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XIII DEPARTMENTAL SERVICES

A. THE IMMIGRATION ACT OF 1965

1. Background

At the time when President Johnson took office in November 1963, immigration to the United States was governed by legislation that had not changed in most of its important aspects since 1924. The Immigration and Nationality Act of 1952, passed over the veto of President Truman, was essentially a codification of earlier acts, although it also contained a provision for limited immigration by Asians which had previously been prohibited. The philosophy behind this legislation was a concept of limiting the volume and content of immigration in a way that would maintain the ethnic balance of our population as it existed in 1920.

The 1952 legislation modified the formula for computation of individual quotas but did not affect the concept of national origins as the basis for apportionment of quota visas. Immigration by natives of Western Hemisphere countries which

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were independent in 1952 was unrestricted, as was immigration by spouses and children of US citizens, returning resident aliens, certain former citizens, ministers of religion, and certain employees or former employees of the US Government abroad. Within the national quotas, preference was given to (1) highly skilled aliens (50%), (2) unmarried sons and daughters and parents of United States citizens (30%), and (3) spouses and children of resident aliens (20%). If any numbers remained after applicants in these categories had obtained their visas, brothers and sisters and married sons and daughters of US citizens were entitled to the first fifty percent of that residuum. The legislation also contained a number of qualitative criteria for immigration, in the form of some thirty-one grounds of ineligibility for a visa or for admission into the United States because of health, moral, economic, or political factors. In addition to relatively minor amendments to the basic law, there were during the intervening years from 1952 to 1963 a number of special purpose acts to accord nonquota status for applicants in

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oversubscribed preference categories and for the benefit of refugees.

President Eisenhower repeatedly, and unsuccessfully, requested liberalized legislation in the immigration field for much the same reasons that President Truman had vetoed the 1952 legislation, and President Kennedy expressed his concern in this matter several times before sending to the Congress on July 23, 1963 specific proposals for immigration reform. These proposals arose from draft bills prepared at his request by both the Department of State and the Justice Department but embodied primarily the suggestions of the latter, the original draft of which went further with regard to elimination of national origins favoritism. The final product was a result of coordination among the appropriate Executive departments and the White House staff. Despite the immediate introduction of this bill, no hearings or other actions were taken on these proposals prior to President Kennedy's death.

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2. Genesis of the Act of October 3, 1965

President Johnson expressed his support for liberalized immigration legislation in his State of the Union address of January 8, 1964 and at a White House meeting on January 13th specifically endorsed the proposals of the late President Kennedy then before the Congress. The Subcommittee on Immigration of the Senate Judiciary Committee opened public hearings on S. 1932 that same day, although the House Subcommittee hearings did not begin until June 11, 1964. Secretary Rusk, accompanied by the Administrator of the Bureau of Security and Consular Affairs, Mr. Abba P. Schwartz, was the principal witness of the Department at those hearings. His testimony in support of the legislation emphasized its prospective foreign affairs impact: "The adoption of these proposals would substantially assist in the conduct of our foreign relations..." ^{1/}

^{1/} The Secretary's statement before the Senate Judiciary Committee, Subcommittee on Immigration and Naturalization, on July 31, 1964 (Department of State Press Release, July 31, 1964). See also the Secretary's testimony as given in the Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 88th Congress, Second Session, on H.R. 7700 (and other bills), Part II, Serial No. 13, pp. 385-408.

On January 13, 1965, President Johnson sent a similar bill to Congress, incorporating changes which appeared appropriate as a result of the 1964 hearings, urging that "it be accorded priority consideration." ^{2/} The bill was introduced that day in the House by Representative Emanuel Celler of New York ^{3/} and on January 15th in the Senate by Senator Philip A. Hart of Michigan. ^{4/}

The principal elements of the proposed legislation were:

1. Gradual elimination of the national origins quota system through a twenty percent reduction of each quota each year for five years;
2. Abolition of the Asia-Pacific Triangle provisions of the Immigration and Nationality Act;
3. Creation of a pool of visa numbers, to be known as a "quota reserve," composed of the twenty

^{2/} House Document No. 52, 89th Congress, First Session.

^{3/} H.R. 2580, 89th Congress, First Session.

^{4/} S.500, 89th Congress, First Session.

percent of quota numbers withheld each year plus any quota numbers not used the preceding year, to be used for applicants from quota or subquota areas which were oversubscribed, on a first-come, first-served basis;

4. Authority for the President to reserve not to exceed 30 percent of the quota reserve for allocation to quota immigrants who might suffer undue hardship through the reduction of the national quotas or in the interest of US national security, after consultation with an Immigration Board to be established by the legislation, in addition to which an additional ten percent could be reserved for refugees (the limitation for any quota area described under 5 below would not apply to the recipients of these quota numbers);
5. Use of the quota reserve for natives of any single quota area could not, coupled with the

quota for that area, exceed ten percent of the total of authorized quota numbers for the year (except as indicated above);

6. An increase, before the initiation of the annual reductions, to 200 as a minimum quota for any area;
7. The addition of parents of US citizens to the nonquota class and parents of alien residents to fourth preference classification;
8. A provision for a subsidiary preference for workers in short supply in the United States within the fourth preference class;
9. Authorization for the filing of a petition in his own behalf by first preference applicants ("aliens whose services are especially advantageous to the United States"), who were to be entitled to the first fifty percent of each quota or of the quota reserve;

10. The extension of nonquota status to the natives of any independent country of the Western Hemisphere;
11. Authority for the Attorney General to waive certain mental grounds of ineligibility, after consultation with the Surgeon General of the US Public Health Service, for specified relatives of US citizens or resident aliens or immigrant visa recipients; and
12. Authority for the Secretary of State to require prepayment of registration fees and to terminate the registration of aliens who did not evince a continuing interest in immigrating, in the hope of reducing so-called "insurance" registrations.

Even the seemingly technical changes proposed could affect our "image" and thus be of relevance in the field of foreign relations, but the provisions of greatest importance from the standpoint of the Department of State were those abolishing

discrimination against Asians and countries with minimum national quotas, extension of equal treatment to all independent countries of the Western Hemisphere (two recently independent countries were not included in the nonquota provision of the 1952 act), and the authority to stem the flood of unrealistic registrations. (As of July, 1964, there were more than a half-million visa applicants registered at consular offices abroad, and, since it was known that many did not have a serious intent to immigrate, this represented a significant distortion of actual prospective immigration.)

There were extensive hearings in both the House and Senate Subcommittees in early 1965. On June 1, 1965, Chairman Feighan of the House Subcommittee introduced H.R. 8662, which incorporated, in a modified form, the Administration's proposals to abolish the national origins quota system and the Asia-Pacific Triangle provisions but also eliminated all nonquota classes other than natives of independent countries of the Western Hemisphere and returning residents and altered significantly the preference categories

by which a selection among intending immigrants can be made within the overall allowable volume of annual immigration. This bill called for immediate effect of all provisions, rather than a gradual elimination of the quota system. Congressmen Moore and Rodino, also members of the Subcommittee, submitted other modifications of these proposals in June, 1965.^{5/}

On August 6, 1965, the House Judiciary Committee reported out H.R. 2580 with amendments. The bill as reported was a blend of the principles in the Administration bill with some of the particulars proposed by members of the Subcommittee. It contained provisions for a gradual phase-out of the national origins quota system by July 1, 1968, with a pool of unused quota numbers for use by backlogged preference applicants, immediate abolition of the Asia-Pacific Triangle, a preference system emphasizing family reunification similar to that in H.R. 8662, and an amendment of section 212(a)(14) of the Immigration and Nationality Act, the protection-of-

^{5/} H.R. 9136 and H.R. 9312, respectively, 89th Congress, First Session.

labor clause, that had not appeared in any of the bills. The 1952 legislation contained in section 212(a)(14) authority for the Secretary of Labor to issue what were, in effect, "desist" orders against the immigration of workers in fields for which he had determined labor to be in over-supply in the United States. Although he certified certain occupations (usually in specific areas) to the Secretary of State under this authority from time to time, this negative certification procedure did not directly affect many visa applicants. In H.R. 2580 as amended, the thrust of this provision was reversed. Each intending immigrant coming to the United States for the purpose of employment (except certain relatives) was required to obtain a specific ruling from the Secretary of Labor that there were no available workers in the United States for his proposed employment and that his employment would not have an adverse effect on the wages and working conditions of persons already similarly employed in the United States. The bill also included such Administration proposals as granting "immediate relative" (formerly called "nonquota") status to

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parents of adult US citizens, authority to waive certain medical grounds of inadmissibility for specified classes of relatives of US citizens and resident aliens, and extension of "special immigrant" (formerly called "nonquota") status to natives of all independent countries of the Western Hemisphere. For the first time, provision was made for refugees in the basic act by establishing a preference classification for "conditional entrants" and according that class a specific percentage of the overall limit of 170,000 immigrants annually (exclusive of special immigrants and immediate relatives). No provision was made for a Presidential reserve for countries that might be temporarily disadvantaged by the abolition of national quotas.

The bill was debated at length in the House on August 24 and 25, 1965, at which time Congressman Clark MacGregor of Minnesota introduced an amendment to establish a ceiling of 115,000 annually on immigration from the Western Hemisphere, exclusive of immediate relatives and other classes of special immigrants. The amendment was defeated by a vote of 218 to

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189. The bill then passed the House on the 25th by a vote of 318 to 95. ^{6/}

The Senate Judiciary Committee thereupon addressed itself to the amended version of H.R. 2580, which it reported out with further amendments on September 15, 1965. The most important of the Senate additions to the bill provided for the creation of a Select Commission on Western Hemisphere Immigration, to be composed of five appointees each by the President, the President of the Senate, and the Speaker of the House, to consider the economic, political, cultural, and demographic factors affecting and affected by intra-Hemisphere immigration. Under the terms of the bill the Commission was to make a final report by January 15, 1968. Further, unless contrary legislation was enacted prior to July 1, 1968, in response to recommendations of the Commission or otherwise, a ceiling of 120,000 per annum (exclusive of immediate relatives) was to go into effect for natives of

^{6/} Congressional Record, August 24, 1965, pp. 20773 - 20800; August 25, 1965, pp. 20948 - 21013.

independent countries of the Western Hemisphere on that date.

The Senate amendment regarding Western Hemisphere immigration was accepted in Conference, and the House and Senate agreed to the Conference Report on September 30, 1965.

On October 3, 1965, in a special ceremony at the foot of the Statue of Liberty, President Johnson signed the bill ^{7/} and described it as "one of the most important acts of this Congress and of this Administration. ... The days of unlimited immigration are past. But those who do come will come because of what they are, and not because of the land from which they sprung." He summed up the measure thus: "This bill says simply that from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here." ^{8/}

In the same speech the President announced the initiation of a program to assist Cubans who seek refuge in America, as

^{7/} Public Law 89-236 (79 Stat. 911), Act of October 3, 1965.

^{8/} White House Press Release, October 3, 1965.

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a result of which a daily airlift from Cuba to Miami, arranged with the assistance of the Swiss Government and the International Red Cross, was begun on December 1, 1965, which was also the effective date of the Act of October 3, 1965. The following year legislation was enacted to permit adjustment of status to that of permanent resident by Cubans who had been paroled into the United States as refugees.^{9/} (Adjustment of status is not otherwise available to natives of the Western Hemisphere.)

3. Impact of the New Law during the Transition Period

The effect of the new immigration system was immediate and in some ways dramatic. There had been 55,611 quota numbers unused the preceding fiscal year which became the "pool" for the remainder of fiscal year 1966. Relatives of US citizens, particularly married sons and daughters and brothers and sisters chargeable to oversubscribed quotas, who had been

^{9/} Public Law 89-732, (80 Stat. 1161), Act of November 2, 1966.

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waiting for visa numbers for as long as twelve years were suddenly able to obtain visas almost overnight. Over 700 immigrant visas were issued in Naples on December 1, 1965, the effective date of the Act. A similar surge in visa issuances to relatives in other countries of southern Europe and Asia reunited family members long separated by quota limitations. Adjustments of status similarly jumped in volume as a result of these additional numbers. Numbers from the pool were also available for members of the professions (the new third preference) and skilled and unskilled workers in short supply in the United States (the new sixth preference) who were chargeable to oversubscribed quota areas, but, since such applicants had to obtain the labor certification now required under section 212(a)(14), administrative delays kept the volume of such applicants at a rather low level for the seven months remaining in FY-66.

Nonpreference applicants and special immigrants from the Western Hemisphere (other than parents, spouses and children of United States citizens and resident aliens) were

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also subject to the labor certification requirement. Just as applicants were slow in qualifying for third and sixth preference classification, so were nonpreference and Western Hemisphere applicants. In London, which took over immigrant visa functions from Glasgow and Liverpool on December 1, 1965, and should therefore have shown an increase in output, visa issuance which had averaged about 1300 a month until November dropped to 463 in December, 1965. The effect was the same in all of the undersubscribed quota areas and most of the independent countries of the Western Hemisphere. By the early part of FY-67, however, the new ground rules were more widely understood, and the wheels of the certification machinery were better greased. The rate of filing of petitions for third and sixth preference and of visa issuances to nonpreference and Western Hemisphere applicants both began rising markedly. The temporary retardation of nonpreference issuance in the latter part of FY-66 had left a pool of 84,225 unused quota numbers for use in FY-67, but this was of limited use to the third and sixth preferences since each is

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restricted to 17,000 numbers per annum. The increased volume of demand as a result of this petitioning meanwhile caused backlogs of third preference applicants in excess of the 17,000 limitation to develop during that fiscal year. By the end of fiscal year 1968 there were over 70,000 applicants in the (combined) third and sixth preferences more than could be accommodated within the limitations imposed on those classes.

Since most of the pool numbers were available for relatives entitled to a preference classification, the backlogs in those preferences that had existed when the law took effect were eliminated by mid-1967 except for persons born in Italy. (There were more than 100,000 Italians registered for immigration as preference applicants on December 1, 1965, and the limitation of 20,000 annually on natives of a single foreign state made it impossible to erase that backlog quickly.) New backlogs developed, however, particularly in the fifth preference, for siblings of United States citizens. (The rate of petitioning for relatives had accelerated sharply from the

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passage of the act, that for brothers and sisters trebling between FY-65 and FY-66.)

One measure of the effectiveness of the 1965 Act can be found in the fact that in 1968, for the first time since numerical controls were established, immigration reached the volume authorized by the Congress. (In the ten years immediately preceding this amendment, unused quota numbers had ranged from a low of 45,000 in 1958 to a high of 61,000 in 1962.)

4. Situation when Permanent Provisions took Effect July 1, 1968

On July 1, 1968, two major changes took effect: (1) the national origins quotas were abolished and immigration was governed on a strictly first-come, first-served basis within the preference (and nonpreference) system; (2) a ceiling of 120,000 was imposed on immigration by special immigrants from the Western Hemisphere (see discussion below).

The quotas of most of the countries of Western Europe had remained "current," meaning that there were fewer

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applicants than quota numbers, during the transition period. As a result, there was no necessity for applicants from those countries to obtain preference visas as national quota nonpreference visa numbers were readily available. As previously indicated, however, applicants from countries in which national quota numbers were not available had sought preference status (in order to use "pool" numbers) in such volume as to "oversubscribe" the third, fifth, and sixth preferences. Therefore, when the national quotas were abolished, and it appeared that the preference applicants might use all of the 170,000 numbers available for immigrants (since the preference percentages total 100), it became necessary for visa applicants from the formerly "current" countries also to seek preference status and, more importantly, to get at the end of a rather long line of applicants already waiting for visa numbers. The effect resembled that of the imposition of the labor certification three years earlier -- an immediate drop in immigration from the Western European nations which had formerly supplied the

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bulk of our newcomers. Using London again as an example, and similar to the drop in December 1965, the immigrant visa issuance level sagged from an average of about 2500 a month before June to 750 in July 1968. An identical impact was felt in all formerly "undersubscribed" countries from which immigration had traditionally been, for the most part, by young men seeking a new life abroad rather than by relatives seeking to join family members in the United States. This shift in the source of immigration can best be likened to the action of a pendulum, in that natives of countries which once were disadvantaged now have first call on immigration opportunities, and vice versa; the situation should equalize, with the pendulum centered, within at most two years, however. By that time applicants who were the beneficiaries of petitions filed prior to spring 1968 should have received visas; all applicants who filed petitions in late FY-68, which includes applicants from Western Europe, will be competing on an equal footing for the allowable visa numbers. Despite the apparent temporariness of the disruption in the pattern of

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immigration from some of our closest allies, it has been sufficiently disturbing to generate a number of bills to provide temporary relief to intending immigrants from those areas.

Some of these proposals were similar to that in the original Administration bill for a reserve of numbers to be used in the discretion of the President ^{10/} while others suggested a "floor" or minimum number of visas to be made available to countries from which immigration dropped so sharply as to indicate a need for special consideration. ^{11/}

Since the limited amount of visa numbers for the third and sixth preference classes is directly related to the drop in immigration from Western Europe, and, further, since the percentages applied to the preferences do not seem to accord realistically with demand for visas (e.g., there are 34,000 visa numbers available annually for unmarried sons and

^{10/} H.R. 16863, 90th Congress, Second Session, is representative of such proposed legislation.

^{11/} H.R. 16593, 90th Congress, Second Session, is representative of the bills containing this type of provision.

daughters of United States citizens but the annual demand for this class of applicant averages about 2,000, while the third and sixth preferences are "oversubscribed"), consideration has also been given to a restructuring of the preference system. Several bills were introduced for this purpose^{12/} and executive hearings were held by Subcommittee No. 1 of the House Committee on the Judiciary in the spring and summer of 1968. At the request of the Subcommittee, Miss Barbara M. Watson, (then Acting) Administrator of the State Department's Bureau of Security and Consular Affairs, offered five alternative proposals for the members' consideration, outlining the advantages and disadvantages of each. She prefaced these suggestions with a formal statement which included this summation of the current situation:

I think the Committee is aware that the Department has welcomed the basic reform in our immigration laws effectuated by this Act. There can be no question but that the Act has accomplished its

^{12/} H.R. 13453, 90th Congress, First Session, is representative.

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principal objectives of removing racial and national discriminations from our immigration laws, uniting families, and protecting the American labor market. ... These objectives of that legislation have been achieved. Nevertheless, experience with the 1965 Act has shown that there are also areas of difficulty -- results which were not foreseen and which could not, on the basis of the information then available, have been anticipated. ... Since little more than half the numbers can be used by the principal applicants for whom these (third and sixth) preferences were designed (the other half go to accompanying family members), it seems clear that the numbers available for principal applicants in these two categories will be far less than was intended and presumably not sufficient to meet the needs^{13/} of our country for persons with these skills.

5. Western Hemisphere Immigration

Aside from the initial retardation of the rate of immigration resulting from the labor certification requirement, there was little direct effect on the overall volume of immigration from the Western Hemisphere during the transition

^{13/} Statement by Miss Barbara M. Watson, Acting Administrator, Bureau of Security and Consular Affairs, Department of State, before the Immigration and Nationality Subcommittee of the House Committee on the Judiciary, April 3, 1968.

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period from December 1, 1965, to July 1, 1968. There was, however, a shift in the source of immigration within the Hemisphere as natives of the former quota areas of Jamaica and Trinidad and Tobago were granted "special immigrant" status, as were those from former subquota areas such as Barbados and Guyana which became independent during that period. This permitted a significant increase in immigration from those areas, the most dramatic change being represented by Jamaica from which immigration in 1965 totalled only 1,780 while that of 1968 soared to 19,925. There was also a shift in the character of immigration as the occupational classes of immigrants which found it easiest to obtain labor certifications for which they were qualified were members of the professions and live-in domestics. Applicants normally engaged in agriculture or unskilled and semi-skilled fields were unable to enter at their former rate.

The Select Commission on Western Hemisphere Immigration met at frequent intervals between early 1966 and late 1967. President Johnson's appointees were Messrs. Richard M. Scammon

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(Vice President of the Governmental Affairs Institute and former Director of the Bureau of the Census), Chairman, Leo Cherne (Executive Director of the Research Institute of America and Chairman of the Executive Committee of Freedom House, New York City), Lincoln Gordon (Assistant Secretary of State for Inter-American Affairs and former US Ambassador to Brazil) who was succeeded in June 1967 by Covey T. Oliver (former US Ambassador to Colombia who became Assistant Secretary of State for Inter-American Affairs at that time), Stanley Ruttenberg, (Assistant Secretary and Manpower Administrator, Department of Labor), and Raymond F. Farrell (Commissioner of the Immigration and Naturalization Service, Department of Justice). The five members each appointed by the President of the Senate and the Speaker of the House were Senators Everett M. Dirksen (Illinois), James O. Eastland (Mississippi), Philip A. Hart (Michigan), Roman L. Hruska (Nebraska) and Edward M. Kennedy (Massachusetts) and Representatives Emanuel Celler (New York), Michael A. Feighan (Ohio), William M. McCulloch (Ohio), Arch A. Moore, Jr. (West Virginia),

and Peter W. Rodino, Jr. (New Jersey), respectively.

The final report of the Commission ^{14/} in mid-January 1968 recommended that the imposition of a ceiling on immigration from the Western Hemisphere be postponed for one year. (Legislation would be required to implement this recommendation, since a numerical limitation was to go into effect automatically on July 1, 1968, in the absence of contrary legislation.) The Commission also offered "fall back" recommendations, in the event the primary one was not accepted, such as provision for a 40,000 numerical limit per country (although the foreign state limit for Eastern Hemisphere nations is 20,000 per annum), a negative recommendation against establishing national origins quotas for Western Hemisphere countries, and a recommendation that legislation be enacted to exclude from the ceiling those Cuban parolees who adjust status under the Act of November 2, 1966.

The position of the Administration had steadfastly been against any ceiling on Western Hemisphere immigration and, if it were a fait accompli as it appeared to be, at least wished

^{14/} Report of the Select Commission on Western Hemisphere Immigration.

to minimize its effect to the extent possible. As the Presidential appointee representing the viewpoint of the Department of State on the Commission, Assistant Secretary of State for Inter-American Affairs Covey T. Oliver had appended to the Report a statement of his views in which he stated, with regard to the Cuban adjustment problem, "I cannot view with equanimity the prospect of reducing an already-undesirable ceiling by one-third for a purpose that was not under consideration at the time the ceiling was established. ... The present airlift also was not in effect at the time of the passage of the 1965 Act. Therefore, this volume of adjustees was not in the original contemplation of the 120,000 ceiling and in my view should not now be injected. ... It must also be borne in mind that the rate at which Cubans are eligible for adjustment is far in excess of normal immigration from that area, and that this is due solely to a special program of the United States Government." No final action was taken by the Congress to prevent the automatic imposition of a ceiling of 120,000 on July 1, 1968, nor to

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exclude Cuban adjustments from that number, although several bills were introduced along those lines.^{15/} The effect of the numerical limitation cannot yet be statistically measured although it is clear that there will be a sharp reduction in immigration from other countries in the hemisphere and a resultant development of "waiting lists" of both visa applicants and Cuban applicants for adjustment. (On a strictly first-come, first-served system, natives of no one country can preempt all of the visa numbers, despite the absence of country ceilings, but it is noteworthy that Cuban adjustments in FY-68 totalled about 95,000.)

^{15/} H.R. 11993, to postpone the effective date of the ceiling for one year passed the House of Representatives on August 21, 1967, but was not acted on in the Senate; H.R. 18251 and S.3629, 90th Congress, Second Session, are representative of the bills introduced to exclude Cuban adjustments from the Western Hemisphere numerical limitation which were not acted upon by either House of Congress.

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6. Tourism

The Administration moved forward not only in the field of immigration but also with respect to nonimmigrant visitors to the United States. In April 1967 the Department of State announced the initiation of a program of issuing visitor visas with an indefinite validity, a so-called "lifetime" visa, for nationals of countries which accorded reciprocal or better treatment to United States citizen visitors to their lands. (Many nations do not require any visa of American visitors.) This was the most liberal step that could be taken under the law toward facilitation of travel since no authority exists for a waiver of visas except for nationals of contiguous territory and under certain emergent circumstances. On February 23, 1968, President Johnson sent to the Congress a bill ^{16/} proposing the waiver of nonimmigrant visas for visitors for business or pleasure who wish to remain in the United States for ninety

^{16/} H.R. 15651, 90th Congress, Second Session.

days or less. The President emphasized in his message "This new Act will improve our foreign relations and promote a better understanding of America throughout the world. It will improve our balance of payments and strengthen the dollar. It will allow us to treat travelers from abroad more efficiently and more hospitably." Although the bill was favorably reported by the House Judiciary Committee on June 4, 1968, no final action was taken by the Congress on this measure.

Further nonimmigrant changes were recommended in proposed legislation sent to the Congress under copy of a letter from Undersecretary Nicholas Katzenbach to the Vice President on May 6, 1968. These proposals included a liberalizing of the "temporary worker" definition to permit aliens of exceptional ability to perform here temporarily in positions which are not necessarily themselves temporary (such as a professor occupying a Chair at a university for a year), amendment of the requirement that exchange visitors reside abroad for two years before being eligible for immigrant or temporary worker

status by simultaneously broadening it to include students and temporary workers and limiting it to those who come to the United States in any of these capacities at the expense of either the United States Government or their own Government or who are nationals of less-developed countries which need their skills, and, finally, a provision for nonimmigrant classification for fiancées of United States citizens and resident aliens. The bill was introduced in the House on May 15, 1968 ^{17/} but had not been acted upon by the date of this report.

^{17/} H.R. 17290, 90th Congress, Second Session.

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B. PASSPORTS AND TRAVEL CONTROL

1. Travel Controls

The Passport Act of 1926 (22 USC 211(a)), authorizes the Secretary of State to "grant and issue passports." Under this authority and under the general executive authority to conduct foreign affairs, the Department of State has (1) for reasons related to an individual applicant's activities or associations, refused to issue or has revoked passports of US citizens, and (2) for foreign policy reasons, has declared passports to be invalid for travel to certain countries or areas. Over the years general restrictions on the travel of US citizens to certain countries or areas had, from time to time, been imposed (primarily in war time). Passports had also been occasionally denied to a few individuals because of their activities abroad. However, the atmosphere of the cold-war period, both in the United States and abroad, was the principal cause for the imposition, both by legislative enactment and by exercise of regulatory

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authority, of restrictions on the travel of certain classes of individuals and on travel of US citizens generally, to certain countries or areas. Apart from the practical necessity of possession of a passport for entry into other countries, the effectiveness of the denial of a passport to a US citizen in preventing or restricting his travel stemmed largely from Section 215 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1185) which makes it a crime for a US citizen to depart or enter the United States, or attempt to do so, unless he bears a valid passport.

a. Denial or Revocation of Passports for Activities or Associations of the Individual

Prior to 1952, it was the Department's practice to determine, in the case of each individual applicant for passport facilities, whether the issuance of a passport to that individual would be "contrary to the best interests of the United States." The denial of passports under this criterion was exercised principally in the case of members of the Communist Party USA and members of other Communist or pro-Communist organizations. In the middle 1950's, the

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Department adopted regulations providing for the denial of passports to "supporters of the Communist movement." In 1958, however, the Supreme Court in Kent v. Dulles, 357 US 116, held that neither the Passport Act of 1926 nor any other statute had delegated to the Secretary of State the authority to deny a passport on the grounds of the applicant's beliefs and associations. In that case, the court enunciated the principal that freedom to travel is "an important aspect of the citizen's liberties in or out of courts which may not be infringed without the due process of law prescribed by the Fifth Amendment."

In 1961, when the Communist Party of the United States became legally obliged to register under Section 7 of the Subversive Activities Control Act of 1950, the provision of Section 6 of that Act which made it a crime for a member of any organization required to register to apply for or use a US passport became applicable. The Department thereupon issued regulations providing for the denial of passports to members of the Communist Party. Pursuant to this regulation

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the passports of Elizabeth Gurley Flynn, Herbert Aptheker and several other Communist Party members were revoked and they brought suit to obtain restoration of their passports on the grounds that Section 6 of the Act was unconstitutional. In 1964, in Aptheker v. Secretary of State, 378 U.S. 500, the Supreme Court held Section 6 of the 1950 Act unconstitutional on the ground that it too broadly and indiscriminately infringed on the constitutionally-protected liberty to travel because it denied passport facilities without regard to the commitment of the individual to the aims of the proscribed organization and irrespective of his activities or the purpose of his travel.

Subsequent to that decision, passports were no longer denied or revoked because of membership in a Communist organization. A number of bills were introduced in Congress to provide for such action but none was enacted.

b. Area Travel Restrictions

Although US passports had for a time been made invalid for travel to most Eastern European countries, by the

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mid-1950's the geographic restrictions on their validity covered only Albania in Europe and certain areas in the Far East, including Mainland China. The first major challenge to the Secretary's authority to declare passports invalid for travel to designated countries resulted, in 1958, in this authority being upheld in the case of Worthy v. Herter, 270 F.2d 905. A number of other similar challenges at the same time were refused by the courts on the ground that the 1926 Passport Act contained sufficient authority for such action and that the action was reasonable in the light of the hazardous conditions for American citizens in the restricted area.

In 1965 the Supreme Court in Zemel v. Rusk, 381 U.S. 1, upheld the Department's refusal to validate the passport of a citizen for travel to Cuba. The Department continued its practice of restricting the validity of US passports for certain countries or areas (notably Cuba, Communist China, North Korea and North Viet-Nam) and its practice of revoking passports for unauthorized travel to those areas and withholding

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the revoked passport unless and until the individual would give sworn assurance that he (1) would not travel to a restricted area without authorization and (2) would not use his passport for such unauthorized travel.

In 1967, however, two significant court decisions substantially altered the Secretary of State's authority with respect to restricting travel to designated countries or areas. In Laub v. Rusk, 385 U.S. 485, the Supreme Court held that Section 215 of the Immigration and Nationality Act could not be invoked against a US citizen who departed the United States for a restricted area without validation, if he held an otherwise valid passport. (In 1964, the US Court of Appeals for the Fifth Circuit had held, in Worthy v. United States, 328 F.2d 386, that the criminal penalty imposed by Sec. 215(b) upon a citizen entering the United States without a valid passport was unconstitutional as an improper restraint on his right to return to his own country.) In addition, in Lynd v. Rusk, 389 F.2d 940, the US Court of Appeals for the District of Columbia held that the Secretary's statutory

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authority related only to controlling the use or travel of a US passport and not the travel of the citizen. The Court ruled, in effect, that the Secretary of State was without authority to prevent the travel of a US citizen to a restricted country or area by means of withholding a passport from him.

The result of these two decisions was to substantially eliminate the previously asserted means of enforcing restrictions inasmuch as they held that the criminal statute, Section 215(b) was not applicable to such travel and the administrative action of revoking and withholding passports to prevent such travel was not authorized. To fill the resultant statutory void, the Department proposed legislation to the 90th Congress (S. 2766 and H.R. 14428) which would specifically authorize restrictions on the travel of US citizens to areas designated by the Secretary of State and make it a criminal offense to travel in violation of the prescribed restrictions. Neither of these bills was enacted.

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As of the close of 1968, the Department, by regulation, asserts the authority to declare US passports invalid for travel to a country or area which the Secretary of State determines is (a) a country with which the United States is at war; or (b) a country where armed hostilities are in progress; or (c) a country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of US foreign affairs. Pursuant to these regulations and in accordance with their requirements, US passports are declared, by public notice in the Federal Register, to be invalid for travel to Mainland China, Cuba, North Viet-Nam, and North Korea unless specifically validated therefor. Under the regulations restrictions expire one year from date of publication. The existing restrictions were published March 16, 1968. In the light of the Court's decision, particularly the decision in Lynd v. Rusk, the Department terminated its practice of revoking or denying passports for unauthorized travel to restricted areas.

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2. The Five-Year Passport Act

From 1959 until mid-1968, United States passports were valid for an initial period of three years and were renewable for an additional period of two years. These periods of validity were based primarily on the provisions of Sec. 352(a) of the Immigration and Nationality Act of 1952 providing for the loss of citizenship by a naturalized US citizen who resided in the country of his birth or former nationality for three years or any other foreign country for five years. With the 1964 decision of the Supreme Court, in Schneider v. Rusk (377 US 163) that this section was unconstitutional, the reason for these periods of validity ceased to exist. Accordingly, on March 20, 1967, the Department forwarded to the Congress draft legislation to provide for a period of validity of five years without renewal and changes in the passport fees. The proposal also provided a method of obtaining, under certain conditions, new passports without the necessity of applicants appearing in person and executing their applications under oath if

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they had previously held a passport. In effect, the latter provision would permit new passports to be obtained by mail.

The bill was introduced on April 4, 1967, by Senator Fulbright as S. 1418. In testimony before the Senate Foreign Relations Committee on May 24, 1967, Miss Frances G. Knight, Director of the Passport Office, stated generally that the bill would assist in eliminating unnecessary steps in the passport issuance procedures which will be required by the anticipated increase in the workload of the Passport Office, Passport Agencies in the United States and consular posts abroad occasioned by the expected increase in foreign travel during the 1970's. Miss Knight stated that this purpose could be served without lessening the integrity and security of the US passport if appropriate Departmental regulations were established to prevent fraud.

S. 1418 was passed by the Senate as introduced but was amended in the House of Representatives to provide for a smaller passport fee. The Senate adopted the House amendments and the bill was signed by the President on July 26,

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1968. By its terms it became effective August 26, 1968. Implementing regulations were published in the Federal Register on August 24, 1968, as miscellaneous amendments to Part 51 of Title 22 of the Code of Federal Regulations.

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C. IMPROVEMENT OF COMMUNICATIONS

1. Introduction

An important modernization of the Department's physical communications system was carried out during the Johnson years. Probably more advances were made in this area during that five-year period than in any comparable preceding time span.

Communications, in the broadest sense are the nerve system of the Department. Without a rapid and reliable communications system, an otherwise perfect organization may fall down in its mission at crucial points. In the Department, rapid, reliable and secure communications are vitally important because the organizational units of nearly 40 US Government agencies or programs engaged in foreign affairs are so widely separated. To keep some 260 overseas posts in uninterrupted contact with each other and with the Department is a monumental task -- one which, nevertheless, must be accomplished in order that the President, the Secretary of State and other Cabinet Members may always have the

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latest information and advice from their representatives abroad and be in a position to deal quickly and intelligently with problems or emergencies anywhere in the world.

2. Communications Prior to November 1963

a. The Orrick Committee

In the fall of 1962 the full pressure of the Cuban crisis overwhelmed the capabilities of the Department's electrical communications system. Recognizing the problem and the need to examine the communications resources on a government-wide basis, President Kennedy established a National Security Council Sub-Committee for Communications and designated William H. Orrick, Jr., then Deputy Under Secretary of State for Administration, as Chairman. The other principal organizations represented were the Director, Telecommunications Management (DTM), the Department of Defense and the Central Intelligence Agency.

The "Orrick Committee" reviewed US communications worldwide but, understandably, was initially concerned with upgrading the communications facilities at our Embassies in South America.

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Within a matter of months all of the Embassies in South America were equipped with radio teletypewriter facilities (either active or standby) and on-line cryptographic facilities.

b. Office of Communications

It was during that period, early in 1963, that the organization of the Department's communications activity was altered with the creation of an Office of Communications. Assigned to it were the personnel and functions of the superseded Cryptography Staff and the Diplomatic Communications Service. The new office was responsible for planning and directing the worldwide electrical communications system as well as Diplomatic Pouch and Courier operations.

To underscore the creation of the Office of Communications, it was placed under the direction and leadership of a Deputy Assistant Secretary for Communications. The high organizational level of the new office provided its leadership with sufficient rank and power to come to grips with the problem of modernizing the Department's communication system.

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John W. Coffey was selected to be the first Deputy Assistant Secretary.

3. Transformation since 1963

The moves described above signified that a start had been made in the Department's communications modernization program; but much more remained to be done. Plans had to be made, concepts developed, equipment purchased and, equally important, money to effect the program had to be obtained. The initial goal was to achieve security improvements. In November of 1963, the National Security Agency informed the Department that for security reasons the outmoded off-line cryptographic equipment being used by the Department had to be replaced by July 1, 1965. The security implications were of such magnitude that action could not be deferred.

Support was solicited and received from all levels of the Department and elements of Congress. Members from both the House and Senate Appropriations Committees were invited to the Department and received briefings on the modernization program and the security implications inherent in the

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existing system.

As the Senate Subcommittee on National Security Staffing and Operations noted: "If an Ambassador is to meet his responsibilities he needs swift, secure and survivable communications with Washington and with our Ambassadors at other posts. But the State Department has been tardy in making use of modern communications and personnel. As things stand, an Ambassador may not have immediate access to as rapid, reliable, and sophisticated means of communications as other American elements in his country of assignment." ^{1/}

On April 28, 1964, Secretary Rusk outlined the Department's efforts to speed communications with embassies abroad to the Senate Sub-Committee of the Committee of Appropriations. He made reference to the military's instantaneous communications system and stated that "We do not have similar communications for the purpose of preventing a war, for conducting our normal diplomatic business. We do feel that

^{1/} Administration of National Security, 88th Congress, GPO 52-7210 Washington, 1965.

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we need to improve our communications facilities fairly substantially." ^{2/}

Appearing before the Senate Sub-Committee on National Security Staffing and Operations on April 8, 1964, Ambassador Foy D. Kohler, our envoy to the Soviet Union, indicated that "our communications were not adequate, and that the Cuban crisis was one of the proofs of this." He concluded that "we ought to have a better system on a global basis." ^{3/}

Money was made available to continue the program. Specific areas, including the replacement of obsolete equipment, were identified and action was taken to make the modernization program a reality. The 1963-69 progress in these areas, each in effect a separate program, is detailed below.

(1) Equipment Modernization Program

The policy guidelines approved by the United

^{2/} Hearing Before the Sub-Committee of the Committee on Appropriations, 88th Congress, 2nd Session. GPO 31-834. Washington, 1964.

^{3/} Administration of National Security, 88th Congress. GPO 52-7210. Washington, 1965.

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States Communications Security Board, of which the Department was a member, provided that where there was a requirement for electrical transmission of record communications, the objective was to protect the circuits with automatic encryption-decryption equipment, i.e., "on-line systems." These systems simultaneously and automatically encrypt and transmit messages at the point of origin and automatically decrypt when the message is received at the destination.

The optimum, of course, was to have an on-line capability with all Foreign Service posts. From a purely practical point of view, however, the volume of messages generated or received from many posts would not justify the expense, both in personnel and equipment, of such a capability. Where such was the case, either "off-line" or "one-time pad" systems were used.

In November of 1963, 67 Foreign Service posts were equipped with on-line systems. Five years later this number stood at 118, 25 in Africa, 27 in Latin America, 27 in Europe, 21 in the Near East, and 18 in East Asia. Of the total 118 on-line posts, 32 were equipped with TSEC/KW-7 equipment

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and 86 were equipped with TSEC/KW-26 equipment. The KW-7 was first introduced into the Department's inventory in September of 1964 in a shipment of 10 units; an additional 50 units were procured in October of the same year to support the African On-Line Program. In December 1965 an order was submitted for 33 more, followed by an additional 13 in mid-1966. In late 1966 an eleven-unit procurement lasted until June 1968 when another 30 were ordered, primarily for use in Africa, in Europe, and to protect the electrical distribution circuits in the Department. The equipment being small and of a lower classification than the KW-26, was ideally suited to the smaller embassies which were opening in the many emerging nations in the world.

At those posts where on-line cryptographic facilities were not justified, encryption-decryption was done separately from the transmission process, i.e., "off-line." Obsolete off-line type cipher machines (MEC, MOX and MOT), including types used since 1941 were in use in November 1963 at 151 Foreign Service posts. At the same time, the National Security Agency informed the Department that these machines were

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susceptible to compromise and must be replaced by July 1, 1965, at the latest.

The TSEC/HW-28 was selected as the replacement equipment, and by mid-1964 450 units had been procured. The HW-28 became the sole off-line mechanical cryptographic equipment in use at 160 Foreign Service posts. Capable of operating at speeds up to three times as fast as the old equipment, the new off-line equipment provided the highest degree of security available for teletypewriter transmission.

One-time pad (OTP) was the only cryptographic system available at 128 Foreign Service posts in 1963; by mid-1967, the number was reduced to 111 and by the end of 1968 it stood at 85. A replacement program for this manual OTP system was begun in 1967, designed to provide a small, non-electrical device, which would be easier to use. Three prototype models (CY-1) were delivered in September of 1968 for field test purposes, and plans made to procure 250 units in 1969, all to be distributed during that year to one-time pad posts.

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(2) Voice Radio Program

Overseas, events such as political or military action, civil disorder, and natural disasters often result in a disruption of the normal means of communications both locally and with the outside world. The objectives of the Voice Radio Program were to provide overseas posts with voice radio equipment which would (1) enable an embassy to communicate with its constituent posts and to embassies in neighboring countries, and (2) enable a post to communicate with its key personnel within the city.

Over the five-year period commencing in November 1963, there was a concentrated effort to increase the total number of posts having voice radio capability. In 1963 there were approximately 50 posts with long and short range equipment. By mid-1966, there were approximately 151 posts with long range capability and 146 posts with varying quantities of short range equipment; by the end of 1968 approximately 200 posts had been provided both long and short range equipment. During that same period a significant amount of obsolete equipment was replaced with newer equipment having more

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versatile operational characteristics such as selective calling and push-button tuning.

(3) Secure Facsimile

On September 28, 1964, the Executive Secretary of the Department and the Director of the Operations Center viewed a demonstration of high-speed facsimile equipment (Xerox LDX). A contract had been let to adapt the Xerox equipment to high speed cryptographic equipment, to be used to transfer biographic data between the Department and CIA. When the Department suggested to the White House the possible application of the system to State/White House intercommunications, the Special Assistant to the President for Telecommunications requested the Assistant Secretary of Defense (Administration) to establish such systems between the various Operations Centers in Washington. On January 21, 1965, the Manager of the National Communications System was tasked with the expeditious development of a plan to establish the necessary facilities. In July of 1965 the initial link was installed between State and CIA; the remainder of the system was installed in January of 1966. The telephone companies

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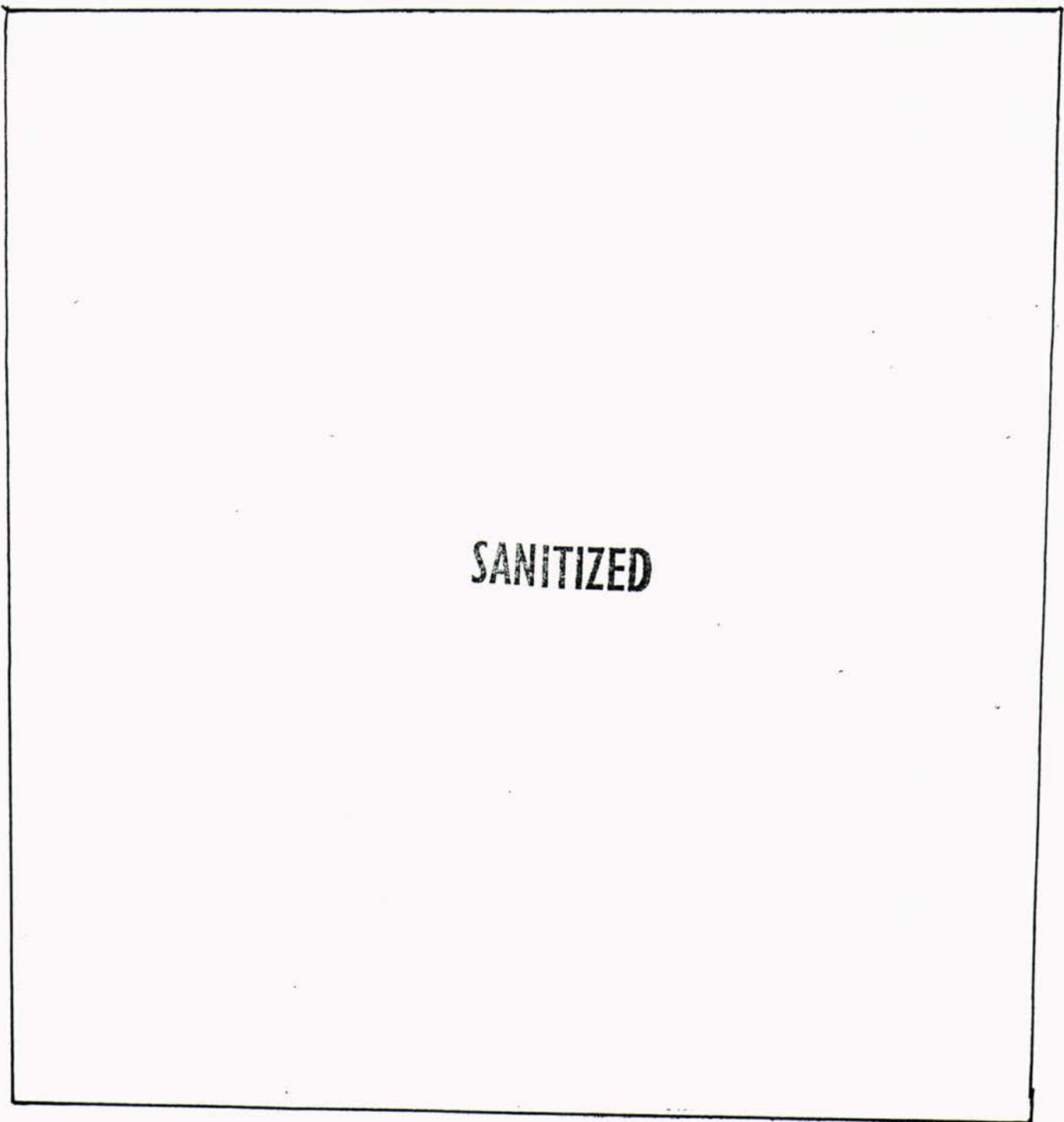
— specially engineered the wideband circuits required since none were available. A program which would normally have required three years to implement was accomplished in one. The system exceeded expectations, mutually serving the Department of State, CIA, the White House and the National Military Command Center (NMCC) and its alternate site (ANMCC). The National Security Agency Center was later added, and plans were made to automate a switching center so as to allow participation of other subscribers. The high cost of the system and circuitry and of such additions as the switching center served to limit its application to only the most essential requirements, although its features made it extremely desirable. Designed for a quasi-office environment, it was capable of being operated by substantive officers rather than requiring professional communicators. Its speed of 6 pages of documents, maps, charts, drafts, etc. per minute was far in excess of the fastest conventional equipment rate of 3 minutes per page. This speed provided the quick reaction time necessary to maintain the mutual

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up-to-the-minute data base which is such a vital tool in the national crisis management function.



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(5) Teleconference Facility

In the spring of 1964 a new teleconference facility was installed in the Department permitting the Secretary and other senior officers of the Department to "talk" directly with officials at Foreign Service posts. A conference room within the Department's Operations Center was equipped with a teletype projection system which allowed the conferees to view the teletype message on a rear projection window as it was being received. Their answer was sent by means of teletypewriter equipment in the adjoining room and was viewed on another projector. Since the equipment used was secure, the information transmitted could be of a classified nature, up to and including Top Secret. This

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facility was used extensively after its installation, chiefly in world crisis situations. (An example was its use between the Department and our Embassy in Santo Domingo during the April 1965 Dominican crisis -- described in Chapter VI above.)

(6) Washington Communications Center

Among the recommendations of the "Orrick Committee" was that an automatic message switch be installed in the Department of State to ensure improved handling of communications traffic. To this end, in September of 1963, Mr. John W. Coffey, Deputy Assistant Secretary for Communications, appointed a committee to develop the specifications for an automated center.

In July, 1964, the specifications for a computer-based, message processing, transmission, and automated relay system, were issued to industry. This system would henceforth be known as the Automated Terminal Station (ATS). The industry proposals were received, and in November, 1964, the ATS Task Force was formed to evaluate the proposals, refine the

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specifications, and negotiate a contract. Close to one year was spent ironing out the technical, logistical and financial problems which arose. Finally, in September 1965 a contract was signed with the International Telephone and Telegraph Corporation to install the ATS.

The ATS was activated on July 29, 1967, and after testing, was accepted on August 22, 1967. During the initial weeks, the usual bugs appeared. However, after the "shake-down" period, the system did function as planned.

By applying computer techniques to message handling, the ATS enabled the Department to process greater volumes of traffic faster and with considerably fewer personnel. At the heart of the ATS, there were two computers, each with a "memory" of 52,000 computer words. They were augmented by four magnetic drums, each with a "memory" of 262,000 words, and two devices capable of storing 50 million words. By pressing a button, a message could be retrieved from the storage units within twelve seconds.

Messages originated in the Department were introduced

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into the ATS via manually prepared paper tapes or via tapes prepared by an optical character reader (OCR), an automatic process which converted typewritten pages into perforated paper tapes. These tapes were introduced into the ATS at 1000 words per minute.

Incoming and outgoing messages were displayed to analysts on television-type screens. The analyst gave the displayed messages a substantive review to determine their proper distribution and then sent them to reproduction on 1000 line per minute printers.

The Department's Washington Communications Center became one of the most modern in the world and was used as a model for further development. Perhaps the most significant example of this, the further application of computer techniques to message handling, may be found in the Bonn Automated Exchange (BAX). On October 12, 1968, a contract was signed with the Control Data Corporation to install in Bonn a computer-based message switching system designed to serve the Department and most of Europe. Plans called for

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the BAX to be activated in early 1970 and to replace three manual torn-tape relay facilities in Europe.

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