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Office of the General Counsel

B-235147.2

August 14, 1991

Mr. Anthony Dudley  
Associate Comptroller  
for Financial Operations  
United States Department of State  
Washington, DC 20520

Dear Mr. Dudley:

This responds to your request that we grant relief, pursuant to 31 U.S.C. § 3527(a) (1988), for Mr. , the Chief of Employee Claims, and former main State Department Class B Cashiers, Ms. , Ms. Ms. , and Ms. , for the loss of \$349,430 in Citicorp travelers checks entrusted to the office of the cashier in the Department's headquarters building. We are granting relief because we cannot conclude, in view of the pervasive laxity with which the Department managed and operated the cashier's office, that any individual action on the part of these accountable officers was the proximate cause of this loss.

According to your submission, on August 19, 1987, the State Department learned from the Federal Bureau of Investigation that Ms. , a former employee of the State Department, had confessed to embezzling \$72,150 worth of travelers checks advanced to the Department by Citicorp for use in place of cash travel advances.<sup>1/</sup> A subsequent inventory of the remaining travelers checks could not account for a total of \$349,430 out of \$3 million worth of travelers checks.<sup>2/</sup> Based on Departmental investigations of this matter, you have concluded that the loss of these checks occurred in the performance of the official responsibilities

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<sup>1/</sup> Ms. had been a clerk-typist who was detailed on several different days to serve as a substitute cashier. She and some of her associates who were not State Department employees have agreed, under court order, to repay a portion of what she stole.

<sup>2/</sup> Approximately \$60,000 of the missing checks have been cashed so far. However, you recognize that the uncashed balance also constitutes an immediate liability of the State Department and must be treated as if it were missing cash. See 64 Comp. Gen. 456, 458-60 (1985).

of the named individuals.<sup>3/</sup> You also concluded that this loss "did not occur by reason of wilful intent to defraud the Government or fault or negligence" on the part of the named persons, but rather as a result of the criminal acts of Ms.

Like you, we do not see in the record any indication that the named individuals embezzled the missing funds. Although the record submitted for our consideration suggests a failure on the part of these individuals to perform their duties fully consistent with the high standards normally required of accountable officers, it clearly shows the presence of a pervasive web of negligence and lack of concern on the part of the State Department (from the Office of the Comptroller to the individual window tellers in the cashier's office) for the security and proper management and operation of the cashier's office.

Among the findings documented in the record of the Department's investigations are such deficiencies as the absence of written rules or procedures governing the operation of the cashier's office and the management of travelers checks, the Department's refusal to allow the office to close early enough to conduct daily reconciliations of the office's transactions, and the Department's failure to adequately staff the cashier's office and its resort to the use of untrained and unqualified clerical and administrative staff from elsewhere in the Department. Most significant, however, is the fact that top level officers of the Department did not respond to requests for additional resources and protests concerning the inadequacy of the office's operations, other than to order the office to keep running during all State Department business hours for the convenience of the Department's traveling employees, "at any cost."

According to documentation submitted with this request, the Department's Inspector General has performed numerous reviews and made many recommendations which have been or are being implemented. Among the many corrective actions taken thus far are the development of procedures and handbooks for the cashier's office and the establishment of a permanent policy office to periodically review them. The Department undertook a new inventory of its travelers checks. It now requires them

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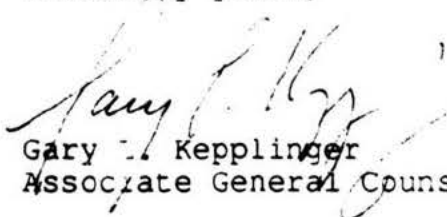
<sup>3/</sup> Mr. \_\_\_\_\_, as the responsible administrative supervisor of the cashier's office, originally accepted custody of the travelers check from Citicorp and placed them in the cashier's office. The other named individuals were cashiers who worked in that office, on detail or otherwise, at varying times over the period in which the travelers checks were kept in the cashier's office.

to be stored in a safe and advanced to the cashiers each day in small quantities for sequential disbursement. The cashier's office is now closed at 3:00 p.m. each day to allow daily reconciliation, and some selected services are restricted to limited periods on certain days of the week. Moreover, many conflicting, unrelated, and burdensome tasks imposed upon the cashier's office have been transferred to other Department offices.

This Office is authorized to grant relief from liability upon its concurrence with determinations by the Department or agency that (1) the loss or deficiency occurred while the accountable officers or agents were acting in the discharge of their official duties, or that it occurred by reason of the acts or omissions of subordinates, and (2) that the loss or deficiency occurred without fault or negligence on the part of the accountable officers. 31 U.S.C. § 3527(a). This shortage is, in part, an "unexplained loss," in that Ms. has admitted to stealing (and agreed to repay) only part of the missing travelers checks, and it is unknown how the balance was lost. The disappearance of funds without explanation gives rise to a rebuttable presumption of negligence on the part of the officers accountable for them. The burden lies upon them to rebut this presumption with evidence to the contrary. In the past, we have occasionally held that accountable officers may rebut this presumption with evidence indicating that the existence of "pervasive laxity" in the applicable security procedures was the proximate cause of the loss incurred. We have also held that accountable officers may be negligent and nevertheless be relieved from liability, if their negligence is not the proximate cause of the loss or shortage. Cf., e.g., 63 Comp. Gen. 489, 492 (1984); B-232744, Dec. 9, 1988; B-227714, Oct. 20, 1987; B-182386, Apr. 24, 1975.

We do not doubt that the Department's accountable officers could and should have carried out their duties more responsibly. Nevertheless, it is also clear to us that the proximate cause of this loss was not the negligent acts of one or more of these accountable officers. Rather, it was the general lack of concern and the sense of laxity which pervaded the Department's operation and management of the cashier's office. Accordingly, relief is granted to the named officers pursuant to 31 U.S.C. § 3527(a).

Sincerely yours,

  
Gary L. Kepplinger  
Associate General Counsel