territory, or possession of the United States is also a constitutionally guaranteed right, and no restraints may be imposed upon such rights except by reasonable regulations under law. While during World War II the rights of U.S. citizens were infringed upon to a greater extent than ever before, the courts nevertheless made it quite clear that only an extreme emergency such as the danger of invasion could justify restrictions on the movement of citizens. In recent passport cases the courts have held that the

<sup>36</sup> Id. at 763 (Fed. R. Crim., p. 7(a)).

<sup>37</sup> Act of Aug. 27, 1954, § 1, 68 Stat. 882, amending the Organic Act of Guam § 22(b), 64 Stat. 390, as amended, 48 U.S.C. § 1424(b) (1958). To this date the local legislature has not provided for a grand jury.

<sup>38</sup> *Balzac v. Porto Rico*, 258 U.S. 298, 312-13 (1922).

<sup>39</sup> See e.g., *Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Scherzberg v. Maderia*, 57 F. Supp. 42 (E.D. Pa. 1944); *Ebel v. Drum*, 52 F. Supp. 189 (D. Mass. 1943); *Schueler v. Drum*, 51 F. Supp. 383 (E.D. Pa. 1943).

<sup>40</sup> *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-48 (1924).

<sup>41</sup> *Friedmann, "Legal Theory,"* 446 (2d ed. 1949).



right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law, and that any restraint upon this liberty must conform with the provisions of the fifth amendment.

(a) The "security clearance" and "exclusion" cases: During World War II U.S. citizens of Japanese ancestry were uprooted from their homes and relocated away from the western coast. This exercise of the war power was ratified by the Supreme Court in *Korematsu v. United States*.<sup>40</sup> The Court said:

"We uphold the exclusion order as of the time it was made and when the petitioner violated it. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. . . . But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger."<sup>41</sup>

Also during World War II, the Supreme Court upheld a curfew restriction requiring all persons of Japanese ancestry to be within their place of residence daily between the hours of 8 p.m. and 6 a.m.<sup>42</sup> Both the exclusion order and the curfew restriction had been imposed pursuant to Executive order.<sup>43</sup> In upholding the validity of the curfew, the Supreme Court stated:

"Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulgation, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew. We decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power."<sup>44</sup>

It should be noted that the Supreme Court in both the *Korematsu* and *Hirabayashi* cases recognized that individual liberties were being restricted and that under ordinary circumstances the restriction would be unconstitutional. Nevertheless the admittedly discriminatory treatment of U.S. citizens was justified solely on the ground that the President and Congress could restrict the liberty of citizens by exercise of the war power at a time of great emergency.

Subsequent to the *Hirabayashi* and *Korematsu* cases several cases arose in the U.S. district courts involving U.S. citizens of German ancestry.<sup>45</sup> The plaintiffs in these cases had been excluded by military order from a coastal strip along the eastern seaboard of the United States. Authority to exclude certain persons from such areas had been given to military commanders by an Executive order<sup>46</sup> which had been ratified and confirmed by Congress.<sup>47</sup>

In *Schueler v. Drum*<sup>48</sup> the district court acknowledged that from the evidence produced the plaintiff appeared to be a German sympathizer. Nevertheless the court held that there was not shown such danger as would warrant denial to the petitioner of her right to due process of law. In regard to the situation existing on the eastern seaboard at the time Mrs. Schueler was excluded, the court stated:

"The normal civilian life of the area was being pursued; commercial and industrial activities, their tempo heightened by a demand for greater production, were in private ownership; the courts both Federal and State were open and functioning as well as all the administrative and executive departments of government, and it could not be honestly said that ordinary law did not adequately secure public safety and private rights. Accordingly, it would seem to me that Congress 'cannot authorize the executive to establish by conclusive proclamation the very thing which, upon familiar principle, would have been the subject of judicial scrutiny.' (Citing Fairman, *Law of Martial Rule*, 55 Harv. L. Rev. 1253, 1272 (1942).)

"While I am not unmindful that the issuance of the proclamation by the Commander of the area is some evidence of the finding of the necessity for his assuming control of the functions of civil government, yet where there is a direct interference as here with one's liberty and property, conduct normally beyond the scope of governmental power, such action could only be justified, a constitutional guarantee of freedom can only be abridged, when the danger to the Government is real, impending and imminent."<sup>49</sup>

Under present world conditions it cannot be said that the danger of sabotage to Guam is real, impending, and imminent. Certainly it cannot be said that there is any impending danger of invasion, nor is the danger of attack greater to Guam than it is to the entire State of Hawaii or to any city in the United States. Whether or not present conditions justify the Navy in continuing to require a security clearance from U.S. citizens is subject to judicial review.<sup>50</sup> The consistent conduct of the Navy in immediately granting a clearance in cases of entry without a clearance rather than allowing the matter to be heard by a court of competent jurisdiction indicates that even the Navy is convinced that judicial review would not be favorable to the continuation of the clearance requirement. U.S. citizens have been prevented from coming to Guam to engage in a legitimate occupation or to live in the place of their choice. This deprivation of those rights under present circumstances is in clear violation of the due process clause of the U.S. Constitution.<sup>51</sup>

(b) The passport cases: More recently the U.S. courts have been confronted with the right of U.S. citizens to travel as affected by regulations issued by the Department of State.<sup>52</sup> The two cases reaching the Su-

preme Court did not raise the constitutional issue,<sup>53</sup> but the Secretary of State was held not to have authority to deny a passport to citizen applicants solely because of their refusal to be subjected to inquiry into their beliefs and associations.

In the *Shachtman* case<sup>54</sup> the plaintiff sued in the district court to enjoin the Secretary of State from denying application for a passport to visit Europe. His complaint was dismissed and he appealed. The plaintiff had been granted "a hearing of a sort." The court did not decide whether the hearing complied with all procedural requirements, but held that the action of the Secretary of State in denying the passport was arbitrary and thus denied plaintiff substantive due process of law. The principal ground for the denial appeared to be that the Secretary of State alleged that the plaintiff was a member of an organization listed by the Attorney General as subversive. The correctness of this characterization was denied by the plaintiff.<sup>55</sup>

"What is involved at the present stage is a question of substantive due process—whether the refusal for the reason given, as alleged in the complaint and undisputed thus far by the Secretary, was arbitrary. If so, it is not a valid foundation for the denial, for the Government may not arbitrarily restrain the liberty of a citizen to travel to Europe. Discretionary power does not carry with it the right to its arbitrary exercise. Otherwise the existence of the power itself would encounter grave constitutional doubts."<sup>56</sup>

When one compares the language of the *Shachtman* case with that of the *Naval Guam regulations*<sup>57</sup> it immediately becomes apparent that the regulations deny substantive due process of law to any applicant who is denied a security clearance to enter Guam. The regulations arbitrarily provide that "under no circumstances will a notice of disapproval include a statement of the reason therefor."<sup>58</sup> Clearly, if the regulations are followed, any denial of a security clearance to any U.S. citizen is a denial of substantive due process under the fifth amendment of the Constitution. Unexplained denial of a security clearance is arbitrary administrative action outside the authority of law in view of the circumstances existing on the island of Guam at the present time.

## 2. Equal protection of the laws:

In its Guam regulations the U.S. Navy has chosen to discriminate against certain "types" of U.S. citizens.<sup>59</sup> Those born on Guam or those who became citizens of the United States under the Guam Organic Act of 1950<sup>60</sup> may enter the Guam Island Naval Defensive Sea Area and the Guam Island Airspace Reservation without a clearance. Approximately 35,000 U.S. citizens are in that category, and a security clearance is not required of them, while a clearance is required of other U.S. citizens who were not fortunate enough to be born on Guam.

The regulations also discriminate against citizens who do not work for the Government—for that reason alone. Civil service

<sup>40</sup> 323 U.S. 214 (1944).

<sup>41</sup> Id. at 219-220.

<sup>42</sup> *Hirabayashi v. United States*, 320 U.S. 81 (1943).

<sup>43</sup> Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

<sup>44</sup> *Hirabayashi v. United States*, 320 U.S. 81, 101-02 (1943).

<sup>45</sup> *Scherzberg v. Maderia*, 57 F. Supp. 42 (E.D. Pa. 1944); *Ebel v. Drum*, 52 F. Supp. 189 (D. Mass. 1943); *Schueler v. Drum*, 51 F. Supp. 383 (E.D. Pa. 1943).

<sup>46</sup> Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

<sup>47</sup> Act of Mar. 21, 1942, ch. 191, 56 Stat. 173 (now, as amended, 18 U.S.C. § 1383 (1958)).

<sup>48</sup> 51 F. Supp. 383 (E.D. Pa. 1943).

<sup>49</sup> Id. at 387.

<sup>50</sup> Cf. *Sterling v. Constantin*, 287 U.S. 378, 400-01 (1932); *Ebel v. Drum*, 52 F. Supp. 189, 195-96 (D. Mass. 1943).

<sup>51</sup> Even a military order placing a civilian establishment "off-limits" is subject to review. If not well-founded it is unconstitutional as being a deprivation of a property right without due process of law. *Barn Bailroom Co. v. Ainsworth*, 67 F. Supp. 299, (E.D. Va. 1946); cf. 32 C.F.R. § 761.18 (Supp. 1959). Apparently the Navy places the burden upon the United States citizen to prove he has "legitimate cause" to enter Guam. What is "legitimate" is committed to the Navy's sole discretion.

<sup>52</sup> *Kent v. Dulles*, 357 U.S. 116 (1958); *Dayton v. Dulles*, 357 U.S. 144 (1958); *Boldin v. Dulles*, 235 F.2d 532 (D.C. Cir. 1956); *Kraus v. Dulles*, 235 F.2d 840 (D.C. Cir. 1956);

*Shachtman v. Dulles*, 235 F.2d 938 (D.C. Cir. 1955).

<sup>53</sup> *Kent v. Dulles*, supra note 58; *Dayton v. Dulles*, supra note 58. Although the constitutional issue was not reached, the language of the Court was extremely strong.

<sup>54</sup> See *Kent v. Dulles*, supra at 125.

<sup>55</sup> *Shachtman v. Dulles*, 225 F. 2d 938 (D.C. Cir. 1955).

<sup>56</sup> *Shachtman v. Dulles*, 225 F. 2d 938, 943 (D.C. Cir. 1955).

<sup>57</sup> Id. at 941.

<sup>58</sup> 32 C.F.R. §§ 761.1-24 (Supp. 1959).

<sup>59</sup> 32 C.F.R. § 761.16 (Supp. 1959).

<sup>60</sup> See 32 C.F.R. sec. 761.10 (Supp. 1959).

<sup>61</sup> 64 Stat. 384, as amended, 48 U.S.C. secs. 1421-26 (1958).



employees and military dependents and many other groups are not required to be cleared, nor does the Navy claim that they have been checked for security purposes.

It would seem that few would venture to vouch for the undivided loyalty of all persons belonging to any of the Navy's favored groups solely because of membership in that group. Yet the Navy arbitrarily requires no clearance of such persons. Clearly the exclusion of such large groups from the clearance requirement is for the purpose of naval convenience and has no relation to security.

Were they to be enacted by a State the naval Guam regulations would undoubtedly be in violation of the 14th amendment, which extends equal protection of the laws to all U.S. citizens. While the 14th amendment does not extend to authority exercised by the United States,<sup>40</sup> the Supreme Court has tested the validity of Federal legislation under the due process clause of the 5th amendment by the same rules of equality that are employed to test the validity of State legislation under the 14th amendment.<sup>41</sup> The equal protection of the laws afforded by the due process clause of the 5th amendment has been spoken of as "that mere minimum of equal protection secured both by the due process clause and by the equal protection clause of the 14th amendment."<sup>42</sup> Furthermore, the statute or regulation may be so discriminating or so arbitrary and injurious in denying equal protection of the law that it may be said to violate the due process clause of the 5th amendment even though the 5th amendment contains no equal protection clause and provides no guarantee against discriminatory legislation by Congress.<sup>43</sup>

The Supreme Court has held that discrimination against U.S. citizens of Japanese ancestry was unconstitutional as being in violation of the fifth amendment where the circumstances were such as to make racial distinctions relevant.<sup>44</sup> During the time United States was at war with Japan racial distinctions were relevant, as it was then possible that some U.S. citizens of Japanese ancestry might have loyalties toward their mother country. No such distinction is relevant at the present time in respect of Guam.<sup>45</sup> Discrimination against U.S. citizens on the sole ground they were not born on Guam is arbitrary and unjustifiable. The regulation appears clearly to be so objectionable on its face that it violates the due process clause of the fifth amendment.

3. Power exercised by U.S. Navy exceeds the authority of the Executive order:

Assuming Executive Order No. 8683 is valid today, it is submitted that the practical power exercised by the Navy exceeds the authority of the Executive order, and as a result substantial rights have been denied both U.S. citizens and aliens.

(a) Enforcement of exclusions:

"Wherever law ends tyranny begins, if the law be transgressed to another's harm. And

<sup>40</sup> *Truax v. Corrigan*, 257 U.S. 312, 340 (1921).

<sup>41</sup> *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 43 (1937); *Dist. of Columbia v. Brooke*, 214 U.S. 138 (1909).

<sup>42</sup> *Lewis v. Brautigam*, 227 F. 2d 124, 128 (5th Cir. 1955).

<sup>43</sup> *Detroit Bank v. United States*, 317 U.S. 329 (1943); *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943).

<sup>44</sup> *Hirabayashi v. United States*, supra note 70. The Court also said, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people." *Id.* at 100.

<sup>45</sup> It should be noted that by far the greater number of "locally born citizens" are natives of Guam whose ancestry is principally Spanish, Filipino, and Chamorro.

whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not \* \* \* may be opposed, as any other man who by force invades the right of another."<sup>46</sup>

The Navy has acknowledged that it has no power whatsoever to exclude anyone from the island of Guam.<sup>47</sup> In spite of that acknowledgment, however, the Navy has as a practical matter excluded numerous persons from Guam by the simple expedient of revoking their security clearance and notifying their employers that they must be repatriated.<sup>48</sup> A prevalent reason for the revocation of an alien's security clearance is that he has placed himself "out of status" for having had the temerity to marry a U.S. citizen. Employers invariably cooperate, knowing well that future importation of labor depends upon favorable Navy action on security-clearance applications. Though such action is admittedly contrary to law,<sup>49</sup> the Navy continues to revoke clearances, thereby arbitrarily exercising a power it does not have. The rights of aliens under the fifth amendment are also protected if they are permanent residents. In *Kwong Hai Chew v. Colding*<sup>50</sup> the Supreme Court so ruled, saying:

"It is well established that if an alien is a lawful permanent resident of the United States and remains physically present there, he is a person within the protection of the fifth amendment."<sup>51</sup>

Aliens who have been admitted though not with "permanent resident" status do not have constitutional protection.<sup>52</sup> When the language used in *Kwong Hai Chew* is applied to the Guam situation, however, it would appear that even nonresident aliens should have some rights. The Court there said:

"This preservation of petitioner's right to due process does not leave an unprotected spot in the Nation's armor. Before receiving clearance for his foreign cruise, he was screened and approved by the Coast Guard. Before acceptance of his petition for naturalization, as well as before final action thereon, assurance is necessary that he is not a security risk."<sup>53</sup>

<sup>46</sup> Locke, "Second Treatise of Civil Government," sec. 202 (1690).

<sup>47</sup> Letter From J. H. Smith, Jr., then Asst. Secretary of the Navy for Air, to Senator William Langer, in *Guam Daily News*, Dec. 8, 1954, p. 1, cols. 2-4.

<sup>48</sup> A typical exchange of letters will be found in App. A.

<sup>49</sup> In *Wilcox v. Emmons*, 67 F. Supp. 339 (S.D. Cal. 1946), the plaintiff had been excluded from a military area in continental United States. The military commander who had excluded the plaintiff acted under color of law in an honest belief that he was empowered lawfully to direct the acts of expulsion and exclusion by physical force. The court held that the exclusion order was not self-executing and that defendant did not have lawful power to expel or exclude plaintiff from such area, the statute being a limitation on the power of the military and providing for criminal penalties only. *Cf. Ochikubo v. Bonasteel*, 57 F. Supp. 513 (S.D. Cal. 1944), 60 F. Supp. 916 (S.D. Cal. 1945).

<sup>50</sup> 344 U.S. 590 (1953).

<sup>51</sup> *Id.* at 596.

<sup>52</sup> *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 545 (1950). Even here the majority of the Court justified denial of procedural due process to an alien on the ground that a state of war still technically existed. The Court admitted that in peacetime Congress had provided aliens with a hearing.

<sup>53</sup> *Kwong Hai Chew v. Colding*, 344 U.S. 590, 602 (1953). The language of Mr. Justice Jackson in *Shaughnessy v. United States ex*

Before he enters Guam for any purpose an alien presumably is screened to determine whether he is a security risk. Therefore, an alien subsequently excluded by the Navy without explanation should be given some opportunity to be heard and to show that he has not become a security risk in the interim.

The Navy has exercised considerable arbitrary power in forcing repatriation of aliens, particularly to the Philippines, without lawful authority. A very much-needed and well-qualified nurse employed at the Guam Memorial Hospital was separated from her job due to the fact that her security clearance was revoked shortly after she married a U.S. citizen.<sup>54</sup> In justification of the policy of revoking an alien's clearance for marrying a citizen a naval spokesman said that the Navy favors keeping "Guam for the Guamanians."<sup>55</sup> The only other justifica-

rel, *Mezei*, 345 U.S. 206, 224-27 (1953) is of interest also, though in a dissenting opinion.

<sup>54</sup> The Government of Guam terminated Mrs. Delfina A. Cataluna's contract for the reason that the Navy had revoked her authority "to remain within, or reenter the Guam naval defensive sea area as per letter from commander naval forces Marianas dated Apr. 22, 1957." Termination notice, Apr. 30, 1957, signed by Peter C. Siguenza, director of personnel. Mrs. Cataluna had been hired in August 1956 on a 2-year contract.

<sup>55</sup> "The U.S. Navy 'does not favor the entry' of Filipinos to Guam 'for the purpose of settling permanently' because U.S. Navy policy is 'to keep Guam for Guamanians,' Rear Admiral William B. Ammon, commander of the U.S. Naval Forces in the Marianas said. Ammon's 'Guam for the Guamanians' statement was in reply to a question as to why the Navy frowns upon any effort of Filipinos to settle permanently on Guam. 'Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for the purpose of settling permanently,' he said." Abcede, "Guam Policy Explained," the Manila Times, Oct. 12, 1956, p. 2, col. 1.

More recently Mr. Abcede wrote a long article in a Manila newspaper commenting on the life of the Filipino on Guam. He said in part: "Despite the enactment of the Organic Act of Guam, establishing the supremacy of civil authority, the U.S. Navy paper curtain remains to this day. Naval intelligence has been intensifying efforts to fend off foreigners and unwanted Americans. \* \* \* The clearance requirement has worked hardships on both Americans, Guamanians and Filipinos. The economic life of Guam has also been adversely affected. An estimated 200 Filipino-Guamanian families have been broken up because of this stringent requirement. Filipinos married to Guamanian women and who have been forced by circumstances to visit the Philippines found themselves unable to go back to Guam. In many instances, a breakdown of family ties resulted. The writer presented this problem to Rear Admiral W. B. Ammon, commander of the U.S. Naval Forces in the Marianas in 1956. The Navy was asked whether it discouraged the intermarriage of the two peoples and whether it frowns on any effort of the Filipinos to settle permanently in Guam. Admiral Ammon's reply is quoted: 'The Navy does not encourage or discourage intermarriages and endeavors not to become involved in domestic affairs except as necessary to administer entry clearance regulations. Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for the purpose of settling permanently.' " Abcede, "Filipinos in Guam," the Manila Sunday Chronicle, July 26, 1959 (Magazine) p. 16, col. 3.

The Department of Justice maintains an Immigration and Naturalization Office in



tion ever given by the Navy for revocation of an alien's clearance because of marriage to a citizen is that the Navy feels it is not in the best interests of the United States to build up in Guam an alien colony whose members are qualified to become permanent residents.<sup>82</sup>

Just why an alien colony in Guam is detrimental to the interests of national defense has never been fully explained, particularly in view of the fact that there are presently only about 6,500 aliens on the island of Guam, and by far the greater portion of those aliens are working for the U.S. Government or for contractors of the Government. The fallacy of the "alien colony" argument advanced by the Navy is particularly revealed by the fact that although the United States as far more extensive operations on the island of Okinawa than in Guam, Okinawa has an "alien colony" residing thereon, numbering almost 800,000. This is more than one-hundred times the number of aliens on Guam, although the land area of Okinawa is little more than twice that of Guam. Nor has the Navy given any reason why Filipino aliens should be more detrimental to national defense because they happen to reside in Guam, than Okinawans loyal to the Japanese are detrimental to defense because they reside in the small land area of Okinawa.<sup>83a</sup>

(b) Penalties for violators: Navy Guam regulations set forth no less than five sections of the United States Code as providing penalties for violations of Executive Order

Guam, and the entry of aliens is controlled by that office. Under the ostensible authority of Executive Order 8683, however, the Navy excludes numerous aliens who have been admitted by Immigration authorities for announced reasons no better than "Guam for the Guamanians."

<sup>82</sup> "The long term presence on Guam of aliens in large numbers would be a detriment to the effective use of Guam for its primary mission of defense, while heavy population of the island by aliens could not fail to adversely affect the people of Guam and their own economy." Letter From Comdr. Edward L. Beach, Naval Aide to the President, to F. L. Moylan, Guam Businessman, September 20, 1956. The latter reason hardly seems a proper concern of the Navy even if true.

<sup>83a</sup> As a further justification for the imposition of the security clearance, the Navy has insisted on its duty to enforce Executive Order No. 8683. See Letter From Ira H. Nunn, Navy Judge Adv. Gen., to Rear Adm. H. A. Houser, June 3, 1953. However, although current Navy regulations list all Naval Defensive Sea Areas and Naval Airspace Reservations set aside by Executive order, the Navy has suspended operation of entry controls in no less than nine of these areas. 32 C.F.R. §§ 761.3-4 (Supp. 1959). Entry control with respect to Tutuila and Rose Islands was revoked by Executive Order No. 10341, 17 Fed. Reg. 3143 (1952). With respect to the other areas, "suspension of the operation of certain entry controls . . . has been accomplished administratively and is subject to reinstatement without notice at any time." Letter From Comdr. C. E. Herrick, Office of Chief of Naval Operations, to W. Scott Barrett, July 31, 1959. It is difficult, to say the least, to reconcile this administrative suspension of entry controls with respect to selected areas with a compelling duty of obeying Executive Order No. 8683 with respect to entry controls for Guam. Unfortunately, the opinion of the Judge Advocate General's department which concluded that the Navy had such a duty is unavailable. It is, as has been noted before, a classified document. See text at note 35 supra.

No. 8683.<sup>84</sup> One of the sections cited<sup>85</sup> is really not applicable to the security clearance program inasmuch as it provides a penalty for entering military reservations. The entire island of Guam is not a military reservation and the code section therefore applies to Guam only to the same extent that it applies to a U.S. military reservation, post, or camp anywhere in the United States.

Another section cited provides a penalty for violating any regulation or order promulgated pursuant to law by military authority.<sup>86</sup>

A third section cited provides a punishment for knowingly making any false or fraudulent statement or representation.<sup>87</sup> The rather obvious reason for citing that section is seen when one considers the voluminous paperwork applicants are required to execute in order to obtain a security clearance.<sup>88</sup>

Another section cited provides a penalty for anyone who knowingly or willfully violates any Executive order.<sup>89</sup> It is this section that has been "violated" a number of times in Guam by persons who have been denied a security clearance but who nevertheless have entered the island. In their case the Navy has without fail issued them a security clearance forthwith and has not held them long enough to enable their counsel to obtain a writ of habeas corpus.<sup>90</sup>

The fifth penalty provision cited by the regulations related to the naval airspace reservations<sup>91</sup> and has been repealed, subject to a savings clause which provided that all orders made by the President under any provision of law repealed or amended by the act, which were in effect at the time the section takes effect, should continue in effect according to their terms until modified, or terminated, superseded, set aside, or repealed by the administrator or the board or by any court of competent jurisdiction or by operation of law.<sup>92</sup>

#### C. Procedural due process of law denied

The constitutional right to a hearing has been defined in *Morgan v. United States*,<sup>93</sup> as follows:

"The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command."<sup>94</sup>

<sup>84</sup> OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 7, 32 C.F.R. § 761.3(f) (Supp. 1959).

<sup>85</sup> 18 U.S.C. § 1382 (1958).

<sup>86</sup> 64 Stat. 1005 (1950), 50 U.S.C. § 797 (1958).

<sup>87</sup> 18 U.S.C. § 1001 (1958).

<sup>88</sup> Applicants are required to itemize in detail all places of residence and employment for the past 10 years. OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 22, 32 C.F.R. 761.3(b) (3) (iv)-(v) (Supp. 1959).

<sup>89</sup> 18 U.S.C. § 2152 (1958).

<sup>90</sup> One petition for a writ of habeas corpus was actually filed, but the Navy issued a clearance thus rendering the case moot before the court made any decision. *Bojolan v. Johnson*, Civil No. 29-55, D. Guam, Apr. 20, 1955.

<sup>91</sup> Act of May 20, 1926, ch. 344, § 4, 44 Stat. 570 (repealed by The Federal Aviation Act of 1958, § 1401, 72 Stat. 806).

<sup>92</sup> Federal Aviation Act of 1958, § 1504, 72 Stat. 811, 49 U.S.C. § 1301 (1958).

<sup>93</sup> 304 U.S. 1 (1938).

<sup>94</sup> Id. at 18-19.

Prior to the fourth day of September 1956, the Navy had administered the security clearance program for some 13 years,<sup>95</sup> excluding the time Guam had been occupied by the Japanese, without giving persons to whom it denied a clearance any reason or right to appeal.

As Kelsen has pointed out, the liberties granted under a bill of rights are rights only if there is the right to appeal:

"The liberties it (the Bill of Rights) states are rights in a juristic sense only if the subjects have an opportunity to appeal against acts of state by which the provisions of the constitution are violated in order to get them annulled."<sup>96</sup>

1. The Feraru case—Appeal procedure supplied:

In 1953 Arthur N. Feraru was hired by United Seamen's Service to come to Guam in their employ. Subsequently the Navy informed Mr. Feraru that his application for a security clearance had been denied. Mr. Feraru then lost his job since the employer apparently required his services only on Guam. Subsequently, in December 1955 Mr. Feraru filed suit against the Secretary of the Navy in the United States District Court for the District of Columbia.<sup>97</sup> The Government filed an answer admitting substantially all of the factual allegations in the complaint but denying that plaintiffs were entitled to relief and denying on information and belief that plaintiffs were loyal to the United States.

Within 9 months of the filing of the Feraru suit the Office of the Chief of Naval Operations issued a new directive providing a procedure, though grossly inadequate, whereby a U.S. citizen denied entry to Guam might appeal and receive an administrative hearing.<sup>98</sup> This was the first attempt on the part of the Navy to establish an administrative board to hear appeals. The directive is very brief. It places the burden upon the petitioner to justify his entry into Guam. The petitioner is also required to show that his entry would serve the best interests of the United States. The directive applies only to U.S. citizens. The board it establishes is composed of three naval officers or employees who are not empowered to make a final decision. That decision is made by the Chief of Naval Operations to whom the board only makes a recommendation.<sup>99</sup>

<sup>95</sup> During the period between the time of the reoccupation of Guam and Dec. 4, 1950, the Navy did not actually enforce the security clearance; until the passage of the Organic Act in July 1950 it had unquestioned power to exclude anyone from the island. See text at notes 7-9 supra.

<sup>96</sup> Kelsen, "General Theory of Law and State," 236 (1949).

<sup>97</sup> *Feraru v. Thomas*, Civil No. 5603-55, D.D.C., Dec. 27, 1955.

<sup>98</sup> OPNAV Instruction 5420.18, Sept. 4, 1956 (reproduced in App. B). The Navy originally contended no hearing of any kind was required. "The Navy has at no time made any charges against Mr. and Mrs. Feraru. There is no statutory or legal requirement for a hearing in this case, and there has been no change in Navy Department procedures for handling requests for entry into the Island of Guam. Under the terms of Executive Order 8683 . . . no hearing is provided for and none is contemplated where refusal of entry occurs." Letter From Rear Adm. L. L. Russell to David I. Shapiro, of Deickstein, Shapiro & Friedman, New York, Counsel for Mr. and Mrs. Feraru, November 10, 1955.

<sup>99</sup> Compare the appellate procedure reported in *Parker v. Lester*, 227 F. 2d 708, 712 (9th Cir. 1955). In the Parker case, too, the



In January 1957 the Feraru suit was continued by stipulation until the Navy could complete the procedure offered the Ferarus under the new directive. Thereafter, the Feraru family, because of personal problems, were forced to delay the hearing offered them by the Secretary of the Navy pursuant to the directive. Their counsel thereafter agreed to dismiss the suit without prejudice rather than let it remain endlessly on the docket.<sup>1</sup>

Regardless of the merits of his case, there is no doubt that Mr. Feraru was denied procedural due process of law. Only after suit was filed did the Navy provide for appeal. Still more time passed before the appeal machinery was actually set up. The Navy is notoriously slow in these matters. Nor do the regulations providing for appeal take cognizance of the fact that when one desires to travel, it is usually a desire which must be acted on immediately or it is frustrated entirely. By the time the appeal procedure had been provided, Mr. Feraru had lost his job. Few persons would have the time and money and inclination to carry a court case forward under such circumstances.

## 2. The Parker and Greene cases—Appeal procedure inadequate:

Unquestionably the Navy directive offering a limited administrative hearing does not provide the procedural due process of law required by the Constitution. In *Parker v. Lester*<sup>2</sup> petitioners were denied security clearances by the Commandant of the Coast Guard and were thereby deprived of their employment as merchant seamen. The commandant's order had been made pursuant to an Executive order<sup>3</sup> authorized by statute.<sup>4</sup> The principal contention of petitioners was that they were subjected to procedures that deprived them of due process of law in violation of the fifth amendment. The district court judge defined procedural due process of law as "the maximum procedural safeguards which can be afforded petitioners without jeopardizing the security program,"<sup>5</sup> but nevertheless held against petitioners. On appeal the court of appeals reversed,<sup>6</sup> holding that the regulations fell short of furnishing the minimum requirements of due process in respect to notice and opportunity to be heard.<sup>7</sup> In so holding the appellate court discussed the regulations provided by the Coast Guard, which were strikingly similar to the Navy directive establishing the review board.<sup>8</sup> The Coast Guard board in *Parker* had before it the complete record on which the Commandant's initial determination to deny clearance was made, but none of this was disclosed to the seamen, although they could appear in person and by counsel and could submit testimony and documentary evidence. The burden of showing that they were good security risks was on the seamen, notwithstanding the fact that they knew neither the names nor the identities of, nor anything else about their accusers. The Commandant had final authority to grant or deny the security clearance. The board only had

power to recommend.<sup>9</sup> The court of appeals apparently placed great weight upon the fact that the accused seamen were not furnished with a bill of particulars setting forth the source of the data upon which their security clearances were denied.<sup>10</sup>

The Navy directive providing for a limited hearing makes no provision whatsoever for informing the person whose application for entry clearance has been denied as to the source of information upon which the determination was based. Another directive sets forth a form letter which is sent to all persons whose requests for entry authorization are denied.<sup>11</sup> That letter merely states that their entry has been denied because it is not considered in the interests of national defense. The person is then advised that he may appeal the decision by submitting a letter to the Chief of Naval Operations, setting forth in full why the granting of the application would be in the best interests of national defense. Officers are expressly instructed to give no reason whatsoever when they deny a clearance.<sup>12</sup>

In *Greene v. McElroy*<sup>13</sup> an employee of an aircraft factory having access to classified information had his security clearance revoked, thereby causing him to lose his job. The Court of Appeals for the District of Columbia Circuit held that one having access to classified matter may be deprived of his employment without any procedural safeguards. That decision was discussed and criticized in the *California Law Review*,<sup>14</sup> the author concluding that Greene should have been given one or more of the following rights: (1) The right to know the evidence used against him; (2) the right to know the identity of his accusers and to cross-examine them; and (3) the right to inspect reports made by his accusers to the Government.

The Supreme Court granted certiorari and decided the case on June 29, 1959.<sup>15</sup> The Court, Mr. Chief Justice Warren writing the opinion, reversed the court of appeals. The constitutional question was not reached. Rather, the Court apparently preferred to decide the case on the ground that the type of hearing given the petitioner "was the product of administrative decision not explicitly authorized by either Congress or the President."<sup>16</sup> In that connection the Court said:

"Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President and Congress, within their constitutional powers, specifically have decided that the imposed procedures are necessary and warranted and have authorized their use. Such decisions cannot be assumed by acquiescence or non-action. They must be made explicitly not

only to assure that individuals are not deprived of cherished rights under procedures not actually authorized \* \* \* but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government are not endowed with authority to decide them."<sup>17</sup>

Significantly, the U.S. Navy cites as its only authority for enforcing the security clearance entry requirement in Guam the Executive order issued by President Roosevelt in 1941. Congress did not ratify that order although the President was authorized by Congress to make it.<sup>18</sup> It is by no means clear that either the President or Congress within their constitutional powers have specifically decided that the procedures imposed by the U.S. Navy are necessary and warranted. Citizens and aliens alike have been deprived of liberty and property,<sup>19</sup> and the procedures used have afforded less due process than that given to Greene. It must therefore be assumed that Congress and the President intended to afford those affected by the Guam naval security-clearance entry requirement the traditional safeguards of due process.

The issue in the Greene case was whether the Department of Defense had been authorized to create an industrial security clearance program under which persons having access to classified information may lose their jobs on the basis of facts determined in proceedings in which they are denied the traditional procedural safeguards of confrontation and cross-examination. It is at once apparent that the authorization given to the Defense Department to administer its clearance program was much more complex and granted greater authority than has been given to the Navy by virtue of Executive Order No. 8683. The appellate procedure offered to Greene appeared to give him an opportunity for a fair hearing which was considerably better than that given by the appellate procedure offered to those denied a security clearance to enter Guam.<sup>20</sup>

## CONCLUSION

If naval officials were convinced that their security-clearance program was legally unassailable it would seem that some of the

<sup>17</sup> *Greene v. McElroy*, 360 U.S. 474, 507 (1959).

<sup>18</sup> By virtue of the act of Mar. 4, 1909, ch. 321, § 44, 35 Stat. 1097, as amended, ch. 180, 39 Stat. 1194 (1917), added by ch. 20, § 19, 40 Stat. 89 (1917) (now, as amended, 18 U.S.C. § 2152 (1958)).

<sup>19</sup> Joseph Siciliano, a local businessman, somehow incurred the enmity of the Navy and has been excluded from Guam and told never to return. The actual reasons are known to no one but the Navy. Siciliano's substantial business interests in Guam have diminished or vanished due to his prolonged absence.

<sup>20</sup> The Board made the final decision. Greene was informed of charges against him but not of the identity of the informers. Greene had access to three appeal boards, the Personnel Security Board (PSB), the Industrial Employment Review Board (IERB), and the Eastern Industrial Personnel Security Board (EIPSB). Greene had been cleared in 1952 by the IERB, which reversed the PSB. On March 27, 1953, the PSB and the IERB were abolished. On April 17, 1953, the Secretary of the Navy arbitrarily and without further hearing revoked Greene's clearance. More than one year later Greene was granted a hearing before the EIPSB which affirmed the Navy's decision.

Commandant made the final decision and the burden was on petitioners to show they were good security risks.

<sup>1</sup> Letter From James H. Heller, Counsel for Mr. Feraru, to W. Scott Barrett, May 26, 1959.

<sup>2</sup> 227 F.2d 708 (9th Cir. 1955), reversing 112 F. Supp. 433 (N.D. Cal. 1953).

<sup>3</sup> Exec. Order No. 10173, 15 Fed. Reg. 7005-08 (1950).

<sup>4</sup> Magnuson Act, § 1, 64 Stat. 427 (1950), as amended, 50 U.S.C. § 191 (1958).

<sup>5</sup> *Parker v. Lester*, 112 F. Supp. 433, 443 (N.D. Cal. 1953).

<sup>6</sup> *Parker v. Lester*, 227 F.2d 708 (9th Cir. 1955).

<sup>7</sup> Id. at 724.

<sup>8</sup> Discussed note 98 supra; see App. B.

<sup>9</sup> Cf. OPNAV Instruction 5420.18 (see App. B).

<sup>10</sup> *Parker v. Lester*, 227 F.2d 708, 716 (9th Cir. 1955): "Thus if the Commandant's information is that at a certain time and place the accused seaman in a conversation with an acquaintance spoke disparagingly of the American flag, the seaman will have no information that this incident is being considered, for to mention the charge would be to disclose the informer."

<sup>11</sup> OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 31; see note 2 supra. The form letter is not printed in the Code of Federal Regulations.

<sup>12</sup> OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 28, 32 C.F.R. § 761.16 (Supp. 1959).

<sup>13</sup> 254 F. 2d 944 (D.C. Cir. 1958).

<sup>14</sup> 46 Calif. L. Rev. 838 (1958).

<sup>15</sup> *Greene v. McElroy*, 360 U.S. 474 (1959).

<sup>16</sup> Id. at 508.



many violators would have been prosecuted. On the contrary, as has been pointed out, no one has been prosecuted, and violators who enter the island without a clearance are immediately issued one or are permitted to stay without a clearance rather than allow the entire program to be tested in the civil courts.<sup>21</sup>

If there is some doubt in the minds of naval officials as to the legality of the clearance, why do they insist on continuing to enforce it? The answer hardly can be found in the official reasons given by the Navy as set forth in the introduction to this article. Many of the reasons given are not valid at the present time due to change in circumstances, and many others have no justification in law. Although one can only speculate, the real reason seems to be that the Navy hesitates to relinquish power which it has exercised for many years over the entire populace of Guam. The Navy once ruled Guam with an iron hand, and the enforcement of Executive Order No. 8683 may be an attempt to retain as much of that rule as possible.

In Hawaii during World War II martial law was in existence. J. Gardner Anthony, who was for a time Attorney General of Hawaii during World War II, summed up the reasons why martial law in Hawaii was allowed to continue for years after it was necessary. His words are equally applicable to Guam at the present time:

"Perhaps one of the reasons why martial law in Hawaii was allowed to continue for years without correction from the War Department in Washington lies in the application to the situation in Hawaii of the precept that judgment of the military commander in the field should not be disturbed, a principle valid enough at or near the battlefield, but dangerous when applied generally. No one likes to admit error. It is only human to defend a position once it is publicly asserted. However, in the face of convincing proof most people will give way. In the military system this would be looked upon as a sign of weakness. Once a decision is reached by a military commander, change will be resisted even in the face of almost conclusive evidence of error."<sup>22</sup>

Others have also spoken out against the Navy security-clearance requirement in Guam. In a speech before the Multnomah County Bar Association in Portland, Oreg., in August 1957, Judge J. Frank McLaughlin of the U.S. District Court of Hawaii spoke out against the legality of the Guam security clearance.<sup>23</sup> His speech was commented upon in an editorial in the Portland Oregonian.<sup>24</sup> The editorial referred to an incident involving Ford Q. Elvidge, Governor of Guam from 1953 to 1956. Governor Elvidge wrote after leaving his post that he had been surprised by the number of prostitutes in Guam whose origins were in other countries. He asked a Navy officer why these girls, whose vocation was apparent, were admitted in such numbers whereas a casual tourist would be turned down. "Governor," said the officer, "our clearance is for security, and we haven't any reason to think these girls are subversive."

The editorial comment continued:

"There were probably few lawyers in Judge McLaughlin's audience who would want to

undertake to justify legally the U.S. administration's high hand in Guam. The security regulations are, according to the Navy, based on an order issued by President Franklin D. Roosevelt. Actually the Navy is not in charge of civil administration in Guam. This, since 1950, has been the responsibility of the Department of Interior operating through a governor appointed by the President. The Government has limited the veto power over the locally elected unicameral legislature. It is not clear why Guam should be the most stringently guarded of all U.S. territories . . . [for] the scars of war have disappeared from Guam. Its beaches rival in beauty any in the Pacific. Its climate is near perfection. But U.S. tourists are not likely soon to explore its charms. The U.S. Navy doesn't want to be bothered. In fact, a naval spokesman has been heard to take credit for keeping all sorts of "riffraff" out of Guam under cover of the security program.<sup>25</sup>

One can only conclude that the U.S. Navy is intentionally enforcing the naval security clearance while realizing at the same time that it is unsupported by statute and is unconstitutional. The words of Judge McLaughlin are again appropriate, though he was commenting upon the fact that the Army continued martial law on Hawaii long after it was necessary. He said:

"Yes, they did it. They did it intentionally. They did it with design aforethought. They did it in knowing disregard of the Constitution. They did it because Hawaii is not a State. They did it because they did not have faith that Americanism transcends race, class and creed."<sup>26</sup>

#### APPENDIX A

##### (1) Denial of clearance by Commander Naval Forces Marianas:

U.S. PACIFIC FLEET,  
COMMANDER NAVAL FORCES MARIANAS,  
Fleet Post Office, San Francisco, Calif.  
From: Commander Naval Forces Marianas.  
To: Commander 3d Air Division (SAC) Andersen Air Force Base, Attn: Provost Marshal.  
Subject: Guam entry clearances; denial of.

1. In view of information obtained by Commander Naval Forces Marianas during the processing of the following Filipino contract laborers for regular Guam entry clearances, the authorization of these men to remain within, or reenter the Guam Naval Defensive Sea Area is hereby denied:

\* Palican, Feliciano (clerk) laundry.

\* 2. It is requested that these Filipino contract laborers be repatriated to the Philippines as soon as possible. It is further requested that the Commander Naval Forces Marianas be notified when the repatriation of the above men has been accomplished.  
By direction.

G. W. ROBERTS.

(2) Letter cancelling employment.  
CENTRAL CIVILIAN PERSONNEL OFFICE,  
3960TH AIR BASE GROUP (SAC),  
U.S. AIR FORCE,  
APO 334, San Francisco, Calif.,  
March 29 1957.

BPCP

Subject: Notice of proposed separation (disqualification).

To: Mr. Feliciano Palican, 3960th Supply Squadron.

Attention: Base laundry.

APO 334.

1. This notice is issued in accordance with the provisions of Civil Service Regulation 9.102(a) and Chapter AFS1 of AFPM 40-1. You are hereby given 30 days notice of pro-

<sup>21</sup> Ibid.

<sup>22</sup> Anthony, "Hawaii Under Army Rule," 118 (1947), quoting from the Honolulu Advertiser, Feb. 23, 1946.

posed action to separate you from your position for disqualification not earlier than May 1, 1957 for the following reason:

(a) Your separation was requested by the Department of Navy, letter dated March 9, 1957, which indicated that your Guam entry clearance had been revoked. Since you are no longer in possession of the necessary clearance, it is therefore necessary to separate you from the service.

2. You are hereby informed of your right to reply personally and in writing to this notice of proposed separation and to show cause why the action should not be taken. You may submit affidavits and evidence in support of your answer. Your reply must be within 7 calendar days of receipt of this notice. A written reply should be made to the Civilian Personnel Office.

3. No decision to separate you has been made or will be made until after the time allowed you for reply. Your reply will be given full and careful consideration before final decision is made. Whether you reply or not, a written notice of final decision will be given you.

4. You will be continued in a work status during the notice period in your present position until you are instructed to clear the base for transportation to the Philippine Islands on or about May 1, 1957.

By order of the Commander:

WILLIAM L. PUETT,  
Civilian Personnel Officer.

#### APPENDIX B

##### ESTABLISHMENT OF NAVAL DEFENSIVE SEA AREA REVIEW BOARD

DEPARTMENT OF THE NAVY,  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS,  
Washington, D.C.

OPNAV instruction 5420.18.

From: Chief of Naval Operations.

To: Distribution list.

Subject: Naval Defensive Sea Area Review Board; establishment of.

Reference:

(a) General Order No. 13.

(b) OPNAV instruction 5500.11A (security clearance procedure for entrance of individuals to Guam, Trust Territory of the Pacific Islands, Bonin-Volcano Islands and Marcus Island, Midway, Wake and Johnston Island).

1. Purpose: This instruction establishes the OPNAV Naval Defensive Sea Area Review Board and sets forth the policies and procedures governing operations of the Board.

2. Composition of the Board: The OPNAV Naval Defensive Sea Area Review Board is hereby established in the Office of the Chief of Naval Operations and will be composed as follows:

(a) One (1) Rear Admiral USN who will act as Chairman and will be designated by the DCNO (Administration).

(b) One (1) civilian member GS-14, or above, designated by the DCNO (Administration).

(c) One (1) Captain USN or one civilian GS-14, member, who will be appointed by the DCNO (Administration).

(d) There will be a Recorder to provide staff assistance to the Board who will be appointed by the DCNO (Administration).

3. Duties and responsibilities of the Board: The Board will act only in the case of U.S. citizens who make application for entry into a defensive sea area and who are denied entry. Such individual whose entry is denied under the provisions of reference (b) may petition the Board for further consideration of the case, by submitted a request in writing to the Chief of Naval Operations. The petitioner may appear at his own expense or be represented by counsel, and may present a reasonable number of witnesses who have intimate knowledge of the circumstances. In this connection, the Board has the right to restrict the number of witnesses insofar as contribution of additional information is concerned. After fair and rea-

<sup>21</sup> Numerous individuals have entered through the Air Force base in Guam without a naval clearance, though they are not included in the Navy's exempt groups. See note 28 supra and text at note 39 supra.

<sup>22</sup> Anthony, "Hawaii Under Army Rule," 122 (1947).

<sup>23</sup> Judge McLaughlin has visited Guam as Judge of the Guam District Court, Appellate Division.

<sup>24</sup> Bauer, "American Guam Off-Limits to Americans," Portland Oregonian, Aug. 4, 1957, p. 42, cols. 4-5.



sonable effort to ascertain facts has been made, the Board will recommend to the Chief of Naval Operations the final disposition in the case.

4. Policy: It is incumbent upon the petitioner to provide full justification for his entry and to show that the interests of the United States are served by such entry.

5. Procedures: In order to execute its mission the Board may take the following action as appropriate:

(a) Request testimony (not under oath) from interested parties as deemed necessary, except that the petitioner may at his option testify under oath or submit sworn statements. The Board does not have the power of subpoena.

(b) Request services of technical specialist who are able to assist the Board in the establishment of fact.

(c) Obtain from other sources information which will enable the Board to render its determination without prejudice or bias.

(d) The Board will prepare a brief of the significant issues and facts in presenting its recommendation to the Chief of Naval Operations for his final decision.

(e) The Board may establish such other procedures as it deems necessary.

ARLEIGH BURKE.

### BILLIE SOL ESTES AND GRAIN STORAGE TRANSACTIONS

Mr. WILLIAMS of Delaware. Madam President, under date of April 5, 1962, I directed an inquiry to the Secretary of Agriculture, Mr. Freeman, requesting information as to the status of any financial arrangements or storage agreements between his Department and Mr. Billie Sol Estes, of Texas. I have asked for a complete report concerning all of his operations with the Government, which I now understand may extend beyond storage agreements.

Under date of April 13 I received an acknowledgement of the April 5 letter, signed by Mr. B. S. Soleau, Director, Inventory Management Division, stating that the information was being assembled and within a few days I would get a report.

I was interested to note an article which appeared in the Philadelphia Inquirer of April 14, under the headline "United States Aide Quits in Payola From Fertilizer King."

The article states that a U.S. Agriculture Department official was said to have received \$1,433 worth of luxurious gift clothes from this same indicted Billie Sol Estes.

I must say that this news article, to the effect that Mr. Jacobs has been removed from the Department pending inquiry, only further arouses my interest. I am awaiting a full report from the Department of Agriculture.

I ask unanimous consent that the two letters and the article to which I have referred be printed at this point in the RECORD.

There being no objection, the letters and the article were ordered to be printed in the RECORD, as follows:

APRIL 5, 1962.

Hon. ORVILLE L. FREEMAN,  
Secretary of Agriculture,  
Washington, D.C.

MY DEAR MR. SECRETARY: It is my understanding that Mr. Billie Sol Estes, of the El Paso, Tex., area, who recently was mentioned as being involved in a questionable transaction concerning the financing of stor-

age bins, was also storing substantial quantities of Government grain. Allegedly his storage interests were in the United Elevators, Plainview, Tex.; Allied Elevators, Hereford, Tex.; and South Plains Grain Co., South Plains, Tex.; as well as certain others of which I do not have the names.

In this connection I would appreciate the following information:

1. A list of all elevators owned or controlled by Mr. Estes in which any Government grain is stored.

(a) The amount and kind of grain stored in each as of the most recent date readily available.

(b) The amount of storage which has been paid by the Government to each of these companies during the past calendar year.

2. Has the Department experienced any difficulty in prior years from the standpoint of either shortage or downgrading of grain that was stored for the Government?

3. Since the recent adverse publicity of Mr. Estes has there been any reexamination of the inventories in these warehouses as well as the condition of the Government grain? If so, please advise the results of such examination.

Your sincerely,

JOHN J. WILLIAMS.

U.S. DEPARTMENT OF AGRICULTURE,  
AGRICULTURE STABILIZATION AND  
CONSERVATION SERVICE,  
Washington, D.C., April 13, 1962.

Hon. JOHN J. WILLIAMS,  
U.S. Senate

DEAR SENATOR WILLIAMS: This will acknowledge receipt of your letter of April 5, 1962, addressed to Secretary Freeman, in which you request certain information concerning grain elevators owned or controlled by Mr. Billie Sol Estes of Texas.

A reply to your letter will be sent to you within a few days.

Sincerely yours,

B. S. SOLEAU,

Director, Inventory Management Division.

[From the Philadelphia Inquirer, Apr. 14, 1962]

### U.S. AID QUILTS IN PAYOLA FROM FERTILIZER KING

DALLAS, TEX., April 13.—A U.S. Agriculture Department official said to have received \$1,433 worth of luxurious gift clothes from indicted Texas fertilizer king Billie Sol Estes resigned in Washington Friday.

The official, Emery E. Jacobs, Deputy Administrator of the Agriculture Stabilization and Conservation Service, said he was ready to come to Texas and tell his story under oath.

He said there has been no "blemish or implication of misusing the public's trust" in his long years as a public servant.

### HE IS GUILTY

Texas Attorney General Will Wilson, who charged Thursday that Estes took two Agriculture Department men shopping for \$245 suits and \$65 slacks in the Neiman-Marcus Co. men's store at Dallas, said, "In my opinion, he is guilty."

"We want him to testify to all his relationships with Billie Sol Estes, especially as to how Billie Sol Estes managed to secure the storage of U.S. Commodity Credit Corporation grain," Wilson added.

Estes, 37, was until recently regarded as a Texas financial genius. He now is under Federal indictment with three associates on charges of committing 57 acts of fraud in an anhydrous ammonia fertilizer scheme.

His interests, once unofficially estimated to be worth a gross of \$150 million, now are run by a court-appointed receiver. He admits he is \$20 million in debt.

### FORTY-SIX MILLION DOLLARS IN GRAIN

The basis of his prostrate empire was an interlocking fertilizer and Federal grain stor-

age business. An estimated \$46 million worth of grain is in elevators he wholly or partly owns.

Jacobs, an Oklahoman, has spent more than 30 years in Government agriculture work. He is a friend of Democratic Senator ROBERT S. KERR, of Oklahoma, and headed the farmers-for-Kennedy organization in Oklahoma in 1960.

Wilson seeks to prove that Estes showered gifts on Agriculture Department officials to get them to put grain in his elevators. The Government paid him \$8 million in 3 years for storage.

### AN EDITOR'S CHALLENGE TO OUR AMERICAN PRESS

Mr. MUNDT. Madam President, a week ago, it was my privilege to attend the annual meeting of the South Dakota Press Association in Sioux Falls, S. Dak. The annual banquet was addressed by one of neighboring Minnesota's most distinguished editors who has held numerous national offices in the press and editorial associations of our country—Mr. Alan C. McIntosh, editor and publisher of the Rock County Star Herald of Luverne, Minn.

In blunt, picturesque, dramatic language, Alan McIntosh challenged his fellow editors and publishers in this Republic to climb down out of their ivory towers and to revive the type of fearless, untimidated, unshackled journalism which during the golden era of journalism in America enabled the press of this country to provide a responsible and respected leadership that did more than any other factor to determine the direction of our country's destiny.

So that others in the country and the Congress may have an opportunity to read and analyze Mr. McIntosh's penetrating presentation, I ask unanimous consent that the full text of his address be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

### AN EDITOR'S CHALLENGE TO OUR AMERICAN PRESS

This is not going to be a Dale Carnegie type of talk. Instead, I'll probably make a number of people angry, but there are some things that I feel should be said.

Most of us got into the newspaper business the easy way. If we could scrape up a down-payment we were in business. We didn't have to tote a sack of type and a handpress by river boat or prairie schooner and risk our lives in a raw frontier town.

And we don't have to keep in our office desk a piece of equipment that was as necessary as a font of type in pioneer days—a shooting iron.

I think it does good to think back what our pioneer journalistic forefathers went through—Goodhue, Minnesota's first newspaperman had to fight a pistol-bowie knife duel on the streets of Pigs Eye Landing, which is now St. Paul, because a subscriber objected to one of his political editorials.

Down in New Mexico there were about 13 pioneer newspapermen that met violent death—one editor being shot as he entered his church for a Christmas Eve service.

In making talks to the Minnesota audience and the New Mexico newspapermen, I had plenty of data because their historical societies furnished me a wealth of material.

It was a little different preparing for this talk. Your State historical society couldn't furnish me any material of value, and didn't even reply to my second letter renewing my



## SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION [REVISED]

### Part 761—Naval Defensive Sea Areas, Naval Airspace Reservations, Areas Under Navy Administration, and the Trust Territory of the Pacific Islands

#### Subpart A—Introduction

- Sec.  
761.1 Scope.  
761.2 Background and general policy.  
761.3 Authority.  
761.4 Special provisions.  
761.5 Definitions.

#### Subpart B—Criteria and Basic Controls

- 761.6 Criteria.  
761.7 Basic controls.

#### Subpart C—Entry Authorization

- 761.8 General.  
761.9 Entry Control Commanders.  
761.10 Persons: group authorizations.  
761.11 Persons: individual authorizations.  
761.12 Vessels: group authorizations.  
761.13 Vessels: individual authorizations.  
761.14 Aircraft: group authorizations.  
761.15 Aircraft: individual authorizations.  
761.16 Notice of action.  
761.17 Revocation.  
761.18 Appeals.

#### Subpart D—Additional Instructions

- 761.19 Inspection and search of vessels and other craft.  
761.20 Naval Defensive Sea Area closed between sunset and sunrise.  
761.21 Compliance with laws and regulations.  
761.22 Apprehension of vessels, aircraft or persons.  
761.23 Formulation of additional rules.  
761.24 Commander, U. S. Naval Forces, Marianas, designated local representative of the Secretary of the Navy.

**AUTHORITY:** §§ 761.1 to 761.24 issued under 44 Stat. 570, sec. 1, 62 Stat. 799, sec. 6011,

70A Stat. 375; 49 U. S. C. 174, 18 U. S. C. 2152, 10 U. S. C. 6011. Interpret or apply sec. 202, 61 Stat. 500, as amended, sec. 21, 64 Stat. 1005; 5 U. S. C. 171a, 50 U. S. C. 797.

**SOURCE:** §§ 761.1 to 761.24 appear at 23 F. R. 2497, Apr. 17, 1958.

#### SUBPART A—INTRODUCTION

§ 761.1 *Scope.* (a) This part includes regulations governing entry of persons, vessels, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President.

(2) Areas placed by Executive order of the President under the Secretary of the Navy for administrative purposes.

(3) The Trust Territory of the Pacific Islands.

(4) The Bonin, Volcano, and Marcus Islands.

(5) Naval stations located within or contiguous to Naval Defensive Sea Areas or Naval Airspace Reservations.

(b) In addition to the authorization required by this part, local clearance is required for entry into certain restricted areas, including the Saipan District and the Islands of Bikini and Eniwetok in the Trust Territory and the Bonin, Volcano and Marcus Islands. The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.

§ 761.2 *Background and general policy.* (a) The free entry into the defense areas, listed and defined in this part, and naval and military installations located contiguous to or within the boundaries



of defense areas has been barred or restricted by Executive order and by regulation for defense purposes due to the unique strategic nature of the areas and for the protection of the military and naval stations, bases and other facilities located therein and the personnel, property, and equipment assigned to or located within such areas, bases, stations, and facilities, against destruction, loss or injury by accident or enemy action or by sabotage or other subversive actions. Persons, vessels, and aircraft are excluded unless and until they qualify for admission under the Executive order and applicable regulations.

(b) The control of entry into or movement within defense areas by persons, vessels, and aircraft will be exercised so as to fully protect the physical security of, and insure the full effectiveness of, bases, stations, and other facilities within or contiguous to defense areas; but unnecessary interference with the free movement of persons, vessels, and aircraft is to be avoided.

(c) This part will be administered so as to provide prompt processing of all applications, insure uniformity of interpretation and application, insofar as changing conditions permit, and obviate arbitrary or capricious exclusions and other injustices.

(d) In cases of doubt, the determination will be made in favor of the course of action which will serve the interests of the United States and national defense as against the private interests of an individual or group.

(e) Public notices of entry controls are posted at places prescribed by the appropriate entry control commanders.

§ 761.3 *Authority*—(a) *Naval Defensive Sea Areas and Naval Airspace Reservations*. By Executive order, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, vessels, and aircraft into the areas so described.

(1) *Atlantic areas*—(i) *Culebra Island Naval Defensive Sea Area*. Culebra Island Naval Airspace Reservation: Executive Order 8684 of February 14, 1941 (6 F. R. 1016; 3 CFR, 1943 Cum. Supp., p. 895).

(ii) *Guantanamo Bay Naval Defensive Sea Area*. Guantanamo Bay Naval Airspace Reservation: Executive Order 8749 of May 1, 1941 (6 F. R. 2252; 3 CFR, 1943 Cum. Supp., p. 931).

(2) *Pacific areas*—(i) *Guam Island Naval Defensive Sea Area*. Guam Island Naval Airspace Reservation: Executive Order 8683 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 10341 of April 8, 1952 (17 F. R. 3143; 3 CFR, 1952 Supp., p. 68).

(ii) *Johnston Island Naval Defensive Sea Area*. Johnston Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 F. R. 5325; 3 CFR, 1943-1948 Comp., p. 662).

(iii) *Wake Island Naval Defensive Sea Area*. Wake Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 F. R. 5325; 3 CFR, 1943-1948 Comp., p. 662).

(iv) *Midway Island Naval Defensive Sea Area*. Midway Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 F. R. 5325; 3 CFR, 1943-1948 Comp., p. 662).

(v) *Kingman Reef Naval Defensive Sea Area*. Kingman Reef Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 F. R. 5325; 3 CFR, 1943-1948 Comp., p. 662).

<sup>1</sup> Operation of entry control suspended. See § 761.4 (b) following.

<sup>2</sup> Operation of entry control suspended except for entry of foreign flag vessels and foreign nationals.



(vi) *Honolulu Defensive Sea Area.* Executive Order 8987 of December 20, 1941 (6 F. R. 6675; 3 CFR, 1943 Cum. Supp., p. 1048).

(vii) *Kaneohe Bay Naval Defensive Sea Area.* Kaneohe Bay Naval Airspace Reservation:<sup>1</sup> Executive Order 8681 of February 14, 1941 (6 F. R. 1014; 3 CFR, 1943 Cum. Supp., p. 893).

(viii) *Pearl Harbor Defensive Sea Area.* Executive Order 8143 of May 26, 1939 (4 F. R. 2179; 3 CFR, 1943 Cum. Supp., p. 504).

(ix) *Kodiak Naval Defense Sea Area.* Executive Order 8717 of March 22, 1941 (6 F. R. 1621; 3 CFR, 1943 Cum. Supp., p. 915). Kodiak Naval Airspace Reservation:<sup>1</sup> Executive Order 8597 of November 18, 1940 (5 F. R. 4559; 3 CFR, 1943 Cum. Supp., p. 837) as amended by Executive Order 9720 of May 8, 1946 (11 F. R. 5105; 3 CFR, 1943-1948 Comp., p. 527).

(x) *Kiska Island Naval Defensive Sea Area.* Kiska Island Naval Airspace Reservation:<sup>1</sup> Executive Order 8680 of February 14, 1941 (6 F. R. 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(xi) *Unalaska Island Naval Defensive Sea Area.* Unalaska Island Naval Airspace Reservation:<sup>1</sup> Executive Order 8680 of February 14, 1941 (6 F. R. 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(b) *Administrative areas.* By Executive order, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named islands and surrounding reefs:

(1) *Wake Island.*<sup>2</sup> Executive Order 6935 of December 29, 1934.

(2) *Kingman Reef.* Executive Order 6935 of December 29, 1934.

(3) *Johnston Island.* Executive Order 6935 of December 29, 1934.

(4) *Sand Island.* Executive Order 6935 of December 29, 1934.

(c) *Trust Territory of the Pacific Islands.* The Trust Territory of the Pacific Islands is a strategic area admin-

istered by the United States under the provisions of a Trusteeship Agreement with the United Nations. By Executive Orders 10265 of June 29, 1951 (16 F. R. 6419; 3 CFR, 1951 Supp., p. 448), 10408 of November 10, 1952 (17 F. R. 10277; 3 CFR, 1952 Supp., p. 110), and 10470 of July 17, 1953 (18 F. R. 4231; 3 CFR, 1953 Supp., p. 87), the Secretary of the Interior has been charged with administrative responsibility for the Marshall and Caroline Islands and Rota Island, and the Secretary of the Navy has been charged with administrative responsibility for the northern Mariana Islands (less Rota). Under an agreement between the Department of the Navy and the Department of the Interior with respect to the Transfer of Responsibility for the Administration of the Trust Territory of June 29, 1951, clearance by the Secretary of the Navy of all persons, vessels, and aircraft (other than public vessels or public aircraft of the United States), is a prerequisite to the granting of permission by the High Commissioner to enter the Trust Territory. Entry into the Saipan District is subject to the exclusive control of the Navy Department, which control is exercised under the provisions of this part with additional local control by the Commander, U. S. Naval Forces, Marianas.

(d) *Bonin, Volcano and Marcus Islands.* The Bonin, Volcano and Marcus Islands are administered by the Navy Department, as a strategic area, under provisions of the Peace Treaty with Japan (3 UST 3169). In addition to the requirements of this part, the Commander in Chief, U. S. Pacific Fleet, as Military Governor of the Bonin-Volcano Islands and Marcus Island, exercises local control over the entry of persons, vessels and aircraft into these islands.

(e) *Exercise of authority.* The authority of the Secretary of the Navy to authorize ships, aircraft and persons to enter these areas listed in paragraphs (a) through (d) of this section is exercised through the Chief of Naval Operations and certain of his subordinates as prescribed by this part.

(f) *Penalties.* Penalties are provided by law: (1) for violations of orders or regulations governing persons or vessels within the limits of defensive sea areas (62 Stat. 799; 18 U. S. C. 2152); (2) for navigation of aircraft within airspace reservations otherwise than in conformity with the Executive orders regulating

<sup>1</sup> See footnote 1 on p. 268.

<sup>2</sup> See footnote 2 on p. 268.



such reservations (44 Stat. 570, 576; 49 U. S. C. 174, 181); (3) for entering military, naval or Coast Guard property for prohibited purposes or after removal or exclusion therefrom by proper authority (62 Stat. 765; 18 U. S. C. 1382); (4) for violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any department or agency of which said department or agency consists, or any officer or employee of said department or agency, section 21 of the Internal Security Act of 1950 (50 U. S. C. 797), and Department of Defense notice of August 20, 1954 (19 F. R. 5446); and (5) for knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U. S. C. 1001).

§ 761.4 *Special provisions*—(a) *Restricted areas*. Special permits are required for entry into the following restricted areas:

(1) *Eniwetok and Bikini Atolls*. Entry into these islands and the territorial sea thereof is controlled by the Commander in Chief, Pacific, and is not covered by or subject to this part.

(2) *Saipan District, Trust Territory*. In addition to the controls covered by this part, entry into this district is subject to local control by the Commander, U. S. Naval Forces, Marianas, Guam.

(3) *Bonin, Volcano, and Marcus Islands*. In addition to the controls covered by this part, entry into these islands or the territorial sea thereof is subject to local control by the Commander in Chief, U. S. Pacific Fleet, as Military Governor.

(b) *Suspension of restrictions*. Restrictions imposed under the authority of the above cited Executive orders on entry into the following Naval Defensive Sea Areas, and Naval Airspace Reservations and Administrative areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require:

(1) All Naval Airspace Reservations, except:

(i) Guantanamo Bay Naval Airspace Reservation.

(ii) Culebra Island Naval Airspace Reservation.

(iii) Guam Island Naval Airspace Reservation.

(2) The Wake Island Naval Defensive Sea Area, except for entry of foreign flag vessels and foreign nationals.

(3) The portion of Kaneohe Defensive Sea Area lying Northwest of a line drawn from Lae O Kealohi Point to an Eastern point of Kapapa Island and thence Northeast to the present seaward boundary of the defensive sea area.

(4) Wake Island Administrative Area, except for entry of foreign flag vessels and foreign nationals.

Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

§ 761.5 *Definitions*—(a) *Defense area*. A naval defensive sea area, naval airspace reservation or naval administrative area established by Executive order of the President, the Trust Territory of the Pacific Islands and the territorial sea thereof, and the Bonin, Volcano and Marcus Islands and the territorial seas thereof.

(b) *Department of Defense*. The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) *Entry authorization*. A permit which authorizes a person, vessel, or aircraft to enter a defense area. (See Group Authorization and Individual Authorization dealt with in §§ 761.10 through 761.15.)

(d) *Entry Control Commander*. A commander authorized to issue entry authorizations for one or more defense areas.

(e) *Excluded person*. A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for him to enter any defense area has been denied, suspended, or revoked.



(f) *Foreign nationals.* Persons who are not citizens or nationals of the United States.

(g) *Naval station.* A naval activity on shore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to naval jurisdiction and to immediate authority of the commanding officer.

(h) *Permanent resident aliens.* Foreign nationals who have been admitted to the United States as immigrants under the Immigration and Naturalization Laws and are authorized to reside permanently in the United States, its territories and possessions.

(i) *Public vessel or aircraft.* A vessel or aircraft belonging to a government and not engaged in trade.

(j) *Territorial sea—(1) Trust Territory.* In accordance with section 874 (c) of the Code of the Trust Territory " . . . that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such reef system, the distance to be measured from the low water line of any island, islet, atoll, reef, or rocks within the jurisdiction of the Trust Territory."

(2) *Other areas.* That part of the sea included within the envelope of all arcs of circles having a radius of three marine miles with centers on the low water line of the coast. For the purpose of this definition, the term "coast" includes the coasts of islands, islets, rocks, atolls, reefs and other areas of land permanently above the high water mark.

(k) *Trust Territory Registry.* Registration of a ship or aircraft in accordance with the laws of the Trust Territory.

(l) *U. S. Armed Forces.* Military personnel of the Department of Defense, the Departments of the Army, Navy, Air Force, and the United States Coast Guard.

(m) *U. S. Registry.* Registration of a vessel or aircraft in accordance with the laws and regulations of the United States.

#### SUBPART B—CRITERIA AND BASIC CONTROLS

§ 761.6 *Criteria—(a) General.* (1) Entry authorizations may be issued only after an Entry Control Commander, or

a duly authorized subordinate acting in his behalf, has determined that the presence of the person, vessel, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability or effectiveness of any military or naval installation located within or contiguous to a defense area. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the personal history, character and present or past associates of the individuals involved, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft or the individual or individuals (either singly or as members of a group or class) involved impose or might reasonably be expected to impose on the related base complex.

(2) Requests for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimicable to the purposes of national defense.

(b) *Adverse.* Substantial evidence of any of the following shall preclude the granting of entry authorization except with the specific approval of the Chief of Naval Operations in each case:

(1) Prior noncompliance with entry control regulations or failure to observe terms under which an entry authorization may have been granted;

(2) Willfully furnishing false, incomplete, or misleading information in an application for an entry authorization;

(3) Advocacy of the overthrow or alteration of the Government of the United States by unconstitutional means;

(4) Commission of, or attempt or preparation to commit, an act of espionage, sabotage, sedition, or treason, or conspiring with or aiding or abetting another to commit such an act;

(5) Performing, or attempting to perform, duties or otherwise acting so as to serve the interests of another government to the detriment of the United States;

(6) Deliberate unauthorized disclosure of classified defense information;

(7) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General pursuant to Executive Order 10450 of April 27, 1953 (18 F. R. 2489; 3 CFR, 1953



Supp., p. 72), as amended (see 5 U. S. C. 631 note; also 18 F. R. 2741; 19 F. R. 655; 20 F. R. 816, 2093, 7201, 8163; 22 F. R. 8069);

(8) Serious mental irresponsibility evidenced by having been adjudged insane, or mentally irresponsible, or an incompetent, or a chronic alcoholic, or treated for serious mental or neurological disorders or for chronic alcoholism, without evidence of cure;

(9) Conviction of any of the following offenses under circumstances indicative of a criminal tendency potentially dangerous to the security of a strategic area containing military establishments: arson, unlawful trafficking in drugs, espionage, sabotage, treason, murder, kidnapping, blackmail, or sex offenses involving minors or perversion;

(10) Chronic alcoholism or addiction to the use of narcotic drugs without adequate evidence of rehabilitation;

(11) Illegal presence in the United States, its territories or possessions, having been finally subject to deportation order, or voluntary departure in lieu of deportation order, by the United States Immigration and Naturalization Service;

(12) Being the subject of proceedings for deportation or voluntary departure in lieu of deportation for any reasons which have not been determined in the applicant's favor;

(13) Conviction of larceny of military property of the United States, willful injury to or destruction of military property of the United States, fraudulent enlistment, impersonation of a commissioned officer of the United States or of any state or territory thereof, or any offense involving moral turpitude, except offenses, which, in the jurisdiction within which the conviction was obtained, are punishable by imprisonment for not more than one year or a fine of not more than one thousand dollars.

(c) *Aliens.* (1) Entry of aliens for employment or residence in an area entirely within the borders of a defense area is not authorized except when such entry would serve the interests of national defense, and then only for specified periods and under prescribed conditions.

(2) Entry of aliens for any purpose into areas over which the United States exercises sovereignty is further subject to requirements imposed by law for the

obtaining of a United States visa. Naval authorizations for entry into areas covered by this part will not be issued to foreign nationals for purposes, places, or periods of time in excess of those stipulated in the visa.

(3) Alien spouses and bona fide dependents of U. S. citizen employees of the United States and alien spouses and minor children of U. S. citizen permanent (i. e., domiciled) residents of such areas may, if otherwise qualified, be granted entry authorization or extension of entry authorization so long as the U. S. citizen sponsor or principal remains on duty or resident within the defense area.

(4) Aliens who are legal permanent residents of the United States are for purposes of this part to be afforded consideration similar to that provided United States citizens.

(d) *Renewals.* Entry authorizations having been granted and utilized may be renewed upon request at the expiration of the period for which the original entry was authorized, provided the justification for remaining in the area or for making a re-entry meets the criteria set forth in this part. It shall be the responsibility of every applicant to depart the defense area for which entry was authorized upon expiration of the time prescribed in the authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence of violation of this part and may result in denial of future authorizations.

§ 761.7 *Basic controls*—(a) *General regulations.* Except for such persons, vessels, or aircraft as are authorized to enter under the provisions of a group authorization in this part or a person, vessel, or aircraft issued an individual authorization by an Entry Control Commander:

(1) No person, except persons aboard public vessels or aircraft of the United States, shall enter any defense area.

(2) No vessel or other craft, except public vessels of the United States, shall enter any naval defensive sea area or other defense area.

(3) No aircraft, except public aircraft of the United States, shall be navigated within any naval airspace reservation or other defense area.

(b) *Excluded persons*—(1) *Entry prohibited.* No excluded person, as defined in § 761.5 (e), shall enter any defense



area. In a bona fide emergency which requires an excluded person's presence in or transit through a naval station which is also a defense area, the commanding officer of the station may grant permission to enter or transit subject to such restrictions as may be imposed by regulation or which may, in his discretion, be required. (This regulation is imposed in accordance with the Internal Security Act of 1950 (see 50 U. S. C. 781, 797) and Department of Defense notice of August 20, 1954, 19 F. R. 5446; and persons who willfully violate this regulation may be prosecuted and upon conviction be liable to a fine of not to exceed \$5,000.00 or to imprisonment for not more than one year or both.)

(2) *Carrying prohibited.* Except in a bona fide emergency and after being authorized by the appropriate local authority, no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person, as defined in § 761.5 (e), as passenger, officer or crew member.

(c) *Control of violators.* No commanding officer of a naval station shall permit any vessel or aircraft which has entered the limits of his command by passing through a defense area without authorization to land, except in emergency, or, if permitted to land, to disembark passengers or cargo except as authorized by the appropriate Entry Control Commander. Commanding officers will take appropriate action to apprehend violators who come within their jurisdictions and request disposition instructions from the appropriate Entry Control Commander.

(d) *Trust Territory.* In addition to the Naval entry authorization, permission from the High Commissioner is required for all persons, except Trust Territory citizens and U. S. Government employees on official business, to enter part of the Trust Territory of the Pacific Islands which includes Rota Island, the Caroline Islands, and the Marshall Islands (less Eniwetok and Bikini Atolls, and Kwajalein Island).

(e) *Military areas.* Entries authorized under this part do not affect the authority of a commanding officer or other appropriate commander to impose and enforce proper regulations pertaining to movement into or within naval stations or other military or naval facilities.

(f) *Waiver prohibited.* No officer of the U. S. armed forces, except as authorized in writing by the Chief of Naval Operations, has authority to waive the requirements of this part, and any waiver must be in writing and signed by an authorized person.

#### SUBPART C—ENTRY AUTHORIZATION

§ 761.8 *General.* As indicated in § 761.7 certain persons, vessels and aircraft must be specifically authorized under the provisions of this part to enter defense areas. Provision is made for two types of authorizations:

(a) Group authorizations which authorize the entry of individual persons, vessels, or aircraft by reason of belonging to a group or class described in this part or in a special group authorization issued by the Chief of Naval Operations.

(b) Individual authorizations issued to a named or described person, vessel, or aircraft.

When entering or transiting a defense area each person, vessel, or aircraft must carry a valid individual authorization or satisfactory evidence of his or its current status as a member of an authorized group or class.

§ 761.9 *Entry Control Commanders.* The following commanders are designated Entry Control Commanders with authority to approve or disapprove individual entry authorizations for persons, vessels, and aircraft as indicated:

(a) *Chief of Naval Operations.* Authorizations for all persons, vessels, and aircraft to enter all defense areas.

(b) *Commander in Chief, U. S. Atlantic Fleet.* Authorizations for all persons, vessels, and aircraft to enter defense areas in the Atlantic.

(c) *Commander in Chief, U. S. Pacific Fleet.* Authorizations for all persons, vessels, and aircraft to enter all defense areas in the Pacific.

(d) *Commander, Caribbean Sea Frontier.* Authorizations for all persons and U. S. registered private and Canadian public vessels to enter Guantanamo Bay Naval Defensive Sea Area, Guantanamo Bay Naval Airspace Reservation, Culebra Island Naval Defensive Sea Area, and Culebra Island Naval Airspace Reservation.

(e) *Commander, Alaskan Sea Frontier.* Authorizations for all persons and for U. S. registered private and Canadian



public vessels to enter Kodiak Naval Defensive Sea Area, Kiska Island Naval Defensive Sea Area, and Unalaska Island Naval Defensive Sea Area.

(f) *Commander, Hawaiian Sea Frontier.* Authorizations for U. S. citizens and U. S. registered private vessels to enter Johnston Island, Midway Island, Kingman Reef, Kaneohe Bay Naval Defensive Sea Area, Pearl Harbor Defensive Sea Area, and that portion of the Trust Territory of the Pacific Islands east of 160 degrees east longitude. (See also paragraph (i) of this section.)

(g) *Commander, U. S. Naval Forces, Marianas.* Authorizations for U. S. citizens and U. S. registered private vessels to enter the Guam Island Naval Defensive Sea Area, the Guam Island Naval Airspace Reservation, the Trust Territory of the Pacific Islands, for U. S. citizens to enter the Bonin, Volcano, and Marcus Islands; and for Trust Territory vessels to enter the Guam Island Naval Defensive Sea Area.

(h) *Senior Naval Commander in Defense Area.* Emergency authorizations for persons and for aircraft in cases of emergency or distress. In all cases the Chief of Naval Operations, and, as appropriate, the Commander in Chief, U. S. Atlantic Fleet, or the Commander in Chief, U. S. Pacific Fleet, and other interested commands, shall be informed immediately of the nature of the emergency, action taken, and proposed action.

(i) *U. S. Coast Guard.* The U. S. Coast Guard regulates the movement of shipping within the Honolulu Harbor under the authority of Executive Orders 10173 of October 18, 1950 (15 F. R. 7005, 3 CFR, 1950 Supp., p. 140) and 10289 of September 17, 1951 (16 F. R. 9499; 3 CFR, 1951 Supp., p. 469); such shipping is considered to be under U. S. authorized supervision within the meaning of Executive Order 8987 of December 20, 1941 (6 F. R. 6675; 3 CFR, 1943 Cum. Supp., p. 1048). The Commandant, Fourteenth Naval District, as representative of the Secretary of the Navy, retains responsibility for security of the Honolulu Defensive Sea Area, as required by naval interest, and, as such, issues amplifying instructions relating to the Honolulu Defensive Sea Area.

§ 761.10 *Persons: group authorizations.* Persons in the following groups or classes, except persons who have been denied individual authorizations or who

have been notified that their privileges under an individual or group authorization have been revoked, may enter the defense areas indicated without individual authorization.

(a) Persons aboard U. S. public vessels or aircraft.

(b) Military members or U. S. civil service employees of the Department of Defense when traveling on official orders or leave papers, except that personnel traveling on leave may not enter the Trust Territory without an authorization from the appropriate Entry Control Commander and permission from the High Commissioner, and personnel traveling on leave may not enter the Saipan District or the Bonin-Volcano Islands without the prior approval of the Commander, U. S. Naval Forces, Marianas.

(c) U. S. ambassadors, cabinet members, elected U. S. Government officers and U. S. citizen civil service employees of the United States Government traveling on official orders on government business may enter defense areas as required by their orders.

(d) Dependents of military members of the Armed Forces and U. S. citizen dependents of U. S. citizen civil service employees of the United States Government traveling on orders and entering for the purposes of joining a principal permanently stationed in an area covered by this part may enter such area.

(e) U. S. Navy Technicians, U. S. Army Contract Technicians, or U. S. Air Force Contract Technicians, who are traveling on official travel authorizations on U. S. Government business, may enter defense areas as required by such authorizations. This group entry authorization does not include persons traveling on invitational travel orders.

(f) U. S. citizens who were born on Guam or who became citizens of the United States under the Organic Act of Guam (48 U. S. C. 1421-1424b), may enter the Guam Island Naval Defensive Sea Area and the Guam Island Airspace Reservation.

(g) Permanent indigenous residents of the Trust Territory of the Pacific Islands traveling on a properly visaed Trust Territory document may enter the Guam Island Naval Defensive Sea Area, the Guam Island Naval Airspace Reservation, and the Trust Territory of the Pacific Islands.



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(h) Persons domiciled and currently residing in the Bonin Islands and traveling on a Bonin Island travel document, properly visaed when required, may enter the Guam Island Naval Defensive Sea Area, the Guam Island Airspace Reservation, and the Bonin Islands.

(i) Individuals on board any foreign public vessel or aircraft which has been granted diplomatic or other official authorization to enter an area covered by this part.

(j) Through passengers and bona fide regularly employed crew members, except excluded persons, on nonpublic vessels authorized to enter areas covered by this part. This does not include an authorization to disembark at a port contiguous to or within the areas covered in Part 761. Application for permission to disembark may be submitted to an Entry Control Commander having jurisdiction over the particular port.

(k) Through passengers and bona fide regularly employed crew members, except excluded persons, on nonpublic aircraft which is authorized to enter areas covered by this part provided such persons intend and certify in writing that they intend to continue on the flight on which embarked or on the first available onward transportation. Such persons are subject to local regulations governing entry into or movement within military air stations or facilities. Application for permission to disembark may be submitted to an Entry Control Commander having jurisdiction over the air facility.

(l) U. S. citizen news correspondents and photographers when properly accredited by the Department of Defense to enter areas covered by this part except that special authorization is required to enter the restricted areas listed in § 761.4 (a).

§ 761.11 *Persons: individual authorizations—(a) Application; filing.* Applications for authorization to enter defense areas shall be filed with one of the following:

- (1) Chief of Naval Operations.
- (2) Commander in Chief, U. S. Atlantic Fleet.
- (3) Commander in Chief, U. S. Pacific Fleet.
- (4) Any Naval Sea Frontier Commander.

(5) Any Naval Fleet or Force Commander.

(6) Any Naval District Commandant.

(7) Any Naval Attache.

The Commander or Attache with whom the application is filed is responsible for taking such action on the application as he may be empowered to do or for forwarding the application to the nearest Entry Control Commander authorized by this part to take action thereon. Applications received in the United States and those received indicating that the applicant has resided in the United States for the major portion of ten years immediately prior to date of request will normally be forwarded to the Chief of Naval Operations for action. In all cases where the forwarding activity has information regarding the applicant or his employer, appropriate comment and/or recommendation for disposition will be included in the forwarding letter. The processing of applications of persons residing in the continental United States will be expedited if they are mailed direct to the Chief of Naval Operations.

(b) *Form.* (1) Applications for entry authorizations will be made on the standard form, Statement of Personal History, DD 398, which is available at most military installations. In addition to the information required by the form, an entry application shall include the following additional information under Item 20, "Remarks":

21. Purpose of proposed visit: (Detailed statement including names of principal persons, firms, or establishments to be visited)
22. Proposed duration of visit:
23. Estimated date of arrival:
24. Address to which authorization should be mailed:

In the event that a DD 398 form is not available, a locally produced form containing identical information, including the certification and signatures of applicant and witness may be utilized.

(2) Incomplete forms will be returned for completion.

(3) When time is of the essence, emergency applications may be forwarded by message to the appropriate Entry Control Commander. Such messages shall include the following:

- (i) Name of applicant.
- (ii) Date and place of birth.
- (iii) Citizenship.

§(m) For U.S. citizens entering Guam, the requirement for an entry authorization has been superseded indefinitely. Page 275  
[Added Oct. 4, 1961, 26 F.R. 9503]



(iv) Residence for last ten (10) years.  
(v) Employers and address for last ten (10) years.

(vi) Results of Local Agency Check, if pertinent.

(vii) Place to be entered and date of entry.

(viii) Purpose of entry and duration of stay.

(ix) Comments and/or recommendations of forwarding officer as appropriate.

(x) A statement that a completed DD 398 or appropriate substitute has been mailed prior to the sending of the message.

(c) *Processing.* The Entry Control Commander empowered to issue entry authorizations shall upon receipt of an application take the following action:

(1) Initiate or conduct such investigation as may be required to establish facts upon which to make a determination that the entry of the applicant at the time and for the purpose indicated is or is not in accordance with the criteria set forth in § 761.6.

(2) Request additional information from the applicant if required, or

(3) Issue an entry authorization as requested or modified as circumstances require, or

(4) Deny the request and advise the applicant of his right to appeal, or

(5) Forward the application to the next superior in command together with a statement of the investigation conducted and the reason for forwarding and comments or recommendations as appropriate.

(d) *Authorizations.* Entry authorizations will state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization. Authorizations to enter and re-enter may be issued to resident U. S. citizens and be valid for a specified time not to exceed two years. Authorizations may be issued to U. S. citizens residing abroad and to aliens to enter and re-enter for a specified period of time required to accomplish the purpose for which the authorization was issued not to exceed one year.

§ 761.12 *Vessels: group authorizations.* Vessels or other craft in the following groups or classes, except vessels which

have been denied individual authorization or notified that their privileges under an individual or group authorization have been revoked, may enter the defense areas indicated without individual authorization:

(a) U. S. public vessels, to enter all defense areas.

(b) U. S. private vessels which are: (1) under charter to the Department of Defense (including the Military Sea Transportation Service), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clearances, to enter defense areas as authorized by the controlling Defense Department agency.

(c) Vessels of United States registry regularly engaged in trade between ports in the Trust Territory and Guam, and whose crews consist only of United States or Trust Territory citizens or persons holding individual entry permits, to enter Guam and the Trust Territory.

(d) Vessels registered and licensed in the Trust Territory of the Pacific Islands and manned by U. S. citizens or residents of the Trust Territory or the Bonin Islands, to enter Guam and the Trust Territory.

(e) Privately owned local craft, registered with and licensed by appropriate local United States Government agencies, and owned and operated by local inhabitants who have been granted authority, to enter the local naval defensive sea area at the discretion of the local commander.

(f) Foreign flag vessels traveling on diplomatic or other special clearance or for which special arrangements have been made under international agreements or treaties.

(g) Vessels operating under a group authorization issued by the Chief of Naval Operations.

(h) Vessels in distress, subject to local clearance and control by the senior officer present.

§ 761.13 *Vessels: individual authorizations—(a) Applications; form; filing.* Applications for authorization to navigate vessels within the limits of defense



areas shall be filed with the cognizant Entry Control Commander by letter or telegram including the following information and any additional information that may be relative to the proposed operation:

- (1) Name of vessel.
- (2) Place of registry and registry number.
- (3) Name, nationality and address of operator.
- (4) Name, nationality and address of owner.
- (5) Gross tonnage of vessel.
- (6) Nationality and numbers of officers and crew (include crew list when practicable).
- (7) Number of passengers (include list when practicable).
- (8) Last port of call prior to entry into area for which clearance is requested.
- (9) Purpose of visit.
- (10) Proposed date of entry and estimated duration of stay.

(b) *Processing.* Applications for single entries or for multiple entries for a period not to exceed one year may be granted or denied by an Entry Control Commander. Applications for multiple entries for a period to exceed one year or for special group entries must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.14 *Aircraft: group authorizations.* Aircraft in the following groups or classes, except aircraft which have been denied individual authorization or notified that their privileges under an individual or group authorization have been revoked, may enter the defense areas indicated without individual authorization:

- (a) U. S. public aircraft to enter all defense areas.
- (b) U. S. private aircraft which are under charter to the Department of Defense (including the Military Air Transport Service), or operate under a contract with the Department of Defense providing for the employment of such aircraft to overfly U. S. island positions and to land when proper authorization has been obtained from the Chief of Naval Operations for use of naval aviation facilities, to enter defense areas as authorized by the controlling Defense Department agency.

(c) Non-public aircraft of U. S. registry operating under the authority of the Secretary of the Interior to provide logistic support for the Trust Territory to fly over and land in the Trust Territory (except at Naval Air Station, Kwajalein, Eniwetok and Bikini Atolls) and the Guam Naval Airspace Reservation when proper authorization has been obtained from the Chief of Naval Operations to use naval aviation facilities on Guam.

(d) Foreign flag aircraft for which special arrangements have been made under international agreements or treaties.

(e) Aircraft operated by companies authorized by the Chief of Naval Operations to utilize the naval facilities on the island of Guam or in other defense areas for regular commercial activity, to enter the Guam Island Naval Airspace Reservation or other defense areas as authorized by the Chief of Naval Operations.

(f) Any aircraft in distress, subject to local control by the senior officer present.

§ 761.15 *Aircraft: individual authorizations—(a) Special procedures.* In addition to the entry authorization to enter or navigate within the defense area concerned, certain special procedures must be followed by aircraft:

(1) If U. S. Navy aviation facilities are to be used, prior authorization must be obtained from the Chief of Naval Operations.

(2) If U. S. Air Force aviation facilities are to be used, prior authorization must be obtained from the appropriate Air Force commander.

(3) Foreign public aircraft must obtain diplomatic clearance or clearance under applicable special agreements or treaties.

(b) *Application; form; filing.* Applications for authorization to navigate aircraft within the limits of defense areas shall be made by letter or telegram addressed to the Commander in Chief, U. S. Atlantic Fleet, or the Commander in Chief, U. S. Pacific Fleet, as appropriate. Copies of application letter shall be sent to the Chief of Naval Operations and the local commanders who are known to be concerned. Applications shall include the following information:

- (1) Type and serial number of aircraft (the number of aircraft in flight



if a mass movement is involved), nationality and name of registered owner.

- (2) Name and rank of senior pilot.
- (3) Number in crew.\*
- (4) Number of passengers and whether military or civilian; include name (and rank) of distinguished passengers.\*
- (5) Purpose of flight.
- (6) Plan of flight route, including:
  - (i) Point of origin of flight and its destination.
  - (ii) Estimated dates and times of arrival and departure at all airspaces covered by this part including stops within the Trust Territory, when pertinent.
- (7) Radio call signs of aircraft and radio frequencies available.
- (8) Whether cameras are to be carried and whether they will be used.
- (9) Whether arms are to be carried.\*
- (10) Whether authorization to land as indicated in paragraph (a) of this section has been obtained.\*

Information on those items marked with an asterisk (\*) need not be reported when the aircraft will only overfly the areas covered by this part.

(c) *Processing.* Applications for individual authorization for single entries or for multiple entries for a period not to exceed three months may be granted by an Entry Control Commander. Applications for multiple entries over a period to exceed three months and applications for group authorizations must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.16 *Notice of action.* All applicants will be kept advised of action being taken relative to the processing of applications. Individual applications which cannot be processed promptly (usually within ten working days) or whose applications must be forwarded to another office for processing will be notified of the anticipated delay and advised of the approximate time when action may be expected to be taken. Under no circumstances will a notice of disapproval include a statement of the reason therefor. Copies of all notices will be distributed to commands and Entry Control Commanders concerned. Copies of all notices of disapproval will be mailed to the Chief of Naval Operations concurrently with the mailing to the applicant.

§ 761.17 *Revocation.* Entry authorizations will be revoked by an Entry Control Commander upon the discovery of information which would have been grounds for denial of the initial request. Such revocation shall be confirmed in writing. No reason for revocation of the entry authorization will be given. When an authorization is revoked, a one-way permit will be issued as appropriate, to permit the ship, aircraft, or person to transit the defense area in order to depart from a contiguous area.

§ 761.18 *Appeals.* (a) Appeals may be filed with the Entry Control Commander who issued the denial or revocation. It shall contain a complete statement of the purpose of the proposed entry and a statement of reasons why the entry should be authorized, including a showing that the entry will be consistent with the purposes of national defense.

(b) Appeal letters shall be forwarded promptly to the next superior Entry Control Commander with an endorsement setting forth the reasons for the denial or revocation and a recommendation as to the action to be taken by the superior.

(c) The superior may act on the appeal and notify the applicant of the decision, or he may forward the appeal to the next superior and notify the applicant of this referral.

(d) Final review may be had in appropriate cases in accordance with OPNAV (Office of the Chief of Naval Operations) Instruction 5420.18 of September 4, 1956.

#### SUBPART D—ADDITIONAL INSTRUCTIONS

§ 761.19 *Inspection and search of vessels and other craft.* The clearance of all vessels or other craft, other than public vessels of the United States, will be granted only on the condition that their owners, charterers, operators or masters:

(a) Consent to inspection and search of all vessels or other craft whenever the local naval commander considers such action necessary for military security of the area.

(b) Execute a "hold harmless" agreement under which no liability shall be incurred by the Navy Department, its agents or representatives for damage to vessels or other craft, their cargo, or for any demurrage charges which may arise out of or in connection with any inspec-



tion or search while in the exercise of due care.

§ 761.20 *Naval defensive sea area closed between sunset and sunrise.* Passage of any vessel into or out of the Guam Island Naval Defensive Sea Area between the hours of sunset and sunrise is prohibited, except when specifically permitted by the Commander, U. S. Naval Forces, Marianas.

§ 761.21 *Compliance with laws and regulations.* All persons, vessels and aircraft entering the Guam Island Naval Defensive Sea Area or the Guam Island Naval Airspace Reservation, whether or not in violation of Executive Order 8683 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as corrected by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 10341 of April 8, 1952 (17 F. R. 3143; 3 CFR, 1952 Supp., p. 68) shall be governed by such regulations and restrictions upon their conduct and movements as may be established by the Commander, U. S. Naval Forces, Marianas, whether by general regulation or by special instructions in any case.

§ 761.22 *Apprehension of vessels, aircraft or persons.* The Commander, U. S. Naval Forces, Marianas, shall take all practical measures to apprehend vessels, aircraft and persons violating the provisions of Executive Order 8683 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as corrected by Executive Order 8729 of April 2, 1941 (6

F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 10341 of April 8, 1952 (17 F. R. 3143; 3 CFR, 1952 Supp., p. 68) and shall hold each such violator in custody pending receipt of instructions from the Secretary of the Navy.

§ 761.23 *Formulation of additional rules.* The Commander, U. S. Naval Forces, Marianas, shall establish and maintain such further rules and regulations, and shall issue such special instructions in each case, as he may deem necessary for carrying out the provisions of Executive Order 8683 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as corrected by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 10341 of April 8, 1952 (17 F. R. 3143; 3 CFR, 1952 Supp., p. 68).

§ 761.24 *Commander, U. S. Naval Forces, Marianas, designated local representative of Secretary of the Navy.* In all matters pertaining to the local administration of the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation, the Commander, U. S. Naval Forces, Marianas, is hereby designated as the representative of the Secretary of the Navy, with full authority to enforce the provisions of Executive Order 8683 of February 14, 1941 (6 F. R. 1015; 3 CFR, 1943 Cum. Supp., p. 894) as corrected by Executive Order 8729 of April 2, 1941 (6 F. R. 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 10341 of April 8, 1952 (17 F. R. 3143; 3 CFR, 1952 Supp., p. 68) and all regulations issued pursuant thereto.

## SUBCHAPTER G—MISCELLANEOUS RULES

### PART 765—RULES APPLICABLE TO THE PUBLIC

- Sec.  
765.1 Offense committed within the limits of a naval station. [Revised]  
765.3 Security violation. [Revised]  
765.6 Regulations for Pearl Harbor, Hawaii. [Revised]  
765.10 Discharge of minor upon request from parent or guardian. [Revoked]  
765.12 Navy and Marine Corps absentees; rewards. [Revised]  
765.17 Commercial advertising. [Amended]  
765.19 Photographs of naval subjects. [Amended]

- Sec.  
765.19 Photographs and sketches of military or naval subjects. [Amended]  
765.20 Authority to administer oaths and to act as notary. [Added]

**AUTHORITY NOTE:** The citation of authority for Part 765 is changed to read:

**AUTHORITY:** §§ 765.1 to 765.19 issued under sec. 6011, 70A Stat. 375; 10 U. S. C. 6011. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 765.1 *Offenses committed within the limits of a naval station.* (a) All persons within the limits of a naval station or other shore activity are subject





S/S 6479

DEPARTMENT OF STATE  
WASHINGTON

April 17, 1962

~~CONFIDENTIAL~~  
(SECRET ATTACHMENT)

BKS File

MEMORANDUM FOR MR. McGEORGE BUNDY  
THE WHITE HOUSE

Subject: Draft NSA Memorandum on  
"New Policy for the U.S. Trust Territory  
of the Pacific Islands"

Enclosed is a draft of this memorandum on which State, Defense and Interior have now agreed. I understand Harlan Cleveland and John Carver (from Interior) discussed an earlier version with you yesterday. A few changes have since been made to accommodate the concerns of DOD.

*WB*  
L. D. Battle  
Executive Secretary

Enclosure:

Draft NSA Memorandum on  
"New Policy for the U.S.  
Trust Territory of the  
Pacific Islands."

~~CONFIDENTIAL~~  
(SECRET ATTACHMENT)

DECLASSIFIED
E.O. 12958, Sec. 3.5
State Guidelines
By <i>[initials]</i> NARA, Date <i>11/21/96</i>



4/18 NSAM 145<sup>2382</sup>  
3  
① Johnson  
② Kagan

~~CONFIDENTIAL~~  
(SECRET ATTACHMENT)

April 17, 1962

MEMORANDUM FOR MR. McGEORGE BUNDY  
THE WHITE HOUSE

Subject: Draft NSA Memorandum on  
"New Policy for the U.S. Trust Territory  
of the Pacific Islands"

Enclosed is a draft of this memorandum on which State, Defense and Interior have now agreed. I understand Harlan Cleveland and John Carver (from Interior) discussed an earlier version with you yesterday. A few changes have since been made to accommodate the concerns of DOD.

/s/ William H. Brubeck

L. D. Battle  
Executive Secretary

Enclosure:

Draft NSA Memorandum on  
"New Policy for the U.S.  
Trust Territory of the  
Pacific Islands."

~~CONFIDENTIAL~~  
(SECRET ATTACHMENT)

DECLASSIFIED
E.O. 12958, Sec. 3.5
State Guidelines
By <i>[Signature]</i> NARA, Date <i>11/21/94</i>



DRAFT  
4/16/62

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~~SECRET~~

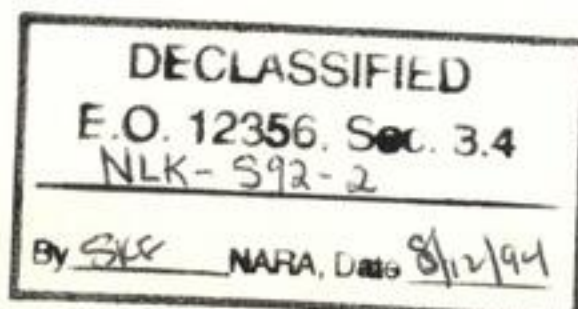
NATIONAL SECURITY ACTION MEMORANDUM NO. \_\_\_\_\_

TO : The Secretary of the Interior  
The Secretary of State  
The Secretary of Defense

SUBJECT: New Policy for the U.S. Trust Territory of the Pacific Islands

1. From 1947, when the United States undertook the Administration of the Trust Territory of the Pacific Islands as a United Nations Trusteeship, until 1961, the U.S. has carried out its obligations to the inhabitants of the Territory in such a manner as to change as little as possible their customary way of life. The present administration has recognized, however, that fundamental changes have been taking place in the outlook of the peoples of the remaining dependent areas and in the attitude of the rest of the world toward these areas, bringing with it a recognition of the need for a greatly accelerated program of political, economic and social development. The obligations of the United States under the United Nations Trusteeship agreement should be reviewed in the light of these facts of international life.

2. Under the terms of the United Nations Trusteeship agreement, the United States is committed to the preparation of the people of the Trust Territory for self-government or independence, according to the freely expressed wishes of the people. It is unlikely that the Trust Territory could, or should, ever become a viable, independent nation.



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- 2 -

It is in the interest of the people of the Territory as well as in the security interest of the United States that the Trust Territory move into a new and lasting relationship within the political framework of the United States. This, then, should be our goal. If it is to be accomplished, the people of the Trust Territory must become an educated people, prepared to exercise an informed choice, which means a choice by people capable of weighing the realistic alternatives. There is an urgent need for the initiation of programs leading to the improvement of education, as a first step toward improvement of other public services and the economic development of the Trust Territory.

3. The President has requested the Secretaries of State, Defense and Interior to designate representatives at the Assistant Secretary level to develop, and put into effect, the programs necessary to carry forward the general policy set forth in Paragraphs 1 and 2 of this Memorandum. A member of the White House staff will be available to sit with this group to assist in its work. The representative of the Department of the Interior will serve as chairman of this Task Force. Its responsibilities will include the identification of special problems requiring further investigation. It will, as necessary, draw upon the resources of other agencies of the Executive Branch, and will consult with the Director of the Budget on the additional funds required to carry out the policy described herein.

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- 3 -

4. The Task Force will bear in mind the importance to the United States of (a) the attitude of the United Nations, the Trusteeship Council, and the neighboring countries of the Pacific toward the United States as the trust administering power; (b) the security requirements of the United States in the area; and (c) the United States long-term objectives of developing the Trust Territory as a viable territory permanently associated with the United States and enjoying a standard of living consistent with such association. Many aspects of the administration of the Trust Territory are dependent upon authorizing legislation and appropriations by the Congress; the appropriate committees of Congress should be fully consulted.

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April 18, 1962

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NATIONAL SECURITY ACTION MEMORANDUM NO. 145

TO: The Secretary of the Interior  
The Secretary of State  
The Secretary of Defense  
The Secretary of Health, Education and Welfare

SUBJECT: New Policy for the U.S. Trust Territory of the Pacific Islands

1. From 1947, when the United States undertook the administration of the Trust Territory of the Pacific Islands as a United Nations Trusteeship, until 1961, the U.S. has carried out its obligations to the inhabitants of the Territory in such a manner as to change as little as possible their customary way of life. The present administration has recognized, however, that fundamental changes have been taking place in the outlook of the peoples of the remaining dependent areas and in the attitude of the rest of the world toward these areas, bringing with it a recognition of the need for a greatly accelerated program of political, economic and social development. The obligations of the United States under the United Nations Trusteeship Agreement must be reconsidered in the light of these facts of international life.

2. Under the terms of the United Nations Trusteeship Agreement, the United States is committed to the preparation of the people of the Trust Territory for self-government or independence, according to the freely expressed wishes of the people. It is unlikely that the Trust Territory could ever become a viable, independent nation. Accordingly, I have concluded that it is in the interest of the United States that the Trust Territory be given a real option at the appropriate time to move into a new and lasting relationship to the United States within our political framework. This, then, should

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E.O. 12356, Sec. 3,4

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By SKF NARA, Date 8/22/97



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be our goal. If it is to be accomplished, the people of the Trust Territory must become an educated people, prepared to exercise an informed choice, which means a choice by people capable of weighing the realistic alternatives. There is an urgent need for the initiation of programs leading to the improvement of education, as a first step. In addition, improvements in other public services and the economic development of the Trust Territory are as important, if not as urgent.

3. I request the Secretaries of the Interior, State, Defense and Health, Education and Welfare to designate representatives at the Assistant Secretary level for a Task Force to develop, and put into effect, the programs necessary to carry forward the general policy set forth in paragraphs 1 and 2 of this Memorandum. A member of the White House staff will be available to sit with the group to assist in its work. The representative of the Department of the Interior will serve as Chairman. Its responsibilities will include the identification of special problems requiring further investigation. It will, as necessary, draw upon the resources of other agencies of the Executive Branch, and will consult with the Director of the Bureau of the Budget on the additional funds required to carry out the policy described herein.

4. The Task Force will bear in mind the importance to the United States of (a) the attitude of the United Nations, the Trusteeship Council, and the neighboring countries of the Pacific toward the United States as the trust administering power; (b) the security requirements of the United States in the area; and (c) the U.S. long-term objectives of developing the Trust Territory as a viable territory permanently associated with the United States and enjoying a standard of living consistent with such association.

/s/ John F. Kennedy

Copy furnished:

The Secretary of the Treasury

The Director, Bureau of the Budget

cc: Gen Taylor, Mr Bundy (3), Mrs. Lincoln, Mr. Forrestal, Mr C Johnson, NSC Files, White House Files

~~SECRET~~



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THE SECRETARY OF DEFENSE  
WASHINGTON

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Dir Jernster  
cc Johnson

MEMORANDUM FOR MR. McGEORGE BUNDY, SPECIAL ASSISTANT TO THE  
PRESIDENT FOR NATIONAL SECURITY AFFAIRS

SUBJECT: New Policy for the U.S. Trust Territory of the  
Pacific Islands

Reference is made to National Security Action Memorandum No. 145 of 18 April 1962, in which the President has requested that the Department of Defense designate a representative at the Assistant Secretary level for a Task Force to develop and put into effect the programs necessary to carry forward the general policy set forth in paragraphs 1 and 2 of NSAM No. 145.

Mr. Paul Nitze, Assistant Secretary of Defense for International Security Affairs, is designated to be the Department of Defense representative on the above Task Force. His Deputy Assistant Secretary for Regional Affairs, Mr. Haydn Williams, will serve on the Task Force when Mr. Nitze is not available.

*Paul Nitze*

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DECLASSIFIED	
E.O. 12356, Sec. 3.3	
DOD Directive 5200,	
March 21, 1983	
By <u>MMB</u>	Date <u>8/5/94</u>





~~SECRET~~

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON

NSAM 145 3060 6

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MAY 16 1962

MEMORANDUM FOR THE PRESIDENT

Reference is made to National Security Action Memorandum No. 145 of April 18, 1962 in which you request that the Department designate a representative at the Assistant Secretary level for a Task Force to develop, and put into effect, the programs necessary to carry forward the general policy set forth in paragraphs 1 and 2 of NSAM No. 145.

Mr. James M. Quigley, Assistant Secretary of Health, Education, and Welfare, is designated to be the Department of Health, Education, and Welfare representative on the above Task Force. Mr. Robert A. Kevan, Deputy Assistant Secretary for International Affairs, is designated to be Alternate to Mr. Quigley on the Task Force and to serve on it when Mr. Quigley is not available.

*Andrew W. K. [Signature]*  
Secretary

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DECLASSIFIED
E.O. 12958, Sec. 3.5
HHS Guideline
By <i>[Signature]</i> NARA, Date 11/21/96

NSAM 145



EXECUTIVE OFFICE OF THE PRESIDENT  
BUREAU OF THE BUDGET  
WASHINGTON 25, D. C.

JUN 16 1962

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MEMORANDUM FOR MR. McGEORGE BUNDY

Subject: Guam security program

On October 9, 1961, the White House Office referred to the Director of the Bureau of the Budget, for appropriate handling, a petition by the Legislature of Guam in which the President is urged to "revoke Executive Order No. 8683 as it applies to the territory of Guam." That order, as amended, provides for the "Guam Island Naval Defensive Sea Area" and the "Guam Island Naval Air Space Reservation." The Legislature objects to the provision in the order which forbids the entrance of any person, other than those on public vessels of the United States, or any vessel or aircraft, other than public vessels and aircraft of the United States, into the area without authorization by the Secretary of the Navy. Among other things, they believe this provision is archaic, prevents the development of civilian industry and tourist trade, makes second-class citizens out of persons residing on Guam Island, and is generally incompatible with the development of local self-government.

On April 16, last, Senator Gruening made a statement before the Senate relative to Guam and inserted in the Congressional Record an article from the March 1960 California Law Review headed "Peacetime Martial Law in Guam" (Congressional Record, pp. 6076 ff.). Views and conclusions critical of the security-clearance program under E.O. 8683 are set forth in the article. (Questions as to the validity and force of E.O. 8683 were raised (by the authors of the above-mentioned article, et al.), but not directly decided, in the 1961 Circuit Court of Appeals cases Buenaventura vs. the United States of America and Siente vs. the United States of America (291 F. 2d 86)).

The Navy Department, by letter of March 2, 1962, has advised that it objects to the revocation of E.O. 8683 (citing, in connection therewith, Guam's vital military importance and an apprehension over the security of Guam from new and continuing sources of danger) and has further stated that "On September 14, 1961, the Secretary of the Navy approved the suspension of entry control requirements into Guam for U.S. citizens for a six-month period. This temporary suspension was extended indefinitely by the Chief of Naval Operations on October 5, 1961 (26 FR 9503). No further suspension of the administrative regulations under the executive order which would permit the entry of non-U.S. citizens or foreign flag vessels or aircraft is contemplated at the present time."



(We are informally advised that Senators Jackson and Anderson some weeks ago requested the Department of Defense to review the Guam security program, including its constitutional aspects, and that the Joint Chiefs of Staff are now making such a review.)

The Secretary of the Interior, by letter of May 15, 1962, has expressed sympathy with the lifting of such restrictions of this security program as may be no longer necessary or which will not affect the defense posture of the United States, and has pointed out that the security requirements make difficult the administration of the civilian government of Guam; but he has also observed that the Department of the Interior is not in a position to comment on defense considerations with respect to the military security program in Guam.

It seems to us (1) that the communications from the Navy and Interior Departments neither point clearly to the proper course of action with respect to E.O. 8683 nor warrant a firm conclusion that no action is called for, and (2) that the determination of the proper course of action is dependent upon considerations which your office may bring to bear on this matter. While national security considerations cannot be disregarded, we believe that the reasons advanced by the Guam Legislature have a great deal of merit. The continuation of the restrictions contained in E.O. 8683 do not appear to be compatible with our general policy to increase local self-government. It seems to us that appropriate steps could be taken to safeguard our Guam bases just as they are safeguarded elsewhere in the United States without resort to restrictions of the type contained in E.O. 8683. Your advice as to the course of action which would be most in the national interest on this matter would be appreciated.

Some twelve naval defensive sea areas were established in the Pacific Ocean in 1939, 1941, and 1952 and eight such naval air space reservations were established in 1941. These apparently have been terminated only in respect of Palmyra Island, Rose Island, and Tutuila Island. We have prepared a table which identifies these various areas and reservations.

I forward herewith a copy of (1) each of the documents referred to above, (2) E.O. 8683, with notations as to past amendments thereof, and (3) the pertinent Navy Department regulations.

*David S. Bee*

Director

Attachments





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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON 25, D. C.

MAY 15 1962

Dear Mr. Focke:

We have your letter of April 18 requesting the views of this Department with regard to the revocation of Executive Order No. 8683, as amended by Executive Order No. 8729, which established the Guam Island Naval Defensive Sea Area and the Guam Island Naval Air Space Reservation. Enclosed for your information is a copy of a letter dated January 3, 1962, which summarizes the position of this Department.

The Department of Interior, as a civilian agency, is not in a position to comment on defense considerations with respect to the military security program in Guam, and in a report to the White House of April 25, 1962, on the same matter I so stated. We have, of course, long felt that the continued application of security requirements makes difficult the administration of the civilian government of Guam as provided by the Organic Act.

Representatives of the Department have also discussed security matters in the Pacific Islands, Guam and the Trust Territory of the Pacific Islands, with staff members of both the National Security Council and the Defense Department. We are in sympathy with the lifting of such restrictions of this security program as may be no longer necessary or which will not affect the defense posture of the United States.

Sincerely yours,

Secretary of the Interior

Mr. Arthur B. Focke  
General Counsel  
Bureau of the Budget  
Washington 25, D. C.

Enclosure





UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON 25, D. C.

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January 3, 1962

Dear Mr. Secretary:

The Governor of Guam, in his letter to me of December 9, 1961, a copy of which was sent to former Secretary Connally, stated that it was agreed between himself, Vice President Johnson, former Secretary Connally, and other persons mentioned in his letter, that Executive Orders No. 8683 and No. 8729, which provide for security clearance from the Navy for persons, vessels, and aircraft entering Guam, should be revoked. I am in full agreement with this conclusion, and I should like to assure you of the full cooperation of this Department in achieving the revocation of those Executive orders.

Governor Daniel transmitted with his letter a draft of a proposed Executive order which would revoke the Executive orders cited above. We have made a few changes in his draft without altering its intent. If you concur in the revocation of the Executive orders, I should be most grateful if you would undertake to send forward to the President a request that he sign an order along the lines of that enclosed. You may, of course, state that such action has the concurrence of this Department. We shall be glad to assist in any way that you may find desirable.

Sincerely yours,

Sgd.

Stewart L. Udall

Secretary of the Interior

Secretary of the Navy  
Washington 25, D. C.



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In the form as attached to a 1-3-62 letter of the Secretary of the Interior to the Secretary of the Navy (copies of which letter and order draft were attached to the 5-15-62 letter of the Secretary of the Interior to the General Counsel of the Bureau of the Budget).

**EXECUTIVE ORDER**

**DISCONTINUING THE GUAM ISLAND NAVAL DEFENSE SEA AREA AND  
AIRSPACE RESERVATION**

By virtue of the authority vested in me by section 2152 of title 18 of the United States Code, the naval defensive sea area around and the naval airspace reservation over the island of Guam, in the Pacific Ocean, established by Executive Order No. 8683 of February 14, 1941, as amended by Executive Order No. 8729 of April 2, 1941, are discontinued and such Executive Orders are hereby revoked.





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DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON 25, D. C.

IN REPLY REFER TO  
LA-315:th  
2 MAR 1962

OFFICE OF LEGISLATIVE AFFAIRS

Honorable David E. Bell  
Director, Bureau of the Budget  
Washington 25, D. C.

My dear Mr. Bell:

Your request for comment on the petition by the Legislature of Guam of October 4, 1961, praying that the President revoke Executive Order No. 8683 as it applies to the territory of Guam, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The petition recites various reasons to support the revocation, specifically that the danger of imminent invasion when that executive order was promulgated ceased long ago, that the Navy has asserted the right to forbid the entry of any person even though the residents of Guam were made American citizens and granted limited self-government, that the development of industry and of tourist trade has been prevented, and that the residents of Guam are reduced to second-class citizens. The petition also avers that the need for the defensive sea area has vanished, that the restriction on entry is not imposed on other U. S. areas, that the USSR has charged the U. S. with colonialism, and that the recent temporary suspension of the executive order precludes any planning.

Executive Order No. 8683 of February 14, 1941 (6 FR 1015, 3 CFR, 1943 Cum. Supp.) established and reserved on and around Guam for purposes of national defense the "Guam Island Naval Defensive Sea Area" and the "Guam Island Naval Airspace Reservation". The entry into these reservations of any person, other than persons on public vessels of the U. S.; any vessel, other than public vessels of the U. S.; and any aircraft, other than public aircraft of the U. S., was prohibited unless authorized by the Secretary of the Navy.

The U. S. Navy has been concerned with the military security of Guam since 1904, as indicated by various restrictions against foreign vessels entering that island, an interest which antedates and



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transcends World War II alone. The considerations which compelled the establishment of security restrictions in 1941 by Executive Order 8683 remain of increasing importance today.

Guam occupies a vital position in the U. S. military strategic and logistic scheme. Its location makes Guam the hub of sea and air transportation routes between the U. S. and the Western Pacific area. The U. S. maintains sizeable military installations on the island which is one of the keystones of the Pacific Defense System of the country. With this military importance goes a corresponding apprehension over the security of Guam from new and continuing sources of danger.

The restrictions imposed by the Executive Order thus only incidentally militate against the development of indigenous economic and tourist interests and do not purport to discriminate against the self-expression of the residents of Guam. The U. S. Government recognizes the patriotism and loyalty of the permanent residents of Guam but must uphold the overriding military security characteristics of their island.

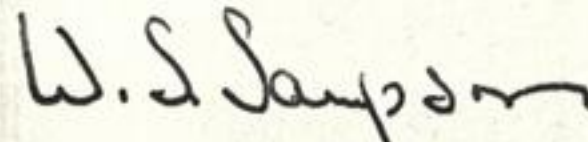
On September 14, 1961, the Secretary of the Navy approved the suspension of entry control requirements into Guam for U. S. citizens for a six-month period. This temporary suspension was extended indefinitely by the Chief of Naval Operations on October 5, 1961 (26 FR 9503). No further suspension of the administrative regulations under the executive order which would permit the entry of non-U. S. citizens or foreign flag vessels or aircraft is contemplated at the present time.

The Department of the Navy, on behalf of the Department of Defense, objects to the revocation of E. O. 8683.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

For the Secretary of the Navy.

Sincerely yours,



W. S. SAMPSON  
Captain, U. S. Navy  
Deputy Chief



7e  
5-23-62Naval defensive sea areas and naval airspace  
reservations in Pacific Ocean places

<u>Ex. Order</u> <u>No.</u>	<u>Year of</u> <u>order</u>	<u>Order pertains to</u>		<u>Order is now</u> <u>in force as to</u>	<u>Order has been</u> <u>terminated as to</u>
		<u>Sea area</u>	<u>Airspace</u>		
8143	1939	X		Pearl Harbor	
8680	1941	X	X	Kiska Island	
		X	X	Unalaska "	
8681	1941	X	X	Kanahoe Bay (Hawaii)	
8682	1941	X	X	Wake Island	Palmyra Island *
		X	X	Midway Island	
		X	X	Johnston Reef	
		X	X	Kingsman Reef	
8683	1941	X	X	Guam Island	Rose Island * Tutuila Island *
8717	1941	X		Kodiak Island	
8987	1941	X		Honolulu	
10361	1952	X		Whittier (Alaska)	

\* E.O. 8682 was terminated as to Palmyra Island by E.O. 9881.

E.O. 8683 was terminated as to Rose Island and Tutuila Island by E.O. 10341.



2-23-62

Naval defensive sea areas and naval airspace  
reservations in Pacific Ocean places

Ex. Order No.	Year of order	Order pertains to		Order is now in force as to	Order has been terminated as to
		Sea area	Airspace		
8143	1939	X		Pearl Harbor	
8630	1941	X	X	Wake Island	
		X	X	Unalaska "	
8681	1941	X	X	Kanahoe Bay (Hawaii)	
8682	1941	X	X	Wake Island	Palmyra Island *
		X	X	Midway Island	
		X	X	Johnston Reef	
		X	X	Kingman Reef	
8683	1941	X	X	Guam Island	Rose Island * Tutuila Island *
8737	1941	X		Kodiak Island	
8907	1941	X		Honolulu	
10331	1952	X		Whittier (Alaska)	

\* E.O. 8682 was terminated as to Palmyra Island by E.O. 9831.

E.O. 8683 was terminated as to Rose Island and Tutuila Island by E.O. 10341.





THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON 25, D. C.

July 13, 1962

✓ 1. Bundy  
2. C. Johnson  
→ 3. John - file  
4. Formentat -  
Trunk file

MEMORANDUM FOR MR. McGEORGE BUNDY

SUBJECT: Guam Security Program

You will note from the attached copy of a letter on the above subject, which I dispatched to Senator Anderson yesterday, that I am not satisfied with the Navy's position with regard to the security arrangements at Guam. Accordingly, a party from Defense headed by Walter Skallerup, Deputy Assistant Secretary for Security Policy, left this morning to take a first-hand look at the Guam security program. After they return ten days hence, we should have the facts necessary to establish a Defense position with respect to the rescission of Executive Order 8683.

My present judgment is in accord with your and Dave Bell's view as expressed in your memorandum of today, but I would like to hear Walter Skallerup's findings before overruling the Navy.

*Rowell Zepeda*

Incl



July 13, 1962

Dear Mr. Chairman:

This is in response to your letter to the Secretary dated July 6, 1962, which made reference to earlier correspondence and informal advices concerning the administration of the Navy's security clearance program on Guam.

The propriety of existing security policies on Guam and the Trust Territory of the Pacific Islands among other matters has been the subject of an extensive review for the past few months by the President's Task Force on the Trust Territory, which as you know, is made up of representatives of the Departments of State, Defense and Interior.

Further, the questions raised in the April 17, 1962, letter from Senator Jackson and you concerning Guam have been considered in turn by the Department of the Navy, CINCPAC and the Joint Chiefs of Staff.

Upon reviewing the responses of these latter authorities, which adhered to what might be called the historic position of the Navy, we were not satisfied to leave the matter on that basis. Accordingly, we are sending the Deputy Assistant Secretary of Defense for Security Policy and a small party to Guam and Saipan to get first-hand factual information. This group is scheduled to leave for Guam within the next few days, and when they return we will communicate further with you.

We appreciate the interest of the Committee and share the view that security policies and practices on Guam should be appropriate and in touch with the times.

We look forward to a resolution of these matters in the near future. I shall personally follow the subject to be sure that no further delays occur.

Sincerely,

Honorable Clinton P. Anderson  
Chairman, Committee on Interior  
and Insular Affairs  
United States Senate

Signed  
ROSWELL L. GILPATRICK



1. Mr. Smith for info

9

2. File

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9a  
NSAM 145.

July 13, 1962

MEMORANDUM FOR

THE HONORABLE ROSWELL L. GILPATRIC  
THE DEPUTY SECRETARY OF DEFENSE

Subject: Guam Security Program

Attached is a file Dave Bell referred to me for suggestion as to what would be the best course of action to follow on this matter. Personally I tend to agree with Dave that there is no strong case for continuing the wartime Executive Order 8683. However, in view of the very strong interest of the military in this matter, I feel that it is important to obtain a DOD view as well as the strictly Navy one.

As you know, a similar problem of security exists with respect to the Trust Territories of the Pacific, and this is now under review by DOD in light of the President's policy in NSAM No. 145. He stressed the need, in effect, for bringing the people of the Trust Territories into the 20th century in terms of education and economic development. The working group headed by John Carver that is dealing with the Trust Territories considers the security restrictions in that area to be an obstacle to the achievement of the President's objective.

Obviously, the policies we follow with respect to Guam and the Trust Territories should be consistent and avoid troublesome discrimination in treatment insofar as we can.

I would appreciate receiving your views with respect to the rescission of Executive Order 8683. This is a matter of some urgency. If the over-all problem of determining the minimum security requirements



from a military point of view with respect to both Guam and the Trust Territories is not going to be solved soon, I suggest that we give the Executive Order rescission separate consideration at this time inasmuch as the military security problem can be handled under other legal authorities that would not be affected by the rescission of 8683.

McGeorge Bundy

cc: Mr. Walter Skallerup, Jr., Department of Defense  
Mr. Harold Seidman, Bureau of Budget



July 13, 1962

MEMORANDUM FOR

THE HONORABLE ROSWELL L. GILPATRICK  
THE DEPUTY SECRETARY OF DEFENSE

Subject: Guam Security Program

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McGeorge Bundy

cc: Mr. Walter Skallerup, Jr., Department of Defense  
Mr. Harold Seidman, Bureau of Budget



96

THE WHITE HOUSE  
WASHINGTON

July 5, 1962

MEMORANDUM FOR: Mr. David E. Bell  
Director, Bureau of the Budget

SUBJECT: Guam Security Program

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As you know, a similar problem of security exists with respect to the Trust Territories of the Pacific and it is now being actively reviewed by the Secretary of Defense in light of the President's policy stated in his NSAM No. 145. In this directive he stressed the need, in effect, for bringing the people of the Trust Territories into the 20th century in terms of education and economic development. The working group dealing with the development of programs for carrying out NSAM 145 has identified the present security restrictions as being a handicap to the achievement of the President's objective.

The policies with respect to the security as applied to Guam and the Trust Territories will have to be treated as a whole to avoid inconsistency and troublesome discrimination in treatment.

I suggest that the Secretary of Defense be requested to give his views with respect to the possible rescission of Executive Order 8683 as a matter of some urgency. If the over-all security problem with respect to Guam and the Trust Territories is not possible of solution without extensive field investigation and debate in Washington, the specific question of the rescission of 8683 should be given separate and early treatment.

McGeorge Bundy



9c  
July 5, 1962

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Director, Bureau of the Budget

SUBJECT: Guam Security Program

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McGeorge Bundy

cc: Mr. Forrestal  
Mr. C. Johnson  
Mr. Harold Seidman, BOB  
Mr. John A. Carver, Jr., Interior,  
Asst. Secretary for Public Land Management.



July 5, 1962

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Mr. C. Johnson  
Mr. Harold Seidman, BOB  
Mr. John A. Carver, Jr., Interior,  
Asst. Secretary for Public Land Management.



MEMORANDUM FOR: Mr. Bundy

Bell's man, Aidman, has no problem with this handling - in fact prefers it. However, I'll talk to Sulzberger's office about not sending all over the Pentagon.

Skallerg is on our side -  
(DATE)  
Chuck J.



9e

NATIONAL SECURITY COUNCIL

July 5, 1962

NOTE TO:

1. ~~Mr. Smith~~
2. Mr. Bundy

Mike Forrestal left this one for my attention. I have discussed it with Seidman in BOB and with OSD staff dealing with both the security policy and national security affairs. There is agreement that the White House should specifically request the views of the Secretary of Defense. This would help in dealing with the problem of the Navy's traditional resistance to OSD intrusion in what they conceive to be their bailiwick. An OSD review of this might well be a fresh look--realistic in terms of the facts and politics of the situation.

CEJ;

CEJ

Let's <sup>report?</sup> request DOD review other my

sig with a hint of NSAN 145 +

it bearing

will you redraft for my sig?



9f

EXECUTIVE OFFICE OF THE PRESIDENT  
NATIONAL SECURITY COUNCIL  
WASHINGTON

June 28, 1962

*Call  
Seidman on  
7/5*

Chuck:

Would you talk to Mr. Seidman about this?  
I think at the least BoB should suggest to the Navy  
that their position is not responsive to the policy  
expressed in the NSAM on the Pacific Trust  
Territories. They should be asked to give  
military reasons for the present regulations.  
Then we should get up a presentation to the  
President on the rescission of the Executive  
Order 8683, if BoB concurs.

Mike

Mr. C. Johnson



August 16, 1962

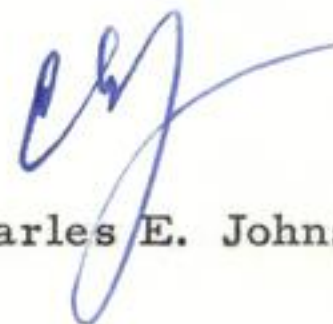
MEMORANDUM FOR MR. BUNDY

Mac--

Here are some action documents for your signature. The whole approach was discussed with Mike who concurs therein and has already talked with Carver to alert him this package is coming over to him.

1. A request to Dave Bell to arrange for the rescission of Executive Order 8683.

2. An action assignment to Carver to draft a Presidential announcement reporting Presidential intention of opening up the Trust Territory of the Pacific Islands which stems from a joint recommendation of State, Defense and Interior. This announcement will be drafted to achieve three purposes: (a) to get psychological mileage in the area and at the UN; (b) to strengthen Interior's hand in negotiating with Navy on procedural arrangements whereby the "opening up" is achieved; and (c) strengthening McNamara and Gilpatric on the Hill against sniping from Navy supporters who may think "we are giving away the Pacific." I am told that there is evidence at this time that the campaign has already begun. As you know, the Defense decision overrules the Secretary and Under Secretary of the Navy and the Joint Chiefs. However, McNamara and Gilpatric feel the decision is a sound one and was reached after Skallerup visited the area and made a first-hand examination of our requirements for national security purposes.



Charles E. Johnson

cc: Mr. Forrestal





THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON 25, D.C.

AUG 15 1962

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MEMORANDUM FOR THE HONORABLE McGEORGE BUNDY  
SPECIAL ASSISTANT TO THE PRESIDENT

This is in further response to your memorandum dated July 13, 1962 concerning the Department of Defense security program for Guam and the Trust Territories.

The Department of Defense interposes no objection to the rescission of Executive Order 8683, February 14, 1941. As you know on Guam the entire natural harbor available for shipping is within the Naval Base and commercial air operations are conducted at the Naval Air Station. It is understood that a rescission of Executive Order 8683 would not affect the authority of the commanding officer or other appropriate commander to control entry into or passage through any base, station or other installation or area, including port and harbor facilities under Army, Navy or Air Force control. It is the responsibility of the Department of the Navy, however, to make appropriate arrangements for the use of harbor and air station facilities by commercial carriers.

Further, the Department of Defense has no objection to opening the Trust Territory of the Pacific Islands to United States citizens, United States investment and United States flag vessels without prior security clearance from the Department of the Navy. It is understood that entry into the Trust Territory will continue to be under control of the High Commissioner of the Trust Territory and further, that entry into Eniwetok, Bikini and Kwajalein Atolls, together with such other islands as are designated for national defense purposes from time to time, will be under the control of the Commander in Chief, Pacific.

We urge that you consider the desirability of requesting the President to announce any action taken by him along these lines, and we would suggest emphasizing that these steps are consistent with our national policies of local self government, and of political, economic and social development for the people of these islands; and further, that all appropriate measures will be taken to insure that the security requirements of the United States in these areas are amply safeguarded.

*Roswell Gelpatrick*



DRAFT  
8/16/62

MEMORANDUM FOR: Mr. David E. Bell  
Director, Bureau of the Budget

SUBJECT: Rescission of Executive Order 8683, February 14, 1941

Mr. Roswell Gilpatric, Deputy Secretary of Defense, by memorandum to me dated August 15, has indicated that the Department of Defense interposes no objection to the rescission of subject Executive Order (copy of his memo is attached). Would you please undertake the necessary arrangements for the rescission of this Executive Order?

For your information, the Department of the Interior, through the Task Force of the Trust Territory of the Pacific Islands, is undertaking the preparation of a Presidential statement to be made in connection with the opening up of the Trust Territory of the Pacific Islands to U. S. citizens, U. S. investment and U. S. flag vessels without prior security clearance from the Department of the Navy. At the same time, <sup>but</sup> the President announces rescission of Executive Order 8683, he <sup>will</sup> ~~can~~ announce his intention <sup>of</sup> ~~to~~ opening the Trust Territory. This means that both the rescission of the Executive Order and the preparation of the statement must be coordinated so that the two actions can be taken simultaneously. A copy of the instruction to Interior is also attached.

I am returning your file with respect to the rescission of subject Executive Order.

McGeorge Bundy

Attachments



✓ 11

EXECUTIVE OFFICE OF THE PRESIDENT  
BUREAU OF THE BUDGET  
WASHINGTON 25, D. C.

AUG 17 1962

MEMORANDUM FOR MR. McGEORGE BUNDY

Subject: Guam Island Naval Defensive Sea Area, etc.

Herewith, in form as transmitted to the Attorney General in consonance with the provisions of Executive Order No. 11030, is copy of the proposed Executive order headed "Discontinuing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Air Space Reservation," together with a copy of our letter to the Attorney General.

Sincerely yours,

*Arthur B. Focke*  
General Counsel

Enclosures



11a

EXECUTIVE OFFICE OF THE PRESIDENT  
BUREAU OF THE BUDGET  
WASHINGTON 25, D. C.

AUG 17 1962

Honorable Robert F. Kennedy  
Attorney General  
Washington 25, D. C.

Dear Mr. Attorney General:

Herewith, in consonance with the provisions of Executive Order No. 11030, is a proposed Executive order headed "Discontinuing the Guam Island Naval Defensive Sea Area and Guam Island Naval Airspace Reservation."

On October 9, 1961, the White House Office referred to the Director of the Bureau of the Budget, for appropriate handling, a petition by the Legislature of Guam in which the President is urged to "revoke Executive Order No. 8683 as it applies to the territory of Guam" (copy attached). The proposed Executive order has evolved therefrom.

Executive Order No. 8683, which was issued on February 14, 1941, originally provided for naval defensive sea areas and naval airspace reservations with respect to Guam Island, Rose Island, and Tutuila Island. Since the issuance of Executive Order No. 10341, the 1941 order has been in force only as to Guam Island.

Additionally, during the last twenty-five years, naval defensive sea areas and naval airspace reservations have been established by Executive Orders Nos. 8680, 8681, and 8682, and naval defensive sea areas have been established by Executive Orders Nos. 8143, 8717, 8987, and 10361. It is our understanding that all of those defensive sea areas and airspace reservations, except in respect of Palmyra Island (E.O. 8682), remain in existence at this time.

The Department of the Interior favors termination of the Guam Island area and reservation. The Department of Defense, while earlier opposed to such termination, now interposes no objection.

There are forwarded herewith copies for the White House Office and copies for the Department of Justice of correspondence relating to this matter.



The proposed Executive order has the approval of the Director of the Bureau of the Budget. We are informally advised by a representative of the National Security Council that the order is expected to be issued before the middle of the coming week.

Sincerely yours,

(Signed) Arthur B. Focke

General Counsel

Enclosures



## EXECUTIVE ORDER

\*\*\*\*\*

DISCONTINUING THE GUAM ISLAND NAVAL  
DEFENSIVE SEA AREA AND GUAM ISLAND  
NAVAL AIRSPACE RESERVATION

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

Section 1. The Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation, heretofore existing under the provisions of Executive Order No. 8683 of February 14, 1941, as amended, are hereby discontinued.

Section 2. To the extent not heretofore rendered inapplicable, the following are hereby revoked:

- (1) Executive Order No. 8683 of February 14, 1941.
- (2) Executive Order No. 8729 of April 2, 1941.
- (3) Executive Order No. 10341 of April 8, 1952.

THE WHITE HOUSE,

, 1962



August 20, 1962

**MEMORANDUM FOR:** Mr. John A. Carver  
Assistant Secretary for Public  
Land Management  
Department of the Interior

**SUBJECT:** Opening Up the Trust Territory of the  
Pacific Islands

According to a memorandum dated August 15 from Mr. Roswell Gilpatric to me, the Department of Defense has no objection to opening the Trust Territory of the Pacific Islands to U.S. citizens, U.S. investment and U.S. flag vessels without prior security clearance from the Department of the Navy.

It is proposed that the President will announce the rescission of Executive Order 8683 simultaneously with announcing his intention of opening up the Trust Territory of the Pacific Islands. This would be done either at a press conference or by a separate White House announcement. Will you undertake, in cooperation with the other departments represented on your Task Force to: (1) prepare a statement along the lines suggested by Mr. Gilpatric in his memo to me (copy attached) emphasizing that his action has been recommended and is supported by the Secretaries of State, Defense and Interior, and (2) undertake immediately the development of the procedural and other arrangements for opening up the Trust Territory and for reserving entry into those islands which are designated for national defense purposes to remain under the control of CINCPAC.



It is hoped that the statement and rescission of the Executive Order can proceed immediately so that they may be used at an early press conference. The final arrangements with the Navy need not be completed before the announcement is made. In fact there is some merit in having an early announcement in advance of the completion of the final arrangements in this matter.

151  
McGeorge Bundy

Dispatch 8/20/62



DRAFT  
8/16/62

MEMORANDUM FOR: Mr. John A. Carver  
Assistant Secretary for Public Land Management  
Department of the Interior

SUBJECT: Opening Up the Trust Territory of the Pacific Islands

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McGeorge Bundy

Attachment



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THE WHITE HOUSE  
WASHINGTON

August 22, 1962

MEMORANDUM FOR THE PRESIDENT

Subject: Announcement Concerning Guam and the Trust Territory  
of the Pacific Islands

(For the August 22 Press Conference)

1. In declaring that the Defense Department had no objection to rescission of Executive Order 8683, the Secretary overruled the Navy Department and the Joint Chiefs of Staff. This may produce some static in Congress and elsewhere among those who view the South Pacific as a U.S. Navy reservation.

2. The Secretary of Defense reviewed our present and prospective military requirements and determined that continuation of the wartime restrictions with respect to Guam and also with respect to the Trust Territory of the Pacific is no longer justified. The Secretary of Defense supported the view of the Secretary of State and the Secretary of the Interior that removing the security restrictions was essential to the achievement of our overall political objective of developing a meaningful and lasting relationship between the people of Guam and the Trust Territory and the people of the United States on the basis of our political framework and institutions.

3. Recently the Legislature of Guam petitioned for the rescission of Executive Order 8683, which rescission you signed yesterday. This petition has had strong support in Congress, particularly by Senators Jackson and Anderson. This group will view your action with respect to Guam and the Trust Territory with considerable favor.

4. The Task Force that was established under your National Security Action Memorandum No. 145 has concluded that the security regulations heretofore in effect for the Trust Territory, which are similar in nature to those maintained over Guam, are obstacles to



- 2 -

the rapid political and economic development of the area. The Task Force has urged the Department of Defense to review the present need for the restrictive regulations applying to the Trust Territory. The action of the Secretary of Defense concurring in opening up the Trust Territory is in line with the recommendation of the Task Force.

5. A major undertaking is still to be completed in the development of regulations and procedures to carry out your intent of opening up the Trust Territory. This will require hard negotiation among State, Defense and Interior and continued Presidential interest and support. In addition, legislation will be required to give the Trust Territory certain political and economic opportunities they do not now have. Such legislation is now being prepared under the aegis of the Task Force for introduction in the next session of the Congress.

McG. B.





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14

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON 25, D. C.


AUG 22 1962

Memorandum for Mr. McGeorge Bundy  
The White House

In response to your request of August 20, 1962, drafts of the following documents have been prepared in cooperation with other departments represented on the Task Force established by NSA Memorandum No. 145, dated April 18, 1962:

- (a) a statement for the President's use in announcing the changed security arrangements for Guam and The Trust Territory; and
- (b) a proposed White House release on the same subject but in more detailed form.

These drafts were the subject of further discussion and refinement in conference with staff representatives of the White House and Defense Department. In the interest of time, they are being put in final form for your consideration by White House personnel. You are advised that they have the concurrence of this Department and may be regarded as having been submitted in compliance with your request.

  
John A. Carver, Jr.  
Assistant Secretary  
Public Land Management



As a result of our national policy of ~~accelerating~~ <sup>promoting</sup> self-government and encouraging expanded social and economic development in the territories under United States administration, I have signed an Executive Order which rescinds a 1941 order establishing the Guam Naval and Airspace reservation.

Previously all persons both foreign and American were required to obtain special security clearance before being permitted to enter the Territory of Guam. This procedure was modified last year to permit the unrestricted entry of United States citizens. Under this new Executive Order, Guam will enjoy the same freedom of movement for all persons that exists in every other part of the United States.

I have simultaneously approved the modification of current regulations relating to the Trust Territory of the Pacific Islands to facilitate free entry of U. S. citizens, U.S. investment, and U.S. flag vessels into that area, in accordance with revised procedures to be established by the High Commissioner. In those limited areas of the Trust Territory which involve strategic considerations, the Departments of Defense and Interior will work out necessary measures to safeguard our security requirements. I believe that these actions will generate new economic activity, will enable the people of the islands to move forward more quickly in increasing their standards of living, and will open new portals of opportunity to them.



14a

Draft Press Release

The President has signed an order rescinding Executive Order 8683, dated February 14, 1941, under which the Navy exercised entry control into the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Entry into the territory was previously conditioned on prior Navy security clearance for both United States citizens and aliens. The President's action in rescinding the order removes the requirement for such security clearance. United States citizens have been free to enter the territory since September 1961 under an indefinite suspension order promulgated by the Secretary of the Navy. The rescission of the 1941 order was recommended by the Secretaries of Defense, Interior and State as a result of their finding that control measures made necessary by the outbreak of the last war are no longer appropriate under existing conditions in Guam. This action will not affect the military posture of the United States in the area and the Department of Defense will continue to exercise control over entry of both persons and vessels into military installations in Guam as is true for entry into U. S. military installations elsewhere. Guam accordingly is placed, insofar as entry is concerned, in the same status as any other part of the United States.

Removal of entry controls is expected to encourage the development of the civilian economy of Guam. It will, for example, remove a major hindrance to the development of tourism and will now provide the territorial government with the opportunity to develop programs for the attraction of long-term investments, a very necessary element in the economic development of the island. This, together with support for an elected governor and a non-voting deputy in Congress for Guam,



is consistent with our national policies of increasing self-government and encouraging the social and economic development of the territory.

The island was acquired by the United States in 1898 as a consequence of the Spanish-American War. Navy administration, except for a period when the island was occupied by Japan during World War II, continued until August 1950 when jurisdiction was transferred to the Secretary of the Interior. The Congress enacted organic legislation in 1950 which granted United States citizenship to the people of Guam and provided for a civilian government with a Governor appointed by the President and a freely elected legislature.

Simultaneously with the rescission of the Guam order, the President approved opening the Trust Territory of the Pacific Islands to United States citizens, investment and shipping without prior Navy security clearance.

The Trust Territory, captured from Japan during World War II, is administered by the United States as a strategic trusteeship under agreement with the Security Council of the United Nations. Entry of non-nationals will continue to require prior security clearance. Entry by United States persons and American flag vessels into the area will be the responsibility of the Department of Interior as the administering agency. This strategic area is also the site of certain defense installations and entry into such designated areas by all persons and vessels will continue to be subject to Navy clearance.



Concurrently with the decision to remove the Navy entry controls for United States citizens and American flag vessels, the Administration has embarked on a program of upgrading programs of political, social and economic development. The first point of attack is education where the goal is to provide standards at a level comparable to the level which has been taken for granted in the United States. A supplemental request for the construction of over 200 school rooms is now pending in Congress. Economic and political development are also being stressed in accelerated programs.

The Trust Territory was administered by the Navy from 1947 until 1951 when jurisdiction was transferred to the Secretary of the Interior. Jurisdiction over the northern Mariana Islands was returned to Navy in 1952. These islands by Presidential order were returned to Interior jurisdiction and, effective July 1, 1962, Saipan became the temporary capital of the Trust Territory.



✓ Mr. Bundy

EXECUTIVE OFFICE OF THE PRESIDENT  
NATIONAL SECURITY COUNCIL  
WASHINGTON

October 12, 1962

~~CONFIDENTIAL~~

Dear Paul:

I have a copy of John Carver's letter to you of October 10th on the problem of controls of entry into the Pacific Islands Trust Territory. As you know, the President is most interested in moving forward with a program of social and economic development in this area, so that we do not find ourselves one day behind the 8-ball in the Trusteeship Council.

One facet of such a program is, of course, the facility of movement in and out of the area by bona fide tourists and businessmen. Such movements have, no doubt, security implications; but it would seem that these could be met by flexible arrangements arrived at in negotiation between the Departments of Interior and Defense.

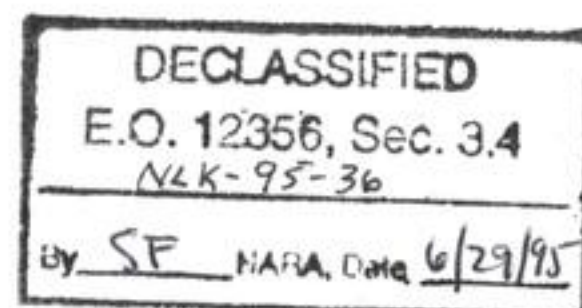
I would appreciate very much being kept advised on the course of discussions and will be glad to lend whatever help I can.

Sincerely,

Michael V. Forrestal

The Honorable Paul H. Nitze  
Assistant Secretary of Defense (ISA)  
Department of Defense  
Washington 25, D.C.

~~CONFIDENTIAL~~





16

106 Giannini Hall  
UNIVERSITY OF CALIFORNIA  
COLLEGE OF AGRICULTURE  
AGRICULTURAL EXPERIMENT STATION

November 6, 1962

OFFICE OF THE DEAN AND ASSISTANT DIRECTOR  
DANIELLE 4, CALIFORNIA

Dear President Kennedy:

I have just returned from the annual meeting of the South Pacific Commission. The time since the last meeting, which followed the South Pacific Conference at Pago Pago, has been short. A brief listing of the highlights will suffice to reflect the current status of the Commission's activities. The regular, more detailed report is being made to the Department of State by the United States Delegation.

WITHDRAWAL OF THE NETHERLANDS FROM THE COMMISSION: This session was marked by the first break in the Commission since its inception in Canberra in 1947. The agreement reached between the Netherlands, Indonesia and the United Nations terminated Dutch sovereignty over Western New Guinea on October 1, 1962. The Netherlands is technically a member of the Commission until January 1, 1963, but its government served notice that it was withdrawing from association with the Commission on October 1, 1962, including its nomination for the position of Secretary-General.

BUDGET: The withdrawal of the Netherlands left a budget deficit of roughly 15% for the coming fiscal year. The remaining governments have partially made this up, aided by possible withholdings within the current budget. The budget adopted is an emergency one and is lower than the 1962 budget figure. As passed, the total contributions from governments stand at 213,924 pounds, of which the United States contribution is 31,497 pounds, or roughly \$88,051. This is well under the Congressional ceiling of \$100,000, but we still are not carrying our proportionate share. Every effort should be made to raise the ceiling, or preferably remove it entirely.

The Commission still operates on one of the smallest budgets of any international body--one wholly inadequate and unrealistic if the communist threat is to be met and these island peoples given understanding, aid and support in their progress toward self government.

REVIEW CONFERENCE: The coming of independence to Western Samoa and the change of status of West New Guinea point up sharply the urgency of the review conference on reorganization and modernization of the agreement under which the Commission works. Originally planned for November, 1962, it has unfortunately been delayed. We are saddled with a "Model T" setup in the jet age.

cy to C. Johnson 12/18



November 6, 1962

Uncomplicated procedures for the admission of new self-governing states; more realistic determination of the contributions by members; greater direct, active participation by island peoples in the Commission's program and operation; new streamlined, flexible rules of procedure; relations with the United Nations and other national and international bodies (public and private) all await the revision of the agreement. It is to be hoped that working parties can proceed rapidly with the basic recommendations to governments and that a review conference can be convened early in 1963.

FRENCH INTRANSIGENCE: As usual the French exhibited exasperating unwillingness to agree to anything but their own last-minute stated position. This is in line with the situation at the meeting of the Commission in Pago Pago, when five of the six member governments came prepared to sign a revision of the current agreement admitting Western Samoa to the Commission. At the last minute France declined.

It was even more exasperating when, after six or seven years of negotiation, all six governments had agreed to sign, on September 11 of this year, at United Nations headquarters in New York, an "umbrella" agreement with the Technical Assistance Board for technical aid for Commission projects. This would have permitted the Secretary-General of the Commission to approach the specific agencies direct without having to get the agreement of six governments each time. On September 11 the French did not sign, though all the other five nations did.

In the conduct of its regular work, the staff is dictated to by the Senior French Commissioner, and Commission sessions are prolonged by long, argumentative monologues. There should be some possible high level agreement by which normal democratic procedures are followed rather than domination by one government. It is believed that the French Government itself cares little about the Commission, and its representatives really are exhibiting their own limited concepts.

THE NEW SECRETARY-GENERAL: The Australian candidate for the position of Secretary-General was elected. He served as the first Secretary-General, and in the years since, has served Australia as its representative at the United Nations and in its diplomatic service. The agreement of the Commonwealth countries upon the Australian candidate made consideration of any other qualified candidate impossible, since the withdrawal of the Netherlands from the Commission gave the Commonwealth countries a majority on any one candidate, a condition which had to be accepted, even if not desired.

WORK PROGRAM: The work program continues to emphasize education, training, community development through local leadership,



November 6, 1962

economic bases for stable self government, health education, control of disease. The increasing threat of the rhinoceros beetle to the main island crop, the coconut, was emphasized, with renewed efforts to get substantial aid from the United Nations Special Fund for an all-out attack along all possible fronts. There can be little or no expansion in the current small budget. We are working at the limit, with many calls for assistance that cannot be undertaken.

GREATER ISLAND REPRESENTATION ON THE COMMISSION: This session was marked by the presence of more islanders on the delegations than any previous session. The United States delegation was particularly proud to have Richard Taitano, Director of Territories of the Department of the Interior, acting as an alternate commissioner for Manuel Guerrero, who could not attend because of his present duties as Acting Governor of Guam. Mr. Taitano is a keen budget officer and parliamentarian--the type of leadership particularly pleasing to island peoples themselves.

Newly independent Western Samoa's representative was a member of the New Zealand delegation. He is a graduate of Stanford University and a leader in Western Samoa. New Zealand also had a native of the Cook Islands as a member of its delegation. Australia had two native delegates from Papua, New Guinea on its delegation.

This is a most hopeful sign, even if they did not take an active part comparable to that played by Mr. Taitano. There should be an increasing number of such instances as islanders progress and qualify. This has long been a United States policy.

THE UNITED STATES DELEGATION: As Senior U.S. Commissioner, I was most fortunate in my fellow team members of our delegation. In addition to Richard Taitano, already mentioned, there was Governor Carlton Skinner, who continues to impress the Commission with his keenness of mind and his deep understanding and sympathy for island peoples and their problems. Mrs. Frances McReynolds, with her long experience with the Caribbean Commission, and Mr. Edward Thacher, both of the Far East Office of the Department of State, and Mr. George Gray, the United States Consul in Suva, Fiji, served as State Department advisers. Our delegation made a well balanced, knowledgeable and experienced team.

THE EAST-WEST CENTER AT HONOLULU: In Honolulu I had occasion to confer with officials of the East-West Center about problems of the South Pacific peoples, to which the Center could make constructive contributions. This institution, inaugurated with strong support from your Administration through the Department of State and Congressional appropriations, is planning carefully thought out programs of immediate help. A special four-months course for agricultural extension workers from American Samoa, now underway, is an example. The Chancellor of the Center, Dr.



President John F. Kennedy

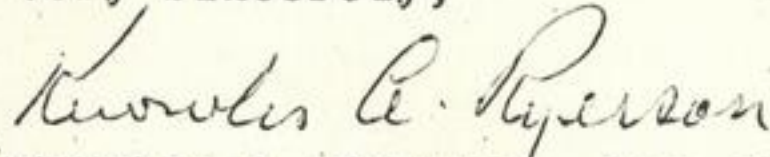
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November 6, 1962

Alexander Spoehr, is a former commissioner on the South Pacific Commission, and is keenly interested in its activities.

The Commission has become a constructive force in the South Pacific area. It has about reached the limit of its usefulness under its present antiquated organization and limited budget. If provided with a streamlined organization with a minimum of administration and a maximum field of activities with full participation by island peoples and backed with adequate financial support, it could continue to be a major influence in assisting island peoples to stand on their own feet and assume a major role in the responsibility for their own activities.

Very sincerely,



Knowles A. Ryerson, Dean Emeritus

Senior U.S. Commissioner  
South Pacific Commission

President John F. Kennedy  
The White House  
Washington, D. C.



THE WHITE HOUSE OFFICE

ROUTE SLIP

(To Remain With Correspondence)

TO Mr. Bundy *K. J. [unclear]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROMPT HANDLING IS ESSENTIAL.  
WHEN DRAFT REPLY IS REQUESTED  
THE BASIC CORRESPONDENCE MUST  
BE RETURNED. IF ANY DELAY IN  
SUBMISSION OF DRAFT REPLY IS  
ENCOUNTERED, PLEASE TELEPHONE  
OFFICE OF THE SPECIAL ASSISTANT.

Date November 14, 1962

FROM THE SPECIAL ASSISTANT

**ACTION:** Comment \_\_\_\_\_  
Draft reply \_\_\_\_\_  
For direct reply \_\_\_\_\_  
For your information \_\_\_\_\_  
For necessary action \_\_\_\_\_  
For appropriate handling   x   \_\_\_\_\_  
See below \_\_\_\_\_

Remarks: \_\_\_\_\_

By direction of the President:  
*Ralph A. Dungan*  
Ralph A. Dungan  
Special Assistant  
to the President



December 4, 1962

EXECUTIVE  
IT 46  
ST 51

gk/ps  
X  
Dean Knowles A. Ryerson  
106 Giannini Hall  
University of California  
Berkeley 4, California

NSAM

Dear Dean Ryerson:

The President has asked me to thank you for your personal letter reporting on the recent annual meeting of the South Pacific Commission. The State Department has not yet submitted the official detailed report; but as soon as it is ready, it will be examined in light of your comments, particularly those on the Commission's budget and its future.

It may interest you to know of another development in our efforts in the South Pacific. The President has appointed a task force here in Washington on which Mr. Taitano is a moving spirit. Its function is to focus the attention of the several departments on U.S. responsibilities for the Pacific Trust territories, and to develop a sensible program for the social and economic development of those islands. Progress has already been made in increasing our financial assistance and in opening up the territory to travel by U.S. and foreign visitors. Programs in health, education and economic development are being drawn up.

The President particularly wanted you to know of his appreciation of your continuing and active interest in South Pacific affairs and for the effort you made to attend the last meeting of the Commission.

Sincerely,

McGeorge Bundy

MVF/lw

RECEIVED  
DEC 5 1962  
CENTRAL FILES

cy L. C. Johnson 12/18



EXECUTIVE OFFICE OF THE PRESIDENT  
NATIONAL SECURITY COUNCIL  
WASHINGTON

~~CONFIDENTIAL~~

February 20, 1963

MEMORANDUM FOR MR. BUNDY

SUBJECT: Pacific Trust Territory Task Force

It has been just a year since the Pacific Trust Territory Task Force was set up under the chairmanship of the Department of the Interior to carry out the President's instructions contained in NSAM 145, dated April 18, 1962, (copy of which is attached). It is the painful truth that very little has been accomplished by the Task Force. Indeed, about the only action that has been taken has come from the President himself in issuing an executive order relaxing the controls over the movement of U.S. citizens to and from Guam and the Trust Territories. Interior failed to get its supplemental appropriation for the Territories through the Congress at the last session and -- worse still -- has failed to come up with anything faintly resembling a coherent program in the fields of education and economic development for which, if I were a Congressman, I would vote any money.

In the face of these failures, the Department of Interior has not been able to take specific action to develop a detailed, sensible program.

As you know, the "anti-Colonial" Committee of the United Nations has been increased from 17 to 24 and now includes some African and Asian nations who are definitely unfriendly to us. I don't like to think of the impact of the story of our efforts in the Territory when it is put on the record.

Finally, we are already in the midst of this session of Congress and without the generation of a full head of steam I feel we will fall flat on our faces again.

I must accept a good deal of personal responsibility for this sad state of affairs. It has not been possible, sitting as a member of this task force, to produce an effective sense of urgency in the Department concerned. The time has come, I think, for the White House to take more vigorous action.

~~CONFIDENTIAL~~

NSAM 145 19  
hold  
stuff  
meeting  
agreed  
He has the situation in hand.  
Your message (that you  
has been passed to H.F.)  
✓

DECLASSIFIED
E.O. 12356, Sec. 3.4
NLK-95-36
By SF HANA, Date 6/29/95



~~CONFIDENTIAL~~

- 2 -

A quick visit to Saipan last month has convinced me that the situation is truly appalling in the Trust Territories of the Pacific. Indeed, they seem to be receiving the worst of both possible worlds, since they get benefits of being neither an integral part of the United States nor an under developed foreign country for which development assistance, PL 480, and Peace Corps are available. The result has been that local opinion such as it is not being won for the United States. In short, Cambodia is receiving ten times the expert attention from this Government that our wards in the Western Pacific are getting.

I would suggest that we ask for a report from the Task Force in the next couple of weeks, setting an absolutely firm deadline for a meeting with the President. I would hope that Harlan Cleveland would participate, since his Bureau has seen the issues clearly. At the meeting I would hope that the President would express himself with his characteristic forcefulness and perhaps even with some sarcasm, direct that the Task Force be placed under White House chairmanship, and give another directive, this time going into some detail on what specific responsibilities each of the agencies concerned should take. I would also hope that the President would put the Congressional aspects of the Trust Territories fairly high on his legislative program, perhaps with a special message. Would you let me know if you agree with this procedure?

  
Michael V. Forrestal

cc: Mr. Kaysen  
Mr. Dungan  
Mr. Johnson

~~CONFIDENTIAL~~